

Barry Engel's *Asset Protection Planning Guide*, 3d Edition

Book Review by Barry Nelson and Michael Sneeringer

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EXECUTIVE SUMMARY:

Barry Engel's *Asset Protection Planning Guide* (the "Guide") is a comprehensive treatise that provides examples, citations and resources for estate planning and asset protection practitioners. The 800 plus pages of information serve as a quick desk reference for the experienced practitioner, as well as an introduction for the novice practitioner seeking to learn the complex concepts of domestic and foreign asset protection planning.

In their commentary, Barry Nelson and Michael Sneeringer review the 3rd Edition of Barry S. Engel's asset protection treatise, titled *Asset Protection Planning Guide*.

FACTS:

Denver, Colorado attorney Barry S. Engel, founding principal of the law firm of Engel & Reiman pc, released the 3rd Edition of his asset protection treatise, titled *Asset Protection Planning Guide*. Published in November 2013 by Wolters Kluwer (CCH), the Guide's contributing authors are also attorneys at Engel & Reiman pc: John R. Garland (a principal); Edward D. Brown (a principal) and Eric R. Kaplan (a senior associate). Over the Guide's 800 plus pages, Engel explains the "integrated estate planning" ("IEP") process with a focus on the asset protection component of IEP. The Guide is divided between Planning Materials (approximately 550 pages) and Practice Tools (approximately 200 pages).

The Guide begins with a general overview: frequently asked questions about what asset protection is and how it works. The rest of the Guide explains in depth, with examples, numerous asset protection techniques. Among the topics covered are the following:

- * Fraudulent transfers;
- * Gifting;
- * Joint or concurrent ownership;
- * Exemptions;
- * Foreign insurance and annuities;
- * Domestic insurance;
- * Family limited partnerships and LLCs;
- * Domestic trusts;
- * Foreign trusts;
- * A comparison of state law and foreign law on trusts;
- * Choice of law and conflict of law issues;
- * Other foreign-based planning tools;
- * Expatriation;

- * Protection of retirement benefits;
- * Ethical, civil and criminal considerations;
- * Contempt of court principles;
- * Trust litigation; and
- * Asset protection for an operating business.

COMMENT:

The Guide's audience is both experienced and novice asset protection planning attorneys. Anybody currently practicing related areas such as "estate planning," "business planning" or "planning for professionals" should consider the Guide. For ordering and other information, enter this link in your web browser: <http://www.engelreiman.com/asset-protection-guide>.

For the novice asset protection planning attorney, the key is that the text itself is 556 pages while the "Practice Tools" is 246 pages. What Engel is able to do is concisely form a basis for what asset protection planning tools are out there, what tools Engel favors the most, and what cases and statutes are out there that will affect the planning described in the Guide.

The novice could essentially read the Guide over a long weekend or a vacation and instantly learn a whole host of issues and ideas that he or she can integrate into a solo practice or bring to the table at a large firm. What Engel also generously does is provide sample planning materials in the "Practice Tools" section. For example, the Guide includes: (i) solvency; (ii) testamentary powers of appointment; (iii) fee agreements; and (iv) Alaska Perpetual Family Trusts, among others. Attorneys often struggle to find "sample forms" and the Guide includes a variety of documents common to an asset protection practice.

The Guide has many resources for the experienced asset protection planning attorney, especially in a field where laws change frequently. The Guide addresses planning with assets exempt from creditors' claims, use of LLCs and partnerships to provide charging lien protection, homestead and use of spendthrift and discretionary trusts, domestic and foreign.

Engel provides case summaries throughout the Guide through 2013. The case summaries provide an experienced asset protection attorney with issues he or she may have missed over the years, and the novice asset protection attorney with examples of effective planning and planning that was ineffective.

Engel provides examples of how his clients fared where his asset protection planning was challenged. Engel's experiences serve as a reminder that asset protection attorneys should plan as if one day planning may be challenged, and if so, describe an example of what a client may expect if asset protection is challenged.

Engel's unique approach is exemplified by his "Ladder of Asset Protection Tools" (the "Ladder") and his "Maxims of Asset Protection Planning" (the "Maxims"). The Ladder is unique in that it serves as Engel's opinion as to a rank of the planning techniques discussed in the Guide. The Ladder, which is introduced in the first Chapter, provides a roadmap for the reader to locate the chapters most relevant to the matter under consideration and then integrate the techniques into the client's comprehensive estate and asset protection planning.

While the Ladder may be an effective aid for the novice, the experienced asset protection attorney can compare his or her techniques with Engel's suggestions to potentially enhance even an experienced planner's repertoire. The Maxims are also geared more toward the novice asset protection attorney. However, for an experienced asset protection attorney, they provide what would look to be an excellent guide for discussion with new clients in that they summarize what the attorney (and client) should hope to get out of embarking on asset protection planning.

Among the unique areas covered in the first portion of the Guide are expatriation as an estate planning tool and trust litigation issues. The Practice Tools include uniform acts, flowcharts of domestic and foreign possible structures, sample clauses, relevant tax forms, and more. The Guide also includes a number of charts comparing state exemptions (such as charging orders by state, homestead exemptions with reference to state laws and life insurance exemption amounts).

Asset protection planning is driven by applicable state statutes and we reviewed with interest the author's review of Florida homestead provisions. The Guide provided a rather thorough analysis of Florida law and addressed some of the finer points that are difficult with a multi-jurisdictional resource reviewing applicable state laws. In addition, the Guide cited a recently filed lawsuit in South Florida that has yet to be decided, but is an excellent example of making large gifts to a spouse as part of an asset protection plan.

Engel's Guide is an effective resource for the seasoned and novice estate and asset protection planner. It covers a wide variety of existing techniques and is likely to be a helpful resource at a reasonable price.

Hope this helps you help others make a positive difference!

Barry Nelson
Michael Sneeringer

Barry A. Nelson, a Florida Bar Board Certified Tax and Wills, Trusts and Estates Attorney, is a shareholder in the North Miami Beach law firm of Nelson & Nelson, P.A. He practices in the areas of tax, estate planning, asset protection planning, probate, partnerships and business law. As the father of a child with autism, Mr. Nelson combines his legal skills with compassion and understanding in the preparation of Special Needs Trusts for children with disabilities. He is a co-founder and current Board Member of the Victory Center for Autism and Behavioral Challenges (a not-for profit corporation) and served as Board Chairman from 2000-2008. A Fellow of the American College of Trust and Estate Counsel, he served as Chairman of its Asset Protection Committee from 2009 to 2012. As the Founding Chairman of the Asset Preservation Committee of the Real Property, Probate and Trust Law Section of the Florida Bar, he introduced and coordinated a project to write a treatise authored by committee members entitled Asset Protection in Florida (Florida Bar CLE 2008, 3rd Edition 2013) and wrote Chapter 5 entitled "Homestead: Creditor Issues." Barry is a past President of the Greater Miami Tax Institute.

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