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WEALTH ADVISER

Restructuring a Family Business to Protect Assets

BY ALEX COPPOLA

The husband and wife were owner-operators of a large, independent theme park whose main attraction was a series of zip lines.

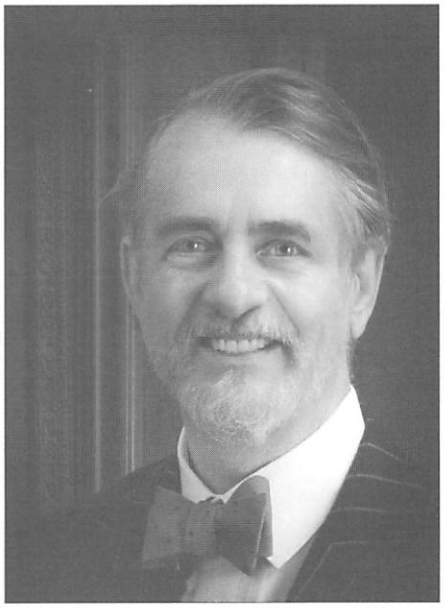
And although the couple did have a $1 million commercial insurance policy on the park, they understood the significant liability inherent in their business and were looking for ways to enhance the protection of their estate.

Their insurance agent referred them to adviser Jeff Camarda, who in just his first meeting with the couple identified a glaring issue with their current plan: The operating company which owned the amusement park had been established as an S corporation.

"That structure wasn't an issue in and of itself," says Mr. Camarda whose firm, Camarda Wealth Advisory Group, manages $244 million for 430 clients in Fleming Island, Fla. "But the couple's belief that the corporation provided an adequate shield against liability wasn't entirely accurate."

Under an S corporation, if the couple were involved in a personal lawsuit, the shares they owned in the corporation could be seized in the case of a judgment. Worse, if a creditor seized a majority share of the stock, they would have the right to liquidate the business to satisfy their claim.

So the adviser made a suggestion: Convert the current corporate structure to a limited liability company. Thanks to the so-called charging order protection that the structures provides, neither the assets owned by an LLC, nor an owner's interest in it, can be taken outright in a suit or by creditors.



Jeff Camarda PHOTO: CAMARDA WEALTH ADVISORY GROUP

"A common fear among S corp owners is that the conversion to an LLC will trigger capital gains taxes like the sale of a business," Mr. Camarda says. "But structured properly, with the help of knowledgeable professionals, the owners incur no taxes during the conversion."

Additionally, the adviser explains, they could make the conversion and maintain the pass-through tax status they enjoyed as an S corporation, which allowed them to avoid paying tax at the corporate level and instead pay taxes on the business' profits on their individual tax returns. Given that information, the clients were eager to put the plan into motion.

Mr. Camarda's first step was to catalog how each of the couple's assets were currently titled. That process raised more concerns for the adviser. The wife, he discovered, owned 100% of the S corporation, which owned the operating company, which in turn owned the theme park as well as the real estate on which the park was located.

"That kind of concentrated ownership also left them unduly exposed," Mr. Camarda says, noting that any judgment against the park, for example, could also include 100 acres of property. "The assets would be far safer if they were divided into separate entities."

With the help of an attorney and CPA, the adviser converted the corporation holding the operating company into a multiple-member LLC, owned in equal parts by the husband and wife. The real estate was placed into a separate LLC, which also belonged to the couple, while a third LLC was created to hold their rental properties.

The couple was grateful for the help and relieved to have a plan in place that shelters them, the assets they've worked so hard to build, and the business they plan to pass down to their children.

"Despite being off the radar of most planners, asset protection planning is one of the most critical services we need to provide for clients with small-businesses," Mr. Camarda says.