



# FOR DOCTORS ONLY

A GUIDE TO WORKING LESS & BUILDING MORE  
DAVID B. MANDELL, JD, MBA  
JASON M. O'DELL, MS, CWM  
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SAMPLE CHAPTER

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& Building More

Fifth Edition

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By David B. Mandell, JD, MBA, Jason M. O'Dell, MS, CWM, Carole C. Foos, CPA.

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To our physician clients—our partners in planning.

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## About the Authors



### **David B. Mandell, JD, MBA**

David B. Mandell, JD, MBA is a principal of OJM Group. David is an author, former attorney, and renowned authority in the fields of risk management, asset protection and financial planning. David has co-authored the book *Wealth Protection: Build & Preserve Your Financial Fortress* and *Wealth Secrets of the Affluent: Keys to Fortune Building and Asset Protection*, both published by John Wiley & Sons, the oldest book publisher in the U.S. and the largest publisher of business books in the world. For physicians, Mr. Mandell has also written *Wealth Protection, MD*, *The Doctor's Wealth Protection Guide* and *Risk Management for the Practicing Physician*. His articles regularly appear in over thirty leading national medical publications, including *The American Medical News* and *Physician's Money Digest*, and he has been quoted extensively in *Medical Economics*. He has been interviewed as an expert in such national media as Bloomberg and FOX-TV.

David holds a bachelor's degree from Harvard University, from which he graduated with honors. His law degree is from the University of California Los Angeles' School of Law, where he was awarded the American Jurisprudence Award for achievement in legal ethics. While at UCLA, David also earned a Master's in Business Administration from the Anderson Graduate School of Management.



### **Jason M. O'Dell, MS, CWM**

Jason O'Dell is a principal and managing partner of OJM Group with offices in Arizona, Florida, New York and Ohio. Jason is a co-author of the book *For Ohio Doctors: Shedding Light on Asset Protection, Tax and Estate Planning*, as well as three other state-specific versions in the For Doctors series. Jason has experience as an entrepreneur, financial consultant and investment advisor and has been working with clients for over 20 years.

Jason has conducted financial planning, asset protection and wealth management lectures nationally and has been recognized by Medical Economics as "One of the Best Financial Advisers to Physicians."

Jason graduated with a Bachelor of Arts degree in Economics from The Ohio State University and has

earned a Master of Science degree with an emphasis in Financial Planning. Jason serves on the Board of Directors of the Alzheimer's Association of Greater Cincinnati and is a member of the Financial Planning Association, Cincinnati Estate Planning Council and the Advisory Board of Partners Financial.



### **Carole C. Foos, CPA**

Carole Foos is a Certified Public Accountant (CPA) offering tax analysis and tax planning services to OJM clients. She is a contributing author of the book *For Ohio Doctors: Shedding Light on Asset Protection, Tax and Estate Planning*.

Carole has over 20 years of experience in public accounting in the field of taxation. She was formerly a manager in the tax department of a Big 4 firm and spent several years in public accounting at local firms in the Cincinnati metro area. She has been a tax consultant to both individuals and businesses providing compliance and planning services over the course of her career. In addition to her work for OJM, Carole also maintains a tax practice.

Carole graduated with a BSBA from Xavier University in Accounting.



# The Best Asset Protection is NOT Asset Protection

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Too many physicians over the last 20 years have sought cookie-cutter asset protection plans to give them some “peace of mind.” While we admire these Doctors’ commitment to proactively managing their risk, we have to remind the Doctors we speak with that all “asset protection plans” are not created equal. In fact, many of these “plans” will not work if they ever are tested. Why is this? Essentially, it is because of a basic tenet of asset protection: for any asset protection plan to truly stand up to a challenge, it *must have economic substance*.

Looking at it from a different viewpoint, superior asset protection planning would involve tools that are primarily used by people for non-asset protection purposes. In this way, the best asset protection plan involves tools typically not thought of as “asset protection tools”; instead, they are “business planning tools.” Stated another way, “the best asset protection is not asset protection.”

## Similar To Tax Planning

While few physicians realize this crucial fact of asset protection planning, leading attorneys in the field know it quite well. In fact, we are not alone, as tax attorneys and CPAs know this adage is just as true when it comes to tax planning.

Simply put, when determining whether or not a particular transaction with significant tax benefits was an illegitimate tax shelter or not, the IRS or tax court typically uses a simple test: “Would a taxpayer have done this deal if not for the tax benefit?” In other words, they are asking whether or not this transaction was simply done to save taxes or if it had another economic purpose. If there was such a purpose, the transaction stands. If the transaction was only tax-motivated, it fails.

This same test applies when evaluating whether or not a credit protection tactic will be upheld if ever challenged down the road. Here, the question is “did this transaction have an economic purpose, or was it simply done for asset protection purposes?” If you are using tools that millions of Americans use on a daily basis for non-asset protection purposes, you can convincingly answer yes.

