SEASON 2, EPISODE 5

EXPERT INSIGHTS ON ASSET PROTECTION WITH BO LOEFFLER, ESQ.

David Mandell:

Hello, this is David Mandell, host of the podcast. Excited about today's episode. I've got a friend of mine and a colleague I do a lot of work with in my law firm and someone I've known for 10 years. So we're going to talk about asset protection, which is a topic near and dear to my heart, which I've been focused on a lot in my practice and professional career. So let me talk about Bo Loeffler and give you some basics of his bio. We'll link to his entire bio as we always do in the show notes. But Bo is an attorney in Ohio. His BA is from the College of Wooster. His JD's law degree from the University of Toledo School of Law. He's a former prosecutor and US bankruptcy trustee and commercial litigation attorney. And we're going to talk about how that impacts his approach and expertise in asset protection.

His law practice is limited to asset protection, estate planning, Medicaid, nursing home, elder law planning, business planning, trusts real estate, and very interesting, representing lottery winners. Maybe we'll talk about that for a minute. He's represented a number of lottery winners. He's a member of the American College of Trust and Estate Counsel, Ohio State Bar Association, the Ohio Legacy Trust Committee of the lost estate planning trust and probate law section of the Ohio bar, co-chair of the Asset Protection and Legacy Trust Committee, which I won't get into all the details, but we'll talk a little bit about it. He's involved with one of a number of attorneys who helped write the Ohio statutes for the trust law almost 10 years ago in the LLC statutes that were improved.

And now, in my view, Ohio is one of the top handful of states in the country, if not the best for some of these asset protection tools, which we're going to talk about. 11 years ago in 2010, he was coauthor of a book with us at OJM called For Ohio Doctors: A Guide to Asset Protection, Tax and Estate Planning. So a lot of accolades and excellent background. And again, we'll link to his full bio in the show notes. So with that, Bo, welcome to the program.

Bo Loeffler:

Thanks for having me today.

David Mandell:

Excellent. So let's jump in and talk a little bit about you first and then we'll get into the meat of the asset protection topics. So for the audience, tell us a little bit about you, where'd you grow up and what made you become an attorney?

Bo Loeffler:

I grew up on the shores of Lake Erie in a small town, actually two towns, Port Clinton and Sandusky. Sandusky is home to the Cedar Point Amusement Park. Very famous amusement park. But I have grown up in a midpoint between Toledo and Cleveland, for those that are a bit geographically challenged. And becoming an attorney, it was... I didn't have a real interest in the medical field. My dad was a physician. My uncle was. I have two cousins that are. I hung around with my dad on Saturday mornings when he made rounds, but just never really clicked for me. And my grandfather was a very successful banker and had a lot of dealings with attorneys and said, "You got to check out being an attorney. You advocate for people, you help solve their problems. You get to know families really, really well." And he was right. That's how it started for me.

David Mandell:

It's pretty interesting because very similar to me. You know and probably all the audience knows my brother, father, grandfather are all physicians, but on my mother's side, my grandfather was in the insurance world and was also an attorney. He was actually... Went to law school and was an attorney, but worked most of his life in the insurance business. And I kind of followed his footsteps in some degree and not in the medical side of the tree. So we're kind of the same that way. Now, in your practice and I just talked about in the bio, you've done some interesting things that in my mind as an expert in the field really would help somebody in asset protection, right? Being a bankruptcy trustee, being on the commercial litigation side. Tell us about your kind of your path and how those positions help you now and helping clients protect what they built.

Bo Loeffler:

After I graduated from law school, I ended up working on the East Coast for a period of time and got to see a lot about real estate development. And ultimately I decided to move back to my hometown. And I was able to right away jump into litigation as a prosecuting attorney. And I worked for a small five man firm that did insurance defense and commercial litigation. And what I learned through the litigation process is really how laws work and how the American system of jurisprudence works. And it set me up for... I always did estate planning though on the side when I was a prosecutor and when I was doing litigation and started doing LLC planning with clients in the planning side. Started to kind of really kind of pique my interest more and more. But having a litigation background and realizing the worst of what can happen especially in the context of creditors' rights and when things go bad, when you have a divorce, when you have lawsuits, when businesses unwind.

