



CAPITAL PRESERVATION  
G R O U P

## **Capital Preservation Group, LLC**

**Areas of Expertise**

Capital Preservation Group, LLC | 1100 Parker Square, Suite 245 | Flower Mound, Texas 75028  
Phone: 972.318.1100 | Fax: 972.318.1114 | Email: [Info@CapPG.com](mailto:Info@CapPG.com)

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## Capital Preservation Group, LLC

The Capital Preservation Group (CPG) is a national alliance of elite independent financial advisory firms, attorneys, and CPAs who work with high income and high net worth clients.

Our alliance is a collaborative effort to bring conservative but creative asset protection and wealth creation strategies to high income and high net worth clients in local markets. Generally, such sophisticated strategies have only been available to the upper echelons of the extremely affluent.

This interdependent alliance consists of some of America's finest financial minds and gives local clients and their local advisors access to superior financial strategies.

## Areas of Expertise

- Asset Protection
- 831(b) Captive Insurance Companies
- PLLC Structure
- Mergers and Acquisitions
- Non-Traditional Executive Benefits
- Family Wealth Planning & Transfer

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## Asset Protection

In today's highly litigious society, fast food chains are successfully sued when a woman spills coffee into her lap, and homeowners are successfully sued when a burglar gets hurt breaking into their home. Perhaps of greatest concern is the growing list of lawsuits being filed against high income and high net worth individuals, especially physicians, business owners, executives, and corporate boards of directors (see "Lawsuit Hell" article in Newsweek, December 15, 2003). The atmosphere of fear and paranoia this risk of litigation creates can sap the joy out of nearly any profession.

Sarbanes-Oxley is now in place to prevent or reduce corporate corruption as a result of ENRON and MCI-Worldcom, but what about the smaller or non-public companies? They face different liabilities, often personal liabilities, and their personal residence can become part of a judgment, just like their checking and brokerage accounts. Juries are often not sympathetic to the wealthy business owner or professional, identifying more closely with the "little guy", and, thus, likely to side with the plaintiff. Personal lawsuits are also something which create concern, particularly outrageous claims from neighbors, "friends," business associates, or casual acquaintances.

### **What can you do to protect yourself? And how do we help protect you?**

The first and most important step all professionals should take is to choose experienced, conservative, and creative advisors, and to do so before any litigation is pending. Your choice in advisor will be key to creating an appropriate and reliable plan. Not all advisors are created equal, and our clients count on our asset protection strategies to protect their life's assets. With that in mind, our recommended attorneys and tax-advisors have done hours upon hours of due-diligence, and have found our asset protection techniques to be, in their estimation, solid and likely to stand up to nearly any challenge.

Capital Preservation Group's role includes providing you with unique and creative asset protection strategies and access to world class attorneys and tax advisors. In addition, we guide you through the steps to implement these strategies. Our techniques can make you or your business a less desirable target for litigation. After implementation of our strategies, it is common for plaintiff's attorneys, after doing an asset search, will recognize that even in the event of a judgment against you, the likelihood of a payout to their client is exceedingly slim. Plaintiffs are generally advised to drop the lawsuit altogether, or they encouraged to settle for pennies on the dollar.

Even if you are never sued, the ancillary benefits of creative asset protection work allows for significant income tax and estate tax protection, and helps to hedge retirement savings against market volatility and inflation.

### **What does Asset Protection entail?**

Proper asset protection begins with the prudent use of investment vehicles which are protected by law, such as those provided for by state and federal exemptions (like ERISA-qualified pension plans), proper titling of assets, and avoidance of common asset protection traps. An asset protection plan may also include the use of Limited Partnerships, Limited Liability Companies, Trusts, and Captive Insurance Companies. Which particular combination of these financial tools that will work best for you or your business will depend on your assets, your state of residence, and your financial goals.

For example, our organization represented a physician client in North Carolina with a net worth of more than \$15mm. His sixteen year old daughter had an auto accident bringing about a suit for millions (the damage claim went up when they discovered that her father was a physician). Fortunately for the family, one of our partners had been engaged to put together a comprehensive asset protection strategy before the accident took place. When all was said and done, a frustrated plaintiff's attorney had to settle for the insurance money plus \$35,000 (in essence, pennies on the dollar). Our client was in control and his assets protected. As you might imagine, he was very pleased with our work. Many others have successfully wrapped their assets in a protective veil with our guidance and the legal work of one of the nationwide asset protection attorneys we would recommend

### **What needs to be protected?**

It is important to meet with a Capital Preservation Group advisor to do a complete check-up of your existing assets and to determine which assets are exposed. Once you determine which assets need to be protected, we can design a plan that best fits your situation into your comprehensive wealth protection plan. Click below to see our asset protection checklist.

