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# FA LAW

*Celebrating Our 26th Year in 2000*

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Asset Protection Trusts  
 Business Law  
 Civil/Criminal Law  
 Commercial Law  
 Employment Law  
 Estate Planning and Administration  
 Family Law  
 Juvenile Law  
 Personal Injury  
 Traffic Law  
 Wills  
 Workers Compensation

## Asset Protection Trusts

All of us use our automobiles, either own or rent property, and perform services or make products and therefore have the potential exposure of committing negligence which may result in a judgment against us. The mainstream lawsuit is generally covered by automobile insurance, premises liability insurance, or some other kind of liability insurance, either purchased by ourselves or our employers. In some instances, a third party has insurance to cover our negligence. Again, most causes of action are covered by insurance. Today, however, many litigants seek to obtain judgments far in excess of the amount for which we are insured.

When a judgment is obtained, the holder of the judgment, called a "creditor", can go after the personal assets of the wrongdoer. Here are a few examples of circumstances in which liability arises and, if the party who sues you prevails, can result in a judgment in excess of your insurance.

You are headed to the grocery store to pick up

groceries for your spouse and your children. As you switch lanes, the long panel van behind you slams on its brakes. Because of the slickness of the road, the long van goes into a ditch and the \$1,000,000 of technological computer equipment it contains is trashed. It is determined that when you switched lanes, your movement was too abrupt and that, as a result of your failure therefore to meet the standard of care required of a driver, you caused the damage to the long van and its contents. A lawsuit is filed and, despite the great defense provided by your insurance company, the jury comes back with a verdict that you were the wrongdoer and the judgment against you is \$1,000,000. Your automobile insurance policy includes \$250,000 in liability coverage and your agent previously sold you a \$500,000 umbrella policy. The \$750,000 of insurance that you have isn't sufficient to cover the \$1,000,000 judgment. The owner of the long van which is a Fortune 500 corporation whose headquarters are located in San Marcos, California, asks its lawyers to

do a financial check of you, the wrongdoer's, assets. Local land records show that you and your spouse own a \$225,000 house in Howard County, Maryland, which is almost mortgage free; and that you own a condominium in Ocean City that has equity of \$50,000. Through other nefarious ways, a private investigator discovers that you have a savings account, a

brokerage account with LeggMason, and other assets. (Note: Even if the private investigator was unable to locate your assets, there are post-judgment proceedings that enable the creditor, the Fortune 500 corporation who owned the long van, to discover your assets through a procedure called "discovery".) The creditor then begins to  
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### Welcome Mark L. Alexander



We're pleased to announce the employment of Mark L. Alexander as an associate attorney.

In our efforts to improve and expand the services provided to you, we have hired Mark. Mark's prior education, training, and experience qualify him to represent clients in business, criminal defense, divorce, and general litigation. He has good people skills having dealt with the public as a law enforcement officer for seven years. His interests include karate, golf, and outdoor sports. Mark lives in Frederick, Maryland, with his son, Connor, and is marrying Patricia Dolan on September 23, 2000. Best of luck, Mark!

## Asset Protection Trusts

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seize your assets. You consider bankruptcy but your assets are greater than your liabilities other than the judgment from the negligence suit so that bankruptcy is not a possible protection for your and your spouse's personal assets.

The example above is what is likely to happen in the event that the judgment or settlement exceeds your policy limits. It is not unusual, in our high-tech society, to have an automobile accident with an unmarked van that carries sophisticated computer equipment or some other expensive item which gets damaged in a vehicular collision.

Another example is that you have bought a home that was previously owned, often called a RESALE. Although the home was delivered to you in "broom clean" condition, there are a number of bags of what appear to be fertilizer and seed in the garage but the bags are faded so that it isn't possible to read what the contents of those bags are. You go to Home Depot and pick up some fertilizers and lawn care

products and rest the new purchases against the old bags. A number of years go by and unbeknownst to you, the neighbor's cat goes into your garage and starts using the various bags as cat litter. Over a couple of months, the ingredients of the various bags come together and begin to seep through cracks in the uppermost corner of your garage. Another year goes by and the fertilizers have a synergistic effect of getting into your well and the wells of 5 houses in your subdivision. The Environmental Protection Agency determines that not only is the water contaminated but the land is environmentally unsafe. In this instance, you have a \$250,000 homeowner's policy with an additional \$500,000 coverage under an umbrella policy. The verdict of the court is that you were negligent. Each of the houses is worth \$200,000; there are 5 houses involved; so the judgment against you is for \$1,000,000. With your insurance applied, you are \$250,000 short. The attorney representing the 5 other homeowners operates in a similar fashion as the Fortune

500 corporation did in the previous example and seeks to seize all of your and your spouse's personal assets.

