Top 10 Asset Protection Ideas to Protect Yourself and Your Family

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In 2009, I received numerous inquiries from folks, with creditor problems, seeking to protect their assets against creditors. Many of these folks never thought there was a possibility they could lose everything to creditors, until it was too late.

Generally these calls stemmed from personal guarantees on real estate investments that went awry during the financial crisis, but there was also a significant increase in the number of lawsuits in general, which often correlates to recessions. Unfortunately, one must plan ahead in order to protect assets from creditors.

I've decided to put together a Top-10 list of asset protection techniques that my clients can use to protect their assets against potential creditors. Not all of these are applicable to everyone, but everyone should be using at least some of the techniques listed. There is no excuse for leaving your assets available to your creditors.

FRAUDULENT CONVEYANCES

First, you need to learn about fraudulent conveyances to understand asset protection. As a general rule, there is nothing that can be done once a creditor situation arises. Asset protection is like the old saying "there's no point shutting the barn door after the horse gets out". You need to take steps beforehand, in order to prevent creditors from having access to your assets.

If you try to move assets into an asset protection structure after a creditor situation arises (or even after the ***potential*** for a creditor situation arises) it's likely too late. Any transfer would be considered a "fraudulent conveyance", and a court could unwind the transaction and give the assets to your creditors.

If you would like security and peace of mind knowing your assets are safe, you need to plan now, before any type of creditor situation arises.

TOP 10 ASSET PROTECTION TECHNIQUES

As our economy recovers, it is imperative that you take the steps necessary to protect yourself and your family against future potential creditor problems, especially ones that may occur the next time the economy sours. There is no excuse for losing a significant portion of your wealth due to a lawsuit. An asset protection plan will allow you to rest assured that no matter what happens, you will always be able to meet your lifestyle needs.

Below I am going to list the options you have to protect yourself and your family. The solutions I will list range from simple to complex, but some combination of the techniques below is appropriate for almost everyone.

1. Exemption Planning. In any type of creditor situation, divorce, or bankruptcy, you have certain exemptions, meaning assets that the law allows you to keep, no matter how much money you owe to creditors or a lawsuit plaintiff. Often it makes sense for folks to convert assets that are *not exempt* into assets that *are exempt*.

2. Life Insurance. Especially for younger folks with kids, it is essential to make sure you have adequate life insurance in place to provide for your family in the event of your death. Life insurance can also be used for wealthy people protect their assets from estate taxes in the event of their death.

3. Liability Insurance Policy. A good liability insurance policy is important for two reasons. First, it will pay your creditors in the event of a lawsuit. Second, and perhaps more importantly, the insurance company will pay for the bulk of your legal fees in the event of a lawsuit. Unfortunately, I frequently see people with no asset protection planning settle with their creditors on really bad terms with their creditors just to avoid the cost of an attorney. A good "Umbrella Policy" is the backbone of any asset protection program.

4. Qualified Retirement Plans. Assets put into any sort of Qualified Retirement Plan, such as an IRA or 401K, enjoy an increased level of asset protection. The amount varies from plan to plan. For more information, check out my article called "Asset Protection for Californians with IRA and ERISA Plans" a www.wilseylaw.com. There are a variety of options available, either through your employer, through normal IRA plans, or through a Corporation or Limited Liability Company you set up for the purpose of managing your own investments. The qualified retirement plans normally involve a tax deduction for contributions, which amounts to Uncle Sam paying for a portion of your asset protection plan. Not a bad deal!

5. Spousal Gifting Trusts. If you are married, you and your spouse can each create a Spousal Gifting Trust whereby you can protect your assets against both creditors and estate taxes, while at the same time retaining control and use of those assets should you need them. Read more in my article "The Spousal Gifting Trust: Asset Protection and Estate Tax Reduction When You Don't Want to Give It All Away" at www.wilseylaw.com.

6. Family Limited Liability Companies and Family Limited Partnerships. Family LLCs or Family Limited Partnerships are great tools for protecting your assets from creditors. You

can put your investments in such an entity, and prevent a creditor from seizing the assets in your Family LLC or Family Limited Partnership in the event you are sued.

7. Domestic Asset Protection Trusts. In California, if you form an Irrevocable Trust and remain beneficiary, the trust doesn't protect you against creditors, since it's a "self-settled" trust. However, several states have abolished this "self-settled" distinction, allowing you to create an Irrevocable Trust for yourself that's exempt from your creditors.

8. Captive Insurance Programs. For business owners with excess cash flow, you can create your own Insurance Company to which you make insurance premium payments. The premiums can be income tax deductible if structured properly, and can be moved into an Irrevocable Trust that is out of your estate. Best of all, the premium payments are now inaccessible by your creditors.

9. Variable Life Insurance. While you should contact your investment advisor concerning the investment suitability, I will say that there are certain advantages to certain Variable Life Insurance policies from an income tax and asset protection perspective. Basically, you can pay premiums for life insurance and invest the policies cash value in a tax-free environment. Then you are allowed to out money, in the form of a loan against the insurance policy. The advantage is the funds in the trust are protected against your creditors, and the outstanding loans will reduce the value of your estate for estate tax purposes.

10. Offshore Asset Protection Trusts. The best protection you can provide yourself is with an Offshore Asset Protection Trust. These trusts are done in countries with a long history of case law that says your creditors cannot take your trust assets, no matter what. In addition, the use of an offshore jurisdiction allows for more opportunities to access your assets if you are in the middle of a creditor claim, i.e. a lawsuit.

SUMMARY

As I stated before, each of the individual techniques listed above are not for everyone. However, everyone should have at least one of the techniques listed above as part of their overall asset protection plan. I've seen a lot of people this past year who are in a mess, about to lose everything, due to creditor issues. Don't let this happen to yourself and your family! Call me today at 858-764-2672 or send an email to wardwilsey@wilseylaw.com for more information on how to protect your family.