EXHIBIT E –

MARTY SHENKMAN'S WRITE UP ON OTHER CREDITOR PROTECTION TECHNIQUES.

Our friend, Marty Shenkman, included the following in his 2017 Forty-Third Notre Dame Tax and Estate Planning Institute outline, creditor the authors with the ideas therein provided:

5. **Asset Protection.**

a. Business Asset Protection.

i. **Take-Away.** Clients with closely held business interests may have many opportunities for asset protection planning. Below are a few ideas that some practitioners may not have considered.[1]

ii. **Discussion.**

1. In the event of a creditor calamity, the lender having a lien on corporate assets will be paid first to the extent that money is owed and secured by the assets of the company.

2. While a typical investor with $1,000,000 of real estate might have bank financing of $700,000 to $800,000, a comparable family business or investment entity may have no debt. Consider having that entity owe another family-related entity or trust, at arm's length and secured by the assets of the family entity, a debt. This may assure that in the event of a claim against that family business or investment entity, the family members or trust holding debt owed by the entity to them could be paid from a forced sale of the entity assets before a judgment creditor would be paid.

3. For a client owning a business or professional practice, have the business or practice guarantee debt that is owed by a related party. For example, the business or professional practice entity might guarantee a mortgage owed on real estate that is leased to the business or practice. Further, consider having the tenant's assets pledged as additional collateral for the loan so that in the event of a claim the bank holding the mortgage on the leased property would be able to call the loan and force a sale of the assets of the business entity or professional practice, resulting in the proceeds from sale reducing the amount of the mortgage on the real estate, and not being available to the creditor holding a judgment against the business or practice entity.

4. Another approach might be to have the business entity enter into a long- term lease with the landlord entity, and provide a lien against the· corporate assets so that the landlord entity would be able to accelerate rents

[1] The author acknowledges Alan Gassman, Esq. for the ideas listed in this section.

to be owed significant monies and force the sale of business or professional assets to pay for the accelerated rents. For example, the lease might provide that in the event f .default all future rents during the lease term shall be accelerated.

Anyone leasing property should consider having a triple net lease from the landowner entity to a “master tenant”, and then having the master tenant company lease the property to the end user or users.

The lease with the end user or users can specify that causes of action will only be against the master tenant, and if the master tenant makes a substantial investment in leasehold improvements or otherwise, it may be possible that third parties who are injured on the property would only have a cause of action against the master tenant, and not the ultimate property owner.

Clients who own real estate “free and clear” may consider having related party debt placed on the real estate to provide further protection. For example, a company owning a shopping center worth $10,000,000 might owe $8,000,000 to a family limited partnership, and lease the shopping center to a master tenant company that in turn signs the leases with the tenants and owns significant leasehold improvements. A lawsuit by someone injured at the shopping center may then have to stop at the master tenant level.

5. Planners should be aware of the doctrine of marshaling of assets, whereby a court may require that a lender that is "over collateralized" to give up cross-collateralized assets. However, cases in this area are uncommon, and it may do no harm to have the assets of a business or professional practice cross-collateralized or given as security in the manner described above, so long as reasonable. This might result in encouraging plaintiff's counsel to settle for malpractice or other insurance policy limits, or otherwise in a more favorable manner rather than competing with a related party creditor, or a third-party creditor, · who might be allegedly over-collateralized.

6. Income tax may be incurred if an S-corporation or C-corporation issues a note to a shareholder. The note issued may be characterized for tax purposes as an amount distributed to the shareholder. In an S-corporation situation, a shareholder receiving an actual or deemed distribution exceeding his or her basis in the stock of the S corporation, will recognize income as if a distribution was made. Therefore, it is common to have a note extended that is less than or equal to the amount of the basis in the stock to avoid imposition of income tax on the creation of the indebtedness. An alternative method will be to establish a new company that can own the existing company and to have the subsidiary/existing

company owe money to its parent company, which can generally be effectuated on an income tax free basis.

7. Example. Oldco may be an operating entity and John Smith, its shareholder, may have a basis in Oldco of $50,000. Oldco may have $300,000 worth of assets. John Smith may form Newco as an S- corporation and then transfer his ownership in Oldco to Newco in a tax- free capital F reorganization. Oldco may thereafter give a note to Newco in the amount of $150,000. Since Newco will be considered to be a disregarded entity owned by Oldco, there will be no tax imposed by reason of the note being given. If Oldco were to be sued well after the note is given, then Newco would be able to foreclose upon the assets of Oldco and receive the first $150,000 of value given, leaving very little, if anything, for a judgment creditor.

8. In addition to leveraging assets of professional and investment corporations, it may be possible to divide both assets and activities so that cause of action or lawsuit against one operating entity would not cause loss of all assets and other affiliated operating entities.