

Asset Protection at a Glance

Many people focus their efforts on increasing their financial resources, yet they may give relatively little attention to protecting those assets once they are accumulated. However, without the proper legal protection, the financial security you have worked long and hard to build could easily be threatened by an unexpected lawsuit.

In today's litigious society it is not only the wealthy who should be concerned. Even individuals of moderate means, who have home equity, savings, or retirement accounts, could be at risk. Business owners and professionals, such as doctors, dentists, lawyers, and accountants may be especially vulnerable to claims from customers/patients/clients, suppliers, employees, and lenders.

Lawsuits can be expensive and time-consuming to defend. Even if you think you are in the right, you may be forced to settle, because it may be more costly to fight a lawsuit than to pay a settlement. Also, regardless of whether you win or lose, you must generally pay for the costs of your own defense. However, with proper advance planning, there are some relatively simple and inexpensive ways to help protect your assets from the threat of litigation.

Life Insurance

In many states, life insurance death benefits and cash values are exempt (in whole or in part) from the claims of creditors of the insured. However, the exemption for life insurance cash values may depend on the ability to prove there is no attempt to defraud a creditor.

Qualified Retirement Plans

You may also want to consider maximizing your contribution to your qualified retirement plan. In order to be tax qualified in the eyes of the Internal Revenue Service (IRS), qualified plan assets may not be assigned. The United States Supreme Court has interpreted this to mean that account balances in a qualified plan are generally protected in bankruptcy situations. In nonbankruptcy situations, state laws govern whether assets in a qualified plan are protected from the claims of creditors.

Primary Residence

Life insurance policies and qualified plans aren't the only ways to protect assets. Most states provide some kind of asset protection for a primary residence. The key may lie in how the residence is titled. One form of titling, called "tenants by the entirety," is often necessary to insulate home equity against the claims of creditors.

Trust Funds

In some cases, a "spendthrift" clause in a trust will prevent creditors from attacking trust fund assets. However, this protection almost never applies in the case of so-called "self-settled" trusts. In other words, you cannot typically set up a trust for your own advantage, unless you cede all control and benefits. It may, however, be possible to establish such a trust to benefit selected family members.

The Bottom Line

When planning your estate, it is important to give thought not only to building wealth, but also to protecting your assets from the threat of lawsuits and the potential claims of creditors. Some relatively simple and inexpensive strategies may exist to achieve this end. However, it is important to bear in mind that asset

protection planning is a complex topic and may require the assistance of qualified legal and tax professionals.

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