These examples may appear to be extreme. However, in today's environment, they are not that far fetched. The difference may be that some individuals have considerably less automobile liability insurance than described in the first example and many people do not have umbrella policies. Also, ten years ago, many plaintiffs (injured parties), when suing the wrongdoer, would accept what is called "policy limits", which is the amount of insurance that the wrongdoer had. However, today the approach utilized to recover judgments is much more sophisticated and often results in the alleged wrongdoer suffering the total loss of personal assets.

If an asset protection trust is created before a cause of action arises, individuals can be almost fully protected. Without getting too technical, the asset protection trust establishes both a general partnership interest and a limited partnership interest. Despite the fact that assets are

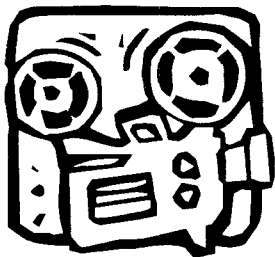
transferred within the trust, you, as the owner of the partnership interest, still have direct and indirect control over the assets that you have transferred. In addition, you have control over the management of the trust and will receive 99% of the flow of distributions made between the trust and you, as a partner.

**[Sharon, our office manager, suggested that we end this article here as you may not be interested in the detailed material that follows. However, if we have caught your attention and you wish to read on, please do!]**

Clients seem to have concern as to whether the asset protection trust affects taxes—either state or federal. Asset protection trusts are tax neutral. The Internal Revenue Service does not consider the asset protection trust to be a scheme to evade taxes. They are treated as any other trust is treated and, specifically, trust income normally is not taxed through the trust but through distributions made to the beneficiaries who established the asset protection trust.

A properly drawn asset protection trust will generally

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## Quick Flix

Looking for some good summer home movie viewing? Here are a few we would like to recommend to you.

### **End of Days**

Arnold Schwarzenegger  
Apocalyptic theme taken

from John's Book of Revelations. Not the normal character for Arnold and the story moves fairly quickly. Agnostic Arnold finds himself protecting a woman chosen to bear Satan's child with a very surprising ending.

### **10<sup>th</sup> Kingdom**

Various cameo appearances  
Originally a television miniseries, this is available now for rental. Great family picture, it revolves around a present-day New York waitress and her father who find a portal to the "nine kingdoms" in Central

Park. Once in the kingdoms, they encounter many figures you will recognize from childhood fairytales while experiencing their own adventures.

### **The McMartin Daycare Center Trial, California.**

James Woods

James Woods is the defense attorney for the family members who operated the daycare center and were charged with sexual abuse of children. Excellent cross-examination by Woods that leads to no convictions of

people who have been falsely accused.

### **Life Is Beautiful**

Roberto Bernini

Award-winning film set in Italy during the German occupation. A young husband and father seeks to protect his family from the cruel realities of life in a concentration camp using his imagination, wit, and humor. We recommend that you view the Italian version as the beauty of the film comes through in the language as well as in the story and character personalities.

# Peace and Order



A new Maryland law went into effect on October 1, 1999, which Maryland state legislators hope will provide some relief to victims of bodily harm, threats of harm, assault, false imprisonment, trespass, stalking, and other issues. The new law allows victims to go to their county district court and request a "Peace Order" from the court. The Peace Order acts as a restraining order against

the accused perpetrator by preventing him or her from contacting or following the victim.

The intention of the law was to provide victims of the aforementioned acts some immediate relief from their perpetrator or stalker. Prior to the enactment of the Peace Order law, victims had to rely on restraining orders and the criminal stalking laws. The problem with the previous laws was that they were limited by the fact that it had to be clearly shown that the perpetrator or stalker posed severe threat to the safety and health of the victim before something could be done. Many times, the only way to prove this was by showing that the perpetrator or stalker had already attempted to or had threatened to harm

the victim. In other words, a person had to be a victim of some action by the perpetrator or stalker before any action would be taken.

The Peace Order law allows a person to go into the county district court, fill out a petition, and present the petition to a judge all in one day. The judge will then review the petition and ask the person questions. If the judge is convinced that there is a possibility the person is being harmed, the judge will issue a temporary Peace Order against the suspected perpetrator and set a hearing to occur within the next couple of weeks. The Peace Order is then served on the suspected perpetrator by the police. The suspected perpetrator attends the hearing

where he or she has the opportunity to present his or her own version of the situation. The judge thereafter decides whether to extend or to revoke the Peace Order.

Should a person violate the Peace Order, he or she is guilty of a misdemeanor and, as a result, could be subject to a fine up to \$1000 and imprisonment for up to ninety (90) days. These penalties are designed, in part, to deter, but also to provide the victim valuable time to file charges against the perpetrator or to seek a full restraining order. The Peace Order is not designed to be a complete solution to the problem but only to provide the victim some relief before the perpetrator's actions reach a level warranting serious criminal charges.