And ultimately that did lead to me getting appointed as a US bankruptcy trustee for the Northern district, Western division out of Toledo, Ohio. And that experience was very much eye-opening. I mean, you get to see unfortunately businesses that don't make it, people that have struggles and very, very difficult problems, and you're able to kind of go, what happened? What went wrong? And bringing that to my practice with business clients, with estate planning clients of saying, hey, we need to be careful about this. We need to protect this type of asset that you have. This is how we do it. Because in bankruptcy as a trustee, I'm going after those assets, right? I'm initiating litigation, hiring attorneys, hiring a team to go after assets that I think should be part of the bankruptcy estate so I can pay them off to the creditors. So all those experiences combined, I don't do really litigation anymore, I farm that out. But really set things up, I think, in a lot of ways, for a mean fully understanding the asset protection, creditor, debtor side of things.

David Mandell:

It's really interesting because I think a lot of physicians listening to this, would understand the progress. And I've seen it with some of my own buddies who work for the prosecutor side, from a criminal point of view. Let's say they work as a federal prosecutor and then they become a defense attorney. It's a pretty common path, right? Or they work at the SEC and then they become a securities attorney representing financial firms. Pretty common path. And this is sort of the analogous to that, right? Because as a bankruptcy trustee, you are hired by a bankruptcy court to go after assets. And that's what a bankruptcy trustee does for those of you listening who probably weren't familiar with that. So they're appointed by the court and have a lot of powers to go after those assets and bring them into the bankruptcy estate and get creditors paid.

And now, and it's not now it's been a long time, but now you've been on the other side of that, which is thinking through what could go wrong, how can I help my clients position themselves? So not just bankruptcy, but a normal lawsuit, malpractice kind of things we helped clients with every day that things can be better protected. So that's a common path in a lot of fields, but I wanted folks to hear your journey because it makes sense to me and they may not see it or recognize it so much. So that's interesting. So before we get into the asset protection, just one kind of one sidebar for a second, because I think people will find interesting, lottery winners. How'd you end up doing that? And I mean, it's just interesting. And I don't know if we've even ever talked about that, even though I know that's in your bio. So give us a minute or two on that.

Bo Loeffler:

I've had an opportunity to represent a number of lottery owners and consult with other attorneys and-

David Mandell:

Winners. These are people who actually won the lottery?

Bo Loeffler:

These are Ohio lottery winners. You're exactly right. And I think I'm right now the only attorney in Ohio that actually has accredited a continuing education course for attorneys and CPAs on that. I did that a number of years ago and I probably need to do it again. But again, it arose out of working with families, doing planning for individuals. And what is unique about Ohio and not all states have this is you can claim money, lottery winnings, through what's called a blind trust. And it was through my first case that I had, and it was quite a sizeable amount.

It was approaching around 10 million. And what we were able to do for the client, the client was just petrified about everyone finding out because they were from a small town close by to where I practice. And we were able to allay those concerns and say, "Hey, you're lucky. Ohio is one of those where you can claim through a blind trust. Nobody will know about it." And it worked out well. And from there I've done the same thing about probably about seven or eight times.

David Mandell:

Interesting.

Bo Loeffler:

I get to represent that mega millions winner that has... It's like 800 million.

David Mandell:

The Powerball winners, right? And just so the listeners know this, and I know all physicians are going to know the difference between correlation and causation. But just by hiring Bo as your attorney doesn't give you a better shot at winning the lottery. It doesn't work in reverse, although he's a great attorney to work with. So now let's jump into asset protection planning. And the folks who know me, who've seen my books, lectured, you and I do a lot of stuff together, not only writing and speaking, but actually working clients together. So how would you define asset protection planning? And then we'll go through a number of questions underneath that and get to some of the tools.

Bo Loeffler:

Dave, in my view, asset protection planning is another form of insurance. It's putting a protective wrapper around those assets that are what we in the litigation arena call low-hanging fruit. And ultimately, again, it's an extension of just another form of insurance that can give the client peace of mind. It's preparing for the unexpected. Things happen. As I saw on bankruptcy, there were physicians in bankruptcy and going after their retirement plans and going after the assets that they have. So the way things are structured and the way our laws developed in the asset protection arena, there are ways that you can plan and set up your assets and title your assets in a manner which you can get them protected.

