



WHAT IS A FUTURE UNFORESEEABLE CREDITOR?

From an asset protection perspective, there are three types of creditors: 1) a present creditor, 2) a future foreseeable creditor, and 3) a future unforeseeable creditor. The first two types of creditors are protected by so-called fraudulent transfer, fraudulent conversion, and voidable transaction laws, which protect the property rights of creditors (i.e., the ability to collect on a judgment). A future unforeseeable creditor is one who could not be known or identified at the relevant time.

It would seem that future creditors are always foreseeable for those who work in high liability professions. However, most states do not define “foreseeability” in this hypothetical manner. For example, one would think that an OBGYN could never engage in asset protection planning because of the sheer possibility of committing malpractice during his or her career. Rather, to be foreseeable, the OBGYN would need to be aware of a specific patient who could bring a specific claim for malpractice.