We can help protect:

- Investment accounts
- Rental properties or other real estate holdings
- Accounts receivable
- Car collections
- Beach or lake houses

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- Primary residence
- Other important and vulnerable assets

## **Conclusion**

Too many professionals and executives spend time and energy worrying about building corporate and personal assets while ignoring the need to protect those assets. It goes without saying that this kind of planning is considered “important, but not urgent” and is often times put off until it is too late. By meeting with a Capital Preservation Group advisor, you can get a better handle on your present situation and learn how implementing an asset protection plan may help protect your business and personal assets from personal and business lawsuits. In that process, you will likely learn how to enhance your existing estate plan and reduce your income and estate taxes during the process. Contact us so that we may direct you to the most appropriate asset protection advisor in your area.

## **831(b) Captive Insurance Companies**

The benefits of owning your own Small Insurance Company (CIC’s) are numerous. As a group, we have found no other single financial and asset protection strategy which can accomplish so much, often solving many financial issues with just this one strategy. Since 831(b) Captive Insurance Companies have their own code section and revenue rulings and IRS published Technical Advice Memoranda abound, CIC’s are considered by legal experts as a very conservative choice for clients who qualify.

Here are a few basic questions and answers.

### **What is a CIC?**

For our purposes, a CIC is a small casualty insurance company that you or those close to you own or control, and which provides insurance of your choosing primarily to entities that you or those close to you own or control.

### **What does a CIC do?**

Typically CIC’s are used to do two things:

- Insure risks that you presently cover via third party insurance arrangements, but at a cost that is expected to be more economical for you over time. For example, it might be more economical in the long run for a medical practice with a history of very low med-mal claims to purchase med-mal insurance from their own CIC rather than on the open market. In this manner, the “profits” that are presently being realized by the third party insurance provider can be retained for the physician owners’ benefit.
- Insure risks that are presently being self-insured (i.e., not insured). Many small businesses fail to insure against very real and highly insurable risks simply because the cost of purchasing the coverage is deemed to be too high or too low of a chance that the risk will occur. Examples of such risks might include terrorism, kidnapping, administrative actions issues, loss of business to competitors, or loss of electronic data stored on computers. Any one of these contingencies would be devastating to a business, yet most don’t insure against them simply due to cost.

Other uses of CICs include:

#### *Asset protection*

CIC’s can be one of the most effective ways of providing numerous layers of protection from potential future creditors or claimants. Under the laws of most jurisdictions, assets of insurance companies enjoy varying degrees of statutory protection, in order to insure that these assets are preserved for the benefit of policyholders rather than at risk to various creditors.

Second, if your CIC is incorporated in certain international jurisdictions, the laws of the international jurisdiction will make it extremely difficult, if not impossible, for any non-policyholder creditor, especially one in the US, to get to the assets of the company.

Third, as discussed above, the CIC can invest its profits and excess capital in such a way that, even if a creditor were successful in penetrating the CIC, it still could not get to the money invested in your LLC.

#### *Utilization of favorable claims history*

Assuming a favorable claims history, self-insuring via a CIC may permit you, or those close to you, to retain profits presently realized by independent third-party insurers.

Second, because with a CIC you, or those close to you, reap the benefits of a favorable claims history, you no longer have a disincentive to purchase more expensive varieties of insurance.

Third, when properly structured, CIC’s provide significant tax benefits. In order to incentivize companies to purchase needed coverage via a self-insurance arrangement with a related CIC,

Congress enacted express provisions governing the taxation of CIC's, which are referred to as "Small Insurance Companies" under the code (see, e.g., Code Section 831(b)).

### *Financial implications*

A primary advantage of a Section 831(b) Small Insurance Company is the first \$1.2 million of its premium income each year is taxed at a 0% bracket. Essentially, one can imagine a 831(b) Small Insurance Company as a C-Corporation which is in a zero percent federal tax bracket up to \$1.2 million per year of premium revenue. Thus, via a CIC, businesses can "reserve" up to \$1.2 million per year on a pre-tax basis to pay future claims or cover future contingencies. The benefits of the CIC strategy are almost limitless. It can be used, among other things, to:

- Save up to \$720,000 per year in taxes assuming a 60% tax on earnings over \$250,000 (39.6% Fed, 6.2% x 2 Social, 1.45% x 2 Medicare, 8% State = 54.9% TN, TX, FL, etc. and 62.9% most states. This assumes that the new administration will implement their proposed tax increases as stated);
- Create an asset-protected nest egg;
- Accumulate wealth for the business owner's retirement, functioning as an alternative or supplement to the owner's other retirement plans.
- Facilitate a buy-out of the business or a completely separate business
- Fund college education for the owner's children or grandchildren;
- For Temporary High Earners, i.e. entertainers, professional athletes, etc, a CIC can be utilized to create assets that may be drawn upon to continue life style after high earning years pass

### *Estate Tax Planning*

Given the right situation, CIC's can be powerful estate planning tools. If properly structured, a CIC could be owned by trust for the benefit of heirs, i.e. children and/or even grandchildren, and, assuming a favorable claims history, could move substantial wealth to younger generations in a very tax efficient manner. Having the CIC owned by a trust for the benefit of the next generation(s) allows for significant asset protection.