David Mandell:

Right. Exactly, right. And you mentioned insurance. And that's something we always, and one of the things I know that you like about OJM that we like is that we're able to, through a national firm, look at the client's property and casualty insurance. So things like their homeowner's and umbrella, and we always start there, right? Because it makes sense to have, not be over-insured, but have the basics in place. You don't want a gap there. And then the asset protection planning can come to kind of fill in gaps and go as a second barrier because not everything is covered by insurance. And sometimes insurance has carve-outs and sometimes it has coverage limitations, and certainly dollar amounts. So we want to go beyond that. What about exempt assets? And I know Ohio is pretty good, but we work with clients all over the country and that range from terrific, like where I live in Florida, to pretty poor in some states. What do you see that playing a role and how early do you look at that in addition to the legal tool?

Bo Loeffler:

Exempt assets are very, very significant in the planning. And going back just real quickly to your discussion of property casualty insurance, insurance is where we always start with that. What if someone's going out on a board, can we get D&O coverage and other type of insurances? There's all sorts of insurances that we can look at with clients and we recommend that. But exempt assets are very, very powerful. And to me, that, again, is those kind of top two initial questions that we ask or look at where we're at with exempt assets. Probably the biggest exempt asset that clients have questions about is their house and then second, their retirement plans.

And this varies significantly from state to state. As you mentioned, Florida, you've got a great homestead exemption, it's factored sort of constitutional. For the listening audience, I always talk about the homestead exemption with the OJ case. Because OJ went from the West Coast to Florida and put his money into a big home down there. And that's a great example. But as you know, Dave, exempt assets are very significant role in a client's estate and asset protection plan and it's insurance homes, IRAs. And, again, it varies state by state.

David Mandell:

Exactly right. We look at it the same way. And I know that and I just wanted other people to hear the way we look at that. We try to get clients to maximize. And first of all, understand what is exempt in your state, right? First, you got to know, knowledge first. And then as long as it fits with your financial plan, maximize your exempt assets, your use of those in your state, right? But even in Florida, right? Where I live, my brother is a cardiologist lives, et cetera, we're not going to get all of our assets and exempt assets. And in some states you're going to be extremely limited. A small piece of your net worth is probably going to be exempt. What I call plus five. We use sliding scale as you do. So then we can say, now what? Now we want to protect assets.

We can't use exemptions. What are tools that are out there. And the two tools that are most popular that you and I are going to talk about for the rest of this podcast over the next 15 minutes or so are LLC, limited liability companies, and trusts. And for the listener, we're not going to go through every type of trust because we could do a five-hour course on that. But there's one particular type of trust I want to talk about. But first let's talk about LLCs. So why are LLCs so popular and why do we use them so often with clients?

Bo Loeffler:

And let me throw in, before I answer that, Dave, is that not all LLC statutes are created equal.

David Mandell:

That's right.

Bo Loeffler:

Particularly all over the country. And we want our audience to be aware of that. And we're going to share with them, as you indicated, some really good states to take a look at. But the LLC is still relatively new. Start on Wyoming, not too many years ago. But it's a very straightforward, simple, initial asset protection entity that gives the clients still a lot of control, a lot of input, but also gives that great umbrella of coverage, again, depending on the state where they live of those assets that they would have such as a piece of investment real estate, a passive investment account. So you're right. That is... I know when you do your analysis for clients of asset protection, LLC is right up there. It doesn't have the protection level of exempt assets as you pointed out. But it's right there.

David Mandell:

Right. And for sure, I want clients to hear that not all LLCs are created equal. And depending on what asset you're using it for, you may have a choice. Meaning a lot of times you say, well... Clients will ask, where should I set up the LLC? Well, it depends. If you have a rental property and let's say you live in Texas and the rental properties in Texas, you're going to use a Texas LLC. Certainly there are some attorneys out there who might say you can use an out-of-state LLC for that, but it's going to have to still step out to do business in that state, which means adhering to the laws of that state. I'm not a big fan of paying twice for what you're ultimately going to get one. So if you've got an asset that's sitting in a particular, what we call in the law to use, locus or actus, these Latin words, right?

A certain place, you're going to... You need to use an LLC in my view and I think in your view in that state. But then there are assets and I ask clients all the time. If my investment portfolio, well, OJM manages it based in Ohio, but with three offices across the country. I live in Florida. The assets actually sit at Charles Schwab, which has offices I make in all 50 states. So where is my portfolio, right? When I go to schwab.com or OJM app, it's hard to say, right? And on those kinds of assets, and I know you and I do this all the time, you have a choice of what state you can use. And while some states in the statute are silent and we don't know what a judge can do, there are some states where clearly the statute gives have a lot of discretion and can actually penetrate LLCs fairly straightforwardly, there are states that make it very difficult.

