



Legal Note – Continued Discussion Retirement Plan (creditor protections afforded)

We continue our discussion of the creditor protections afforded retirement plan assets. As discussed last month, ERISA protects only certain retirement plans. Certain non-ERISA plans for “owners-only” and IRAs, for instance, do not qualify for creditor protection under ERISA. Although the bankruptcy courts have produced mixed rulings on the issue, Florida arguably provides more expansive statutory creditor protection than ERISA over retirement plans. The language of the Florida Statutes protects certain non-ERISA pension, profit sharing and stock bonus plans as well as IRAs. Moreover, the Florida Statutes include language protecting distributions from such plans. The Florida Statutes also exempt from legal suit assets held in certain retirement plans for county officers, teachers, fire fighters, state employees and police officers.

Therefore, when choosing a retirement plan which may not qualify under ERISA, a potentially viable means of establishing creditor protection of the plan may be available under Florida law. The benefits and characteristics of the proposed plan as well as the applicable judicial interpretation of the applicable protections should therefore be carefully considered with legal, accounting and financial counsel.