### **How much does it cost to set up a CIC?**

Cost depends upon the jurisdiction in which the CIC incorporated. Under most circumstances, a quality CIC can be set up and operated in an international jurisdiction for an "all in" cost of about \$70k - \$100k the first year, and \$40k - \$60k in subsequent years. CICs can also be set up domestically, though the administrative, regulatory, and capitalization costs are considerably much higher (exact requirements varying from state to state), usually making them unaffordable to smaller businesses.

## **Tax Implications of International versus Domestic Captive Formation**

None of the federal income tax benefits of CIC's (Small Insurance Companies under the Code) is attributable to the fact that they may be set up internationally. Said another way, the federal taxation of a CIC is the same whether you incorporate internationally or domestically. When working with our clients, all international CIC's file a specific election with the IRS to be taxed as a US Corporation in full accordance with US tax law. The benefits of incorporating internationally are significant, but are limited to asset protection, reduced regulatory and administrative costs, and lower initial capital requirements.

## **PLLC Structure**

Our "Preferred" Limited Liability Structure (PLLC) includes the use of proprietary property which can not be used without permission. This structure allows for two classes of members within the LLC. Each class of membership has distinct rights and responsibilities which affect the amount of capital they are required to invest into the LLC.

Regardless of the particular situation, each PLLC transaction is negotiated between the parties on an arms length basis and typically requires an independent appraisal of the parties' interests and capital contributions into the PLLC.

Given the right set of circumstances, and with the advice of counsel, the PLLC can be used to enhance a number of sophisticated planning transactions.

## **Mergers/Acquisitions, Buy Out or Buy/Sell Arrangements**

The PLLC transaction often allows for a more efficient Buy/Sell arrangement where the seller can receive more and the buyer can pay less.

## **Estate Planning Application**

The PLLC structure can be combined with other traditional estate planning techniques or used separately to bring about a much more efficient and less costly transfer of wealth to future generations, oftentimes reducing the costs of death taxes by 50% or more.

## **Deferred Compensation Plan Alternative**

When compared to traditional deferred compensation our PLLC structure better accomplish two primary goals: 1) we provide the employer with a higher rate of return on its capital used to fund the executive benefit and 2) we provide the executive with asset protection from the employer's creditors, which is not available through deferred compensation arrangements.

## **COLI/BOLI Alternative**

When compared to traditional COLI/BOLI arrangements, the PLLC structure over comes some of the recent regulatory changes which negatively affected COLI and BOLI arrangements.

## **Mergers and Acquisitions**

Our unique M&A strategies have been used very successfully with many types of businesses, involving transactions amounting to billions of dollars. These strategies work with entities of various sizes, but are most commonly used in the small to medium, and private company market. We have coordinated our efforts with some of the most prominent attorneys and tax professionals in the US and abroad to maximize value for both parties involved in a M&A transaction.

The attorneys with whom our clients engage have extensive and varied transaction experience and up-to-date knowledge of the ever-changing regulatory and business issues impacting these transactions. We take special care to understand every nuance of a transaction, and then customize the approach so multiple goals can be accomplished. When working with clients transitioning a business, either to an outside buyer or a family member, our consultative approach combined with innovative strategies provide the best opportunity for both parties to achieve their transaction goals.

### **Non-Traditional Non-Qualified Plans for Executives and Owners**

We specialize in non-traditional forms of executive compensation and benefits. These particular strategies use the intellectual property of one or more of CPGs strategic partners and can only be implemented by CPG member firms.

Our planning experience has involved a wide range of planning opportunities, including business continuation, buy/sell funding, and executive compensation strategies. We have designed programs for various types of business ownership structures such as partnerships, sub-chapter S corporations, and privately held corporations.

Now more than ever, specialized experience is required in the corporate marketplace. We have that experience and specialized knowledge regarding the design, approval, and implementation process required in the corporate environment. We are able to handle and facilitate Human Resource considerations, Corporate Finance concerns, and Board presentation and approval.

Most importantly, post-implementation monitoring and service is crucial when dealing with the inevitable changes and issues that arise over time. This experience allows us to address these problems and allow plans to run as smoothly as possible.

### **Family Wealth Planning & Transfer**

Creating, managing, and transferring wealth all have unique challenges, and, thereby, require unique planning strategies. We do not see wealth as something that is created simply for the sake of having created it, but as something much more meaningful, and which comes with certain opportunities and obligations.

CPG member firms are all cut from the same cloth when it comes to client service: we believe in a customized, long-term wealth plan that is easy to understand, and we proactively interact with the client's other professional advisors in order to make sure that the client's financial needs and desires are met in a timely and coordinated fashion.

Our advisors generally have more than ten years experience working with wealthy families and a majority of our advisors have experience exceeding twenty years. They understand the perspective of wealthy individuals and families, and know the nuances of interacting with multiple generations. The attorneys and other advisors that we work with share these necessary understandings.

We listen, and we make sure we understand. We then apply that understanding to assist you and your selected team of advisors in creating a financial roadmap for future generations.

### **Working with CPG**

Membership is by invitation only. However, if you have an interest in becoming a member of our organization, please send an email with your contact information and professional biography. We will carefully review each person and/or organization and contact you within a month of receipt.

### **Contact Us**

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