And one of the best states in my view at this point, the number one state is Ohio, where you helped draft the statutes. The other ones that I think are in close to that level, but I've used as a lawyer for 25 years, probably ones people have heard of, Nevada, Delaware, Wyoming. These are all states that have good LLC law for 20 years. But in my view, what you guys did in 2012 when you changed the law and what I know you're doing now, plus the fact, and there's some privacy and costs and other reasons that Ohio makes sense, I think Ohio's number one. I'm recommending it to a lot of clients across the country. So tell us just a little bit about what you did in Ohio that makes it so attractive from a national point of view.

Bo Loeffler:

And ironically, Dave, some of this resulted from a Florida decision that took place a number of years ago in your backyard called the Olmstead case. And our statute in Ohio was somewhat similar at the time. And a very close colleague of mine and myself as a result of that decision went ahead and were able to approach a legislature and update our what is called charging order of statute with LLCs to provide some additional protections for single member LLCs. And as you pointed out, Dave, the biggest issue that we start off with LLCs is what is the charging order protection by statute. LLCs are creatures of statute, so we have to start with what are the laws on the books of a particular state. And the biggest thing that we like to see when we look at that those LLC statutes is we want to see how much power does a court have, how much power does a court have to meddle in the internal affairs of an LLC.

We want to have, and our clients want to have really peace of mind to say, hey, some court's not going to go rogue on us and allow that membership interest to be grabbed, taken, sold, various accountings or discovery procedures related to it. How can we limit those? And as you pointed out, Dave, each state is different. And what we decided to do here in Ohio was say, hey, how can we be one of the leading jurisdictions? We got with our legislators and we went ahead and changed our statutes. We took some of the leading states that are out there that you've mentioned and we said, hey, what can we do to provide certainty to the client? Most importantly, certainty to the client that a judge is going to be restricted and is going to have to follow the statute exactly.

And that is, again, coming out of my litigation background. As you know Dave, a lot of prosecutors end up becoming judges. They never practice estate planning or business planning. And so they have this tendency of looking at things of, hey, maybe I can write some new law here. And if our statutes are very specific as to what can be done with a charging order, which is potentially the biggest threat to an LLC, how can we restrict that court? How can we say, court, this is all you get to do?

David Mandell:

That's right. And if a client has the ability to choose based on the assets they're going to use, why not use the best state, especially, or one of the best states if it's not more expensive, right? And I know in Ohio you have, I think, a $99 filing fee and there's no annual fee. So one and done. Plus if you do the work in terms of doing a filing, we can actually keep the client's name off the filing, which is a privacy element. Again, people often confuse privacy with asset protection. They're not the same. Privacy is not anybody knowing. Asset protection is even if they knew or you disclose, they still can't get it, right? But if you can have privacy in addition, why not? Right? I mean, if it doesn't cost you anything, it's a smart thing to do. Now, jurisdiction is one thing.

I mean, another thing that I think in terms of not all LLCs are created equally, it's also what's in the operating agreement. And you and I have spent literally decades working on our operating agreements and comparing notes with us. Bo, also, I didn't mention this in the bio, but he runs an asset protection conference or attorneys every year. The Great Lakes Asset Protection Conference, which I've participated in. And we participate in a lot of different ones online, et cetera. And we learn from our colleagues, just like any of the docs listening here. They're working on their CME and getting better at their procedures and the things they do. And one of the things that I know, and I've looked at about 500 different operating agreements from law firms and you and I have done a lot together is there can be attorneys who are great at writing business LLCs or real estate or estate planning, but there's typically five to 10 bells and whistles that we want to see in an LLC so that it matches the statute.

Because you can have a great statute, you and I know this, right? But if the LLC says something different, then that's what controls, right? So the law could say that a judge can't get in there, but if the operating agreement says, well, a creditor has a right to buy in at some reasonable price and take over once they have a charging order, some kind of order, that's what controls. So speak to a little bit about the importance of the right operating agreement and maintaining the formalities, which is where a lot of people, a lot of docs and other clients screw up. They set it up right in the beginning and then they never really revisit it again. And then we come in and we look at it, it's like, oh boy, we've got to clean this up if you really want the protection. So spend a minute or two and just talk about those two factors.

