Asset Protection & Privacy
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The Need for Asset Protection: Every three seconds another American is sued. We live in the most litigious society on earth. Many claims are frivolous and without merit, brought only to harass and squeeze settlement dollars out of an innocent party. In this environment it is prudent to protect your assets ahead of time. Once you have been sued the courts disapprove of moving or protecting assets.

The Strategy of Asset Protection: Asset protection involves utilizing limited liability entities, such as corporations, LLCs and LPs, as well as certain trusts to minimize your personal exposure. As John D. Rockefeller said: "Own nothing and control everything." When a plaintiff's attorney is looking for people to sue, you want your profile to be low. If during an asset search your name does not show up as an owner, but you control your assets through a mix of limited liability entities and trusts with privacy protections, you will gain protection.

The Right (and Wrong) Way to Protect Assets: There is a misperception that asset protection is only for the very rich. This is not true. Almost all asset protection strategies are very affordable to implement, especially when compared with the potential loss of a lifetime's worth of wealth building. The problem arises when you implement a "poor man's asset protection" strategy. Simply transferring assets to your brother, sister or friend in advance of a judgment in order to "look poor" is a bad idea for three reasons. First, the courts can look right through such late in the game transfers, and can find you in contempt for making them. Second, there are serious gift tax consequences when you give away assets that may bring the IRS to your door. Third, there are many cases when the "friend" refused to transfer the asset back. It is hard to sue to get your property back when it was fraudulently transferred in the first place.

The best way to approach asset protection is to do it early (before you are aware of a lawsuit or get involved in any business or investing activity) and do it right. Using the right structures properly prepared and implemented will provide a lifetime of protection.

BASIC ASSET PROTECTION TOOLS

Liability Insurance: Insurance is your first line of defense. You will want coverage on your automobile, house, business and rental real estate assets. You may want to consider purchasing "umbrella" coverage on your homeowner's policy to provide additional coverage. Although insurance is the first line of defense, it is a truism that some insurance companies find reasons not to cover you, go out of business or leave the state. This is why you need the second line of defense, which is asset protection planning.

Homestead Exemptions: A homestead protects a certain dollar amount of equity in a person or married couple's primary residence. In Texas and Florida this is an unlimited dollar amount. In Nevada $350,000 in equity is protected from creditor claims (which, as in all states, does not include debts secured by the property such as bank loans or IRS liens). In California the homestead amount is $75,000. Each state is different. For a list of state exemptions visit successdna.com under free reports. While a basic and easy protection many people fail to take the important step of homesteading the primary residence.

Business Entities: Corporations, limited liability companies (LLCs) and limited partnerships (LPs) are business entities that were created for asset protection purposes. There are three major advantages to using these very affordable structures:

1. Shield Personal Assets From Business Risks
By using one or more entities you can conduct business and shield your personal assets such as your home and bank account from claims against the business. This is a far superior way of doing business versus using a sole proprietorship or general partnership, which offer no asset protection.

2. Shield Business and Real Estate Assets from Personal Judgments
With the proper asset protection planning you can shield your valuable business, real estate and investment assets from claims brought against you as an individual. Suppose you get in a car wreck and your insurance doesn't cover you. A creditor may have a difficult time reaching your business and investment assets if they are held in the right Nevada and Wyoming entities, which offer charging order protection. A complete discusson of charging orders is found in Garrett's book "How to Use Limited Liability Companies and Limited Partnerships."

3. Using Several Business Entities for Asset Protection
If you own five rental real estate properties in one LLC, a tenant could fall at one property and, because the claim is against the LLC and the LLC owns five rentals, the tenant could reach all five properties. A better strategy is to segregate the assets into five separate LLCs, or at least into several entities. It is a key asset protection strategy to separate assets from each other in order to lower each asset's exposure to claims.

4. Choice and Use of Entities
Using the right mix of entities is an important asset protection tool. In some cases a series of both Nevada and Wyoming entities (LLCs, LPs and Corporations) can be used to implement an effective asset protection strategy. An asset protection attorney consultation can be very informative.
To learn how a consultation may assist you click here.