## Why This Is So Important

Over the last decade, many courts throughout the U.S. have become increasingly frustrated with “asset protection planning.” Reading judges’ decisions in this area, it is obvious what has created their frustration—the prevalence of firms marketing themselves as “asset protection” experts, promoting the idea that the judgments of U.S. courts can be frustrated by their planning. Is this surprising? No. Of course judges are not going to be happy about an area of planning that is designed to circumvent the execution of a judgment that their court rendered, and prevent a successful plaintiff from getting paid on a judgment.

The courts’ frustration is most severe when the defendant has made transfers or engaged in transactions that seem “fishy,” even if the transaction at issue was made well before the beginning of the lawsuit process. If the transaction comes too late, the judges can resort to remedies to undue “fraudulent transfers.” However, even in cases where the transaction came well before any plaintiff’s action, we have seen judges strain to circumvent the asset protection planning.

In fact, there are certain cases where courts have given more leeway to a claim of fraudulent transfer based on a “foreseeability” argument. On the logic of one particularly noteworthy case, a medical malpractice case could always be seen as “foreseeable.” Taken to its logical conclusion, this position could support the argument that a Doctor who does procedures daily is aware of the possibility of mistakes. If this were true, a plaintiff suing a Doctor could attack asset protection transfers made years prior to the case.

By using “non asset protection” asset protection, you are not as vulnerable to this emerging trend in the law. The techniques explained in this chapter do not involve “transfers” at all. Given this, and “non asset protection” techniques with tangible and concrete economic substance, these tools and tactics are certainly among the strongest protection you can implement for the long term.

## Asset Protection That Isn’t

The best asset protection tools were not created as asset protection tools. They are tools that have other primary benefits and offer outstanding creditor protection as a secondary benefit. Which asset protection tools are not asset protection tools? Let’s examine a few of them briefly here. They will all be developed further in other parts of the book.

### Qualified Retirement Plans

The term “qualified” retirement plan means that the retirement plan complies with certain Department of Labor and Internal Revenue Service rules. You might know such plans by their specific type, including pension plans, profit sharing plans, money purchase plans, 401(k)s or 403(b)s. Properly structured plans offer a variety of real economic benefits: you can fully deduct contributions to these plans, and funds within them grow tax-deferred. In fact, this is likely why



most medical practices sponsor such a plan. Keep in mind that distributions may be subject to tax and a 10% penalty if withdrawn prior to age 59.

What you may not know is that under federal bankruptcy law and nearly every state law, these plans are protected against lawsuits and creditor claims—enjoying (+5) protection status. Yet the overwhelming majority of millions of Americans who use qualified plans are not using them for asset protection purposes. This, then, is a great example of an attractive economic tool that just so happens to have tremendous asset protection benefits as well.

### **Non-Qualified Retirement Plans**

Non-Qualified plans are relatively unknown to physicians, even though most Fortune 1000 companies make Non-Qualified plans available to their executives. These types of plans should be very attractive to physicians, as employees are not required to participate and allowable contributions can be much higher than with qualified plans, although not deductible. Once again, Non-Qualified plans are generally not used for asset protection purposes, but they may have such benefits. Read more about them in Chapter 5-4.

### **Captive Insurance Companies (CICs)**

CICs are used by many of the Fortune 1000 for a host of strategic reasons. In this technique, the owners of a medical practice actually create their own properly licensed insurance company to insure all types of risks of the practice. These can be economic risks (that reimbursements drop), business risks (that electronic medical records are destroyed), litigation risks (coverage for defense of harassment claims or HCFA audits) and even medical malpractice (keeping some risk in the captive and reinsuring the rest). If it is created and maintained properly, the CIC is an insurance company—established in a real economic arrangement with its insured. Also, CICs enjoy tremendous creditor protection—although they are almost never created for this purpose. This was covered in depth in Chapter 5-6.

### **Cash Value Life Insurance (CVLI)**

CVLI policies are purchased by millions of Americans each year for their tax benefits (generally tax-free growth, tax-free access and pays income tax-free to heirs), for family protection and for estate planning purposes. Nonetheless, in many states the cash value can enjoy the top (+5) protections. In this way, a physician can purchase a product that is widely recognized as a part of a financial plan and enjoy (+5) protections easily. Please seek the counsel of your qualified professional to discuss this further.

## **The Diagnosis**

When asset protection is a by-product of other primary goals, the courts look more favorably on the planning. In this way, asset protection planning is very similar to tax planning (which is

discussed in Lessons #7 and #9). Qualified Plans, Non-Qualified Plans, Captive Insurance Companies and Cash Value Life Insurance are just a few of the tools that have primary benefits other than asset protection, but offer Doctors outstanding asset protection.

If you have an “asset protection plan” that has no value other than creditor protection, you should be concerned. To help you analyze your situation and to see how well your asset protection plan would hold up to an attack, the authors offer a free phone consultation to everyone who purchases our book. If you visit us at [www.ojmgroup.com](http://www.ojmgroup.com) and click “Free Consultation,” you can schedule yours today.