The law does have some critics. The main argument is that the standard for receiving a Peace Order is so low that anyone can get a Peace Order against anyone else. Your neighbor can get a Peace Order against you for looking at him while he mows the lawn

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## Asset Protection Trusts *(continued from page 1)*

protect you with regard to you and your spouse's personal assets when you are being sued. When a judgment is obtained as identified in the examples above, the creditor is unable to seize the assets of the trust. There are exceptions, however, and although the following are examples of instances where the asset protection trust will not protect you, this is not an exhaustive list: alimony, child support, transferring of assets in order to qualify for nursing home expenses under Medical Assistance, and intentional wrongs. Also, if a pending claim is in existence, meaning the accident occurred but you haven't been sued as yet, the establishment of an asset protection trust after the cause of action arises will not provide protection of your assets.

For those entering marriages, particularly a second marriage, lawyers will

often recommend a pre-nuptial agreement. The asset protection trust is another vehicle to protect a spouse regarding assets that are placed in the asset protection trust.

Alaska, Delaware, and Nevada have established legislation enabling the creation of asset protection trusts. The asset protection trust created in the State of Delaware is geographically convenient and establishing a trust in that jurisdiction will afford protection in the state where you live, work, vacation, or travel, and outside of the United States as well.

For those who want the maximum protection, there are off-shore asset protection trusts. An asset protection trust which is located off-shore is not a device to hide assets illegally or to prevent taxation. The advantage of being off-shore and establishing an asset protection trust, lets say in the Cook Islands (which are north of Australia), is that the

creditor is placed under additional burdens including having to hire a lawyer in the Cook Islands and having to file a lawsuit against the trust in the Cook Islands. Furthermore, in the United States, the burden of proof in a civil case is by what is called "a preponderance of the evidence". This means that it is "more likely" than "less likely" that the wrongdoer is at fault. In order to prevail in the Cook Islands, the injured party must establish his or her proof "beyond a reasonable doubt" which is the same standard used in the United States to convict someone of a crime. The chances of the creditor prevailing against you if you have established an asset protection trust in the Cook Islands is not very good.

Over the next several years the public will become more familiar with asset protection trusts as a device to prevent the loss of personal assets in a highly litigious society.



**FA LAW** is published quarterly for clients and friends of The Law Offices of Fredric G. Antenberg, Chartered. We are here to answer your questions, so give us a call. Remember, your initial consultation is free.

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## Peace and Order

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or a fellow employee can get one against you because you borrowed a pencil from his desk. Critics of the law even say that the Peace Order itself can be used to harm innocent people.

In the past year, I have successfully obtained a Peace Order on behalf of a client. The example that is being given is a case that we successfully tried in Prince George's County, resulting in the issuance of a Peace Order against the wrongful party (perpetrator). We have changed the facts to some degree. The petitioner is a parent whose fifteen-year-old girl becomes involved with a male, approximately twenty-two years of age. The male has a fairly serious criminal background involved with drugs, theft, crimes of assault and battery, and cases where intimidation is used against the victim. The twenty-two-year old becomes intimate with the fifteen-year-old which under

criminal law would constitute rape of the minor because she is not of a sufficient age to consent. The parent is unable to prevent the twenty-two-year-old male from contacting the daughter. A petition is filed but it is very difficult to serve. Finally, on the 26<sup>th</sup> day after the filing of the petition, service is obtained over the twenty-two-year-old male perpetrator. The case is successfully tried in Prince George's County and the Court determines that the petitioner is entitled to a Peace Order.

Either this new law will provide needed relief to victims of perpetrators or it will be misused. However, Peace Orders, when used properly, can provide you with added protection. If you are the victim of a perpetrator for those types of acts described at the beginning of this article, please give us a call. We can provide you with the information you need to stop it.

## 'Quick Quotes'

### A WISE PERSON ONCE SAID.....

"Don't go to divorce court for justice; go for a conclusion."  
—William Concannon, lawyer

"If marriages were as hard to get into, there would be less divorces!"  
—Brenda Millard

"A big case is never simple, but a small case is often complex."  
—Jeffrey Stephen Patterson, Divorce Lawyer

## Brain Teasers

1. *This thing all things devours:  
Birds, beasts, trees, flowers;  
Gnaws iron, bites steel;  
Grinds hard stones to meal;  
Slays king, ruins town,  
And beats high mountain down.*
2. *It cannot be seen, cannot be felt,  
Cannot be heard, cannot be smelt,  
It lies behind stars and under hills,  
And empty holes it fills.  
It comes first and follows after,  
Ends life, kills laughter.*
3. *Voiceless it cries,  
Wingless flutters,  
Toothless bites,  
Mouthless mutters.*
4. *Alive without breath,  
As cold as death;  
Never thirsty, ever drinking,  
All in mail, never clinking.*
5. *A box without hinges, key, or lid,  
Yet golden treasure inside is hid.*

(Taken from There and Back Again (The Hobbit), J.R.R. Tolkien, Ballantine Book, INC., 201 East 50<sup>th</sup> Street, New York, N.Y. 10022 (1937).)

Answers: 1. Time 2. Dark 3. The Wind 4. A Fish 5. An Egg