GULFSHORE INSURANCE
—Private Risk Services—

Syncing your estate plan & risk management plan

Protecting your assets owned in the name of a trust or LLC

It has become very common for affluent clients to follow their estate planning attorneys' recommendations to transfer ownership of their properties, fine art and watercraft to a newly established trust or limited liability corporation (LLC). While these are often prudent steps within an estate preservation strategy, they can create unforeseen pitfalls with related insurance policies, threatening clients' assets in the event of future losses.

It's important to discuss the ownership structure to ensure that all parties' interests are properly accounted for within insurance policies. In many situations, homeowners have transferred their home into a trust, which makes them tenants in what was previously their home. These trusts are known as qualified personal residence trusts, and are more complex than a standard living trust where owners remain as the trustee and have complete control over the property. With a qualified personal residence trust, the owners are granted the right to continue living in the home, but the ownership structure is different, which will have insurance implications.

The following case study is intended to: 1) illustrate the potential costs associated with non-cohesive risk management and estate plans, and 2) encourage additional dialogue between clients and their legal and insurance advisors to properly account for their evolving needs.

Meet the Butlers

Mark and Sarah Butler were in their 60s and retired after selling their successful family business. As part of their retirement planning process, the Butler's trust and estate attorney recommended they transfer ownership of their tangible assets (estimated value: $7 million) to two trusts and an LLC. A qualified personal residence trust was established for their $2-million residence in Naples, FL. A joint living trust was created for their personal property (value: $1 million) and their art and antique collection (estimated market value: $3 million). Their triple outboard fishing boat (estimated valued: $600,000) was titled in the name of a newly created LLC. The LLC was then titled in the name of the living trust.

The trusts and LLC were formally established and the titles of the residence and the watercraft were amended. The Butlers appointed their oldest son Michael as the trustee of the qualified personal trust. Mark and Sarah were then legal tenants of the residence. No changes were made to their related insurance policies. Mark and Sarah Butler remained the "named insured" listed on the homeowners, watercraft and personal umbrella policies.

Now consider the following claims scenarios:

Devastating Fire

While the Butlers were out for the evening, a defective electrical appliance started a fire that destroyed their home and all of their personal property. The estimated total damage was $5 million ($2 million for the home, $1 million for the personal property and $3 million for the art and antiques). As part of the claims settlement process, the company's adjuster pulled the title of the home and uncovered that the home was legally owned in the name of a trust with Michael Butler as the trustee. Further investigation determined that the artwork and the personal property were also considered tangible assets owned in the name of a separate trust.

The Outcome

Neither the trusts nor Michael as the trustee, were listed on the policy as an insured, additional insured, or additional interest. The existing insurance policies listed Mark and Sarah as the named insured but they had no documented legal ownership of the home, the personal property, nor the art and antique collection. The insurance company denied the related property claims. Mark and Sarah were limited to collecting only for their additional living expenses following the fire (as they were documented tenants of the residence). The uninsured property loss netted a $5 million reduction in the value of their estate.

Tragic Accident

Mark and Sarah were enjoying a day at sea on their boat with their friends, Adam and Karen Metcalf. The couples had enjoyed many seasons fishing and water-skiing together in the Southwest Florida waters. Mark unfortunately lost control of the boat while Karen was water-skiing behind it, which caused her to strike the water at a high rate of speed. She suffered a broken femur and pelvis and a severe spinal injury. The Coast Guard airlifted Karen to the hospital. Her rehabilitation process took more than two years, and she was unable to return to her position as National Sales Director for a multi-national pharmaceutical company. Despite their friendship of more than 15 years, the Metcalf's brought a suit against Mark Butler and the owner of the boat: the newly created LLC. The jury awarded Karen $5 million ($2.5 million against the Butlers and $2.5 million against the LLC).

The Outcome

Mark and Sarah's primary watercraft and personal umbrella policies fortunately responded, covering the $2.5 million judgment and their related defense costs. However, since the LLC was not listed as a named insured or additional insured on either policy, there was no insurance coverage afforded to it. The Metcalf's' attorney then pursued the total assets of the LLC to cover the outstanding $2.5 million judgment. The $600,000 boat was the only asset owned by the LLC and was sold quickly for $400,000; the proceeds were awarded to the Metcalf's, for a net loss of $600,000 to the Butler's estate.

Determining the proper insurance solution

While each case is unique and requires specific attention, there are few common insurance solutions for such situations. Clients are encouraged to create an open dialogue between their trust and estate attorney and their insurance advisor. By disclosing the assets owned in the name of an estate, trust or LLC, your insurance agent can determine the best method of insuring the physical properties and potential liability exposures.

It's important to work with an insurance agency familiar with the evolving needs of affluent and high-net-worth individuals and families. Gulfshore Insurance has served such families since 1970, and our Private Risk Services team specializes in personal risk management programs that help protect our clients' assets and lifestyles.

We want to be the 1st choice when clients and their network of trusted advisors need sound advice on any insurance related matter.

For additional information, please contact one of our team members.

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