Bo Loeffler:

You and I, and you and I did experience looking at some clients that don't have operating agreements.

David Mandell:

Right. They don't even have an operating agreement at all.

Bo Loeffler:

Don't have it at all. Either it's a single member or multi-member LLC, big mistake. Because then you actually go through the statute itself. And that's what you have to follow in terms of the relationships between even potentially creditors or the existing members. So as you point out, Dave, the statutes, I'll start at the basics. And we are allowed in Ohio and other states, but in Ohio to go ahead and get very specific, very detailed and do a lot of options in our operating agreement that can create additional shields and protection for those particular members against creditors.

And so to your point, one of the first things that we always look at is, hey, who do we have involved? If we've got a couple of physician members in an LLC, who do we want to have get involved in the event that they're under threat of a lawsuit? And we have the right to go ahead and appoint someone, perhaps it's a spouse. So if there's some sort of order that says you can't get money out of this LLC involving this particular member, we can at least get it out to a spouse, having them be a manager. We can change up the pro-rata distributions. We can withhold distribution. Dave, you and I see operating agreements all the time that say the distributions are to be done pro-rata and [crosstalk 00:26:59]

David Mandell:

99% is that's what it says, right? I mean, 99% of agreements say, if you're a 10% owner, you get 10%. And that makes sense in many, many contexts, right? It's what it should say. But when we're grafting an LLC for a physician and spouse, or two physicians and spouse, or whatever, a family where there's trust and the interest in protecting against creditors of all the members, that doesn't make sense. And in fact, you should go another way with it. But literally, I've never seen that before. I mean, and not that we're the only ones who are doing it, but I've just never seen it in a typical law firms' operating agreement. And there's a lot more we could talk about, but I want to shift gears and talk about the trust because we've got time. So takeaways, you got to want to choose the best state, you want to make sure your operating agreement is as good as it can be.

You want to maintain it. One of the things Bo and I do, we make sure we do LLC annual meetings for clients like a checkup so that you're constantly, at least once a year, at least once, in touch with your attorney and then maybe improving the LLC because things change. Or making sure there's no red flags, right? Just like you would go to a doctor and have a checkup, you should do that with an LLC, especially if it's owning hundreds of thousands or millions of dollars of your assets, do an annual checkup. And again, I can't tell you how many people have come to me, and I know you, say I set this up eight years ago, I haven't really done anything. And it's a mess in terms of the compliance and we have to clean it up.

Bo Loeffler:

Dave, if I could just add to that, title is key. And so often I think what you're alluding to is in those situations, you and I both experienced the client sets up an LLC, but will never transfer the investment account into the name of the LLC. And those annual meetings that you talk about, those are absolutely critical and key because we have that checklist to say, hey, this is one of those items that we need to get retitled to the LLC. Was that done? Has that been completed?

David Mandell:

Another issue is co-mingling. Meaning is the LLC paying personal expenses? Are you personally paying expenses that the LLC should be paying? It's all got to be treated. I tell clients this all the time, you got to think of it as you have a partner. Even if you don't, an outside unrelated partner. Meaning if you had an unrelated partner in your LLC, you would not just pay your personal expenses because they wouldn't want you to do that, right? And vice versa. You have to have that level of formality, even if it's just you. A single member with your own LLC owning these investments, you want to treat it with that formality. All right. We can talk about this for a long time. So I want to make a shift to trust because I want to spend five or seven minutes and then we'll wrap up.

So there's lots of... I'm going to set it up so we can get really get where I want to go. There's a ton of different trusts, right? There's all these different great acronym, CRTs, GRATs, and ILITs, and all these types of things. And we're not here to talk about all these trusts, right? I want to talk about, in most cases, put it this way, for asset protection purposes, you look at trusts in two ways. They're either revocable, meaning you can revoke them, change them or irrevocable. And revocable trusts are terrific. You set them up all the time. I have them personally. They're great for estate planning, right? They're like they're part of your foundational estate plan. They go along with what's called a small pour over will. And it gives you a way to pass your assets, whether you pass away or if you're incapacitated, they're great parts of planning.

