

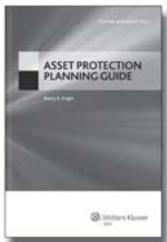
Book Reviews

Asset Protection Planning Guide, 3d Ed.

by Barry S. Engel
556 pp., plus appendices; \$150
CCH Incorporated, 2013
4025 W. Peterson Ave., Chicago IL 60646
(800) 248-3248; www.cchgroup.com

Reviewed by Mark Kolber

Mark Kolber is a former *Automation Annotations* column editor. Until his semi-retirement to North Carolina in 2013, he was Of Counsel and a member of Jones & Keller, PC's Litigation, Financial Institution, and Transportation practice groups, with an emphasis on commercial and financial institution litigation and the defense of Federal Aviation Administration enforcement actions—(919) 443-5380, mjk@mkolberlaw.com.



The third edition of the *Asset Protection Planning Guide (Guide)* by Denver's Barry S. Engel is a broad and detailed guide to the benefits and risks associated with asset protection planning. Far from being a "how to" on hiding assets, the *Guide's* strength is its emphasis on early planning and openness.

The *Guide* begins with the premise that good asset protection planning finds its benefits in the strength of the legitimate protection mechanisms selected, not in surreptitious behavior. It seeks to accomplish the goals of deterring litigation, giving the client more options and a better bargaining position if claims are made, and ultimately creating a "brick wall" with respect to a substantial portion of the client's assets, while at the same time avoiding the pitfalls of potential fraudulent conveyance claims, contempt orders, and even criminal prosecutions. As the author points out, there is nothing wrong with limiting the assets to which creditors have access; the entire concept of corporations and other limited liability entities is based on that objective. Finally, good asset protection planning is, to use the *Guide's* words, a preventive "vaccine" to be worked on at times of low asset exposure when substantial claims against the client are nonexistent or merely future potentialities. It is not a cure to be used for a problem that already exists, nor is it a panacea. As Engel points out, one doesn't know whether an asset protection strategy works until it is tested. The author defines "works" as whether "the client weathers a legal storm at least moderately better than he or she otherwise would have in the absence of any planning."

The preface provides insight into where the author's strong personal interest in the subject originated: concerns that arose over needs for asset protection strategies for his law firm and its members. Using the familiar chapter and paragraph numbering style of CCH guides, with plenty of internal cross-references for the

browsing reader, the *Guide* begins with a discussion of "integrated estate planning," recognizing that estate planning requires asset protection planning because one simply cannot pass on to his or her family assets eaten away by creditors. Indeed, Engel strongly suggests that attorneys providing estate planning services may be committing professional malpractice if they do not also consider how to protect ultimate estate assets from liability claims.

From there, the *Guide* takes the reader through an excellent discussion of fraudulent conveyance law and up what the author refers to as the "Engel Ladder of Asset Protection Planning Tools." The Engel Ladder is a series of asset protection mechanisms ranging from the simple gifting of assets, to the creation of family limited partnerships and limited liability companies to limit creditor rights to charging orders, and, ultimately, to the establishment of foreign trusts in countries with protection-friendly laws and trustees not subject to personal jurisdiction in the United States. The mechanisms are ranked and discussed from lowest to highest based on the author's view of their mix of protection benefits and flexibility in permitting some degree of continued asset control. Following the Engel Ladder is a review of other strategies; procedural issues such as application of choice of law and conflict of law rules; and an important discussion of the legal, ethical, and criminal issues potentially facing both client and attorney, such as the civil and criminal ramifications of concealing (and assisting in concealing) property of a bankruptcy estate.

Finally, the *Guide* contains a substantial appendix of practice tools. These include copies of applicable statutes and rules, as well as sample forms and clauses to aid the reader with drafting.

If there is a weakness to the treatise, it is the author's tendency to "sell" the concept of the use of foreign trusts. From the earliest chapters, the *Guide* cites examples of successful planning, almost all of which involve the foreign integrated estate planning trust. As with most of the book, this understandable bias in favor of foreign protection is forthright and honest:

The case for foreign asset protection planning is made, in part, by recognizing that domestic alternatives rely on the same legal systems for protection that created the problems and concerns clients are seeking to address.

The *Guide* is a detailed and knowledgeable description of the rules, nuances, and pitfalls of asset protection planning, designed primarily for the attorney involved or interested in a significant estate planning practice. It accomplishes this in the well-organized style of most CCH guides, and would make a worthwhile addition to the planning attorney's library. For the general practice attorney not so involved, it may not be a primary reference; however, its extensive discussion of fraudulent conveyance law, conflict of laws, jurisdictional issues, and case-referenced historical examples of what has and has not worked is probably worth a look for those attorneys involved in plaintiff litigation and collection. ■