But if they're revocable, meaning changeable, they provide no asset protection as long as you're alive. So they're great estate planning, but a lot of physicians say, "I've got to trust. That means that it's protected." No, probably not. It's probably a revocable trust, which is good. Good for your estate planning. But probably, again, if it's revocable, no asset protection value. Then there's the other type of trust which are irrevocable. And irrevocable sounds like it means what it's out, it's irrevocable. And that sounds like strong medicine. You're going to put assets in something and it's irrevocable. You can't change your mind. You can't change it. Now, there are some small exceptions we're not going to get into, how you can remediate trust in the courts, but it's difficult and it's certainly not something you want to go into thinking you can change.

But there is one type of trust that's emerged as we practice law over the last 20 years, that went from kind of an oddity to pretty standard now in over 20 states, I think, and certainly in Ohio, which is a trust where you can have your cake and eat it too, right? Which is it could be irrevocable, but you can also be a beneficiary and get to that asset. In every other kind of irrevocable trust you're giving it away and you might have some strings attached like an income stream, but you've really given it away forever, right? That's what it means if you want to protect it. Here, you can give it to the trust, but also have access to it. What we used to have to go off shore. When I started practicing in the '90s, you couldn't do that anywhere in the US. Now you can do it in 20 different states, including Ohio.

So I'm setting that all up. And that type of trust is called a domestic asset protection trust. That's the general tool, a DAPT. I know you have a special name for it in Ohio. But with all that set up, tell us about the DAPT statute in Ohio. You helped write it. It's been in place for a while. And then we'll talk about clients who aren't in Ohio, because it can be used in a lot of different states. But tell us about that trust, how you guys put it in place and what it can achieve for clients.

Bo Loeffler:

You gave a very good background of how that industry has kind of morphed into now 20 states. In 2013, and previous to 2013, again, my number of colleagues and myself, actually four others we approached the legislature and said, "Hey, what can we do about changing our trust statutes to bring in a domestic asset protection trust statute to Ohio?" We call ours in Ohio, an Ohio legacy trust, but it is a domestic asset protection trust. And in 2013 or the day of my mom's birthday, March 27th, we got it passed. So we've had a domestic asset protection trust statute in Ohio since 2013. And we have consistently been ranked by the commentators as one of the top three. With this type of trust, and Dave you've said, you can have your cake and eat it too. You can be an income beneficiary, a principal beneficiary. The key with these though is you have to look at the statute of limitation from the date you put assets in to this bucket, this trust bucket.

And once that time passes, it becomes like a lockbox. We have the shortest statute limitations in the United States. It's 18 months. Most of or many of the other top tier, top five have a two year statute of limitations. Virginia, for example, has a five-year statute. I've always said, why would you do something in Virginia? You have to wait five years until it's protected. But what you're protecting against is future credits. And we can't defraud existing or past creditors when we do this. We can always carve out an exception and note that they're there. But this is really designed for future creditors. So let's say we put a million dollars into this trust bucket, Dave, and then two years down the road, you're in a car accident and you're an Ohio resident and you hit a school bus. You cause a lot of damage. No deaths, but a lot of damage, knock out some utility poles and everything else to the tune of $850,000. The insurance maybe pays half. And now we've got a $400,000 deficit that the creditor's chasing your for. They cannot get at the assets in that domestic asset protection trust.

David Mandell:

Period. And then you can negotiate, pay that off and then you can have access to it, right? Because again, when... Or if you never got into litigation, you have access to it like you're a beneficiary of any other trust. I mean, that's what's really powerful is the cake and eat it too. So it really... For those in Ohio, it is, obviously, it's a higher level of protection than an LLC. LLC has the charging order rules, which still allow some negotiation where the trust, again, once the statute of limitations period is gone, it's off the table. It's more like an exempt asset in my mind at that point. So that's great for clients in Ohio. And we've dealt with clients in other states who have similar statutes. I know we work with a client in Connecticut, right? We've worked with other clients where Connecticut is, I think, the most recent state to pass the DAPT statute maybe a year or two ago. But there's a whole bunch of them. And I can't name all 20 right now. I know my home state of Rhode Island, I think is one.

Delaware is one, Nevada is one. There's a bunch. South Dakota. So Tennessee, different states. So if you're listening to that and you haven't talked to us, we haven't... first let's find out if that's an option in your state, right? It's like finding out what exempt assets are in your state. But there's... Even with 20, there's still 30 states that don't have a DAPT statute, right? And those are some of the biggest states and we've dealt with clients in those states like California or New York, et cetera. So let's say we have, use a real example, client in California approaches us. And he's interested in not only an LLC, but maybe a higher level of protection. Let's talk for a minute about what a hybrid DAPT is or an HDAPT. Because that is something that clients in states that don't have this statute can take advantage of. It's not as good or flexible in all those ways that a DAPT, but it's a pretty good solution beyond an LLC. So what is a HDAPT, hybrid DAPT, and how's it different?

Bo Loeffler:

Good planning point, Dave. And I'll use New York, for example. If we have a client from New York and they want to create this type of trust, because New York does not have these type of statutory trust, we have to do, again, what you call, Dave, a hybrid trust. And the hybrid DAPT trust is one in which the... Let's say a physician from New York establishes the trust. He cannot be a beneficiary of that trust at this time. And note I've said at this time. So he would name, for example, his wife, his children. So he can get out, let's say he's been sued in a professional capacity, or even just got in a dispute with a neighbor over a parcel of real estate and he's sued. In that situation, we can still get out assets and distributions, but it's done in an indirect method or way. It's going to his wife. It's going to his kids. So it can be used for household purposes.

But what we can do with him, if there was ever a change in the law down the road, four years down the road, let's say New York adopts some sort of domestic asset protection trust statute, we have provisions in our trust to make that irrevocable trust, as you kind of indicated, Dave, a bit more flexible. It's not like the old days where the irrevocable trust was inflexible. And that's called a trust protector. And that is typically an independent person, can't be related to the trust maker, the physician in our example. And we can actually, at some point in time, if the law changes or let's say the New York physician moves to Ohio, we can add him in through that trust protector provision very efficiently, quickly, privately. It's not a public scenario where all of a sudden he can start partaking from the benefits of that domestic asset protection trust.

David Mandell:

That's right. So I think what I want listeners to hear is if you're one of the 20 states that has a DAPT statute, it's a terrific tool that can be used in addition to an LLC or instead of. And I know Bo is based in Ohio, but he can work with clients in these different states because we can use kind of the basic sort of chassis of the trust that you create and make sure it works in the local state, maybe with local council just to review it. And then in these clients in the other states who don't have a DAPT statute, then we're looking at a hybrid DAPT. And that can be very effective too. So every client, every doc who's listening to this is a candidate for an LLC and a DAPT or an HDAPT. Doesn't mean they have to have both, right?

We have clinic clients who just did an LLC and sometimes the assets grow and then they want to do something else. But every single client physician, every single state has options. And that's what I want people to hear today. So as we kind of wrap up, if a doc was listening and said, hey, I would be interested in talking about this, how do you typically work? Do you do an initial phone call and then is most of your work on a flat fee basis? Just give a basic on how you do that and then we'll wrap.

Bo Loeffler:

The way we like to do is we like to do a diagnostic analysis with them initially. Typically, there's no charge for that or maybe a small diagnostic fee. But then we... Actually you'll have a conference or two, a teleconference or a Zoom call typically. And we'll go through some of their concerns. And, excuse me, and we'll take a look at those assets as we call low-hanging fruit that we can identify that they've disclosed to us, that they either want protected or we're suggesting be protected. And then typically what we will do is we'll quote them a flat fee, give them some certainty as to how much it's going to cost on the legal side, what the filing fees are, if any, and commence the work.

David Mandell:

And I think that's great. I mean, that's one of the things you and I know that as we do a lot of work co-counseling together, that physicians and other clients want is that when they're working with attorneys to get some kind of handle on what's going to cost, right? And we try really hard in almost all cases to do that. Sometimes there's an engagement that goes into research or something where we say, hey, it'll be between X and Y. We just don't know. But most of the time, in this kind of work, the things we're talking about today, LLCs, trust work, et cetera, we can come back with flat fee. So with that, Bo, I really appreciate it. We covered subjects that I know you and I can ramble on, but we tried to cut it down to a piece that I think is reasonable for our listeners, but also give them some real substance that something they can learn and hopefully everybody did learn. So thanks for coming on.

Bo Loeffler:

All right. Thank you, Dave.

David Mandell:

And to the listeners, thanks for listening. Again, every couple of weeks, we will have another update. So stay tuned for the next one. Thank you.