

ASSET PROTECTION PLANNING

Part 1 of 3

What Asset Protection Planning is:

Asset protection planning involves the application of a series of lawful techniques that will protect your assets from claims of future creditors. The techniques are designed to deter potential creditors from going after your assets and frustrate them if they do by making it difficult or impossible for such creditors to take possession of your assets or collect judgments against you.

Asset protection planning is the process of organizing one's assets and affairs in advance to guard against risks to which the assets would otherwise be subject. Asset protection planning may be applied to protect every type of asset, including an operating business, real estate or a professional practice.

In cases where significant sums are involved, asset protection planning often includes setting up a series of trusts, partnerships and/or off-shore entities to hold legal title to your assets. A future creditor who recognizes how difficult it would be to collect on any judgment it may win, might decide it makes little sense to pursue a claim, or be willing to settle for pennies on the dollar.

What Asset Protection Planning is Not:

As important as it is to know what an asset protection planning component is, it is equally important to know what it is not. Asset protection planning will not aid a client in evading the payment of taxes. Asset protection planning does not use the concept of hiding assets but works to protect those assets. A hidden asset may be found, but a protected asset is a more secure one.

Asset protection is not about cheating existing creditors. By the time that a person has signed a personal guarantee that pledges their assets for a loan, or they have a serious accident, or they incur some other significant liability that threatens to wipe out their wealth, the time for asset protection has passed.

There is a very sharp dividing line between "legal" asset protection planning and actions to "defraud" creditors, which are criminal. For that reason, it is essential to have an attorney guide you through the process.

Who Needs Asset Protection Planning:

Thousands of lawsuits are filed in this country every day of the week. Litigation cripples business. It is time consuming, expensive, and emotionally charged. It detracts from our ability to focus on productive matters, as attention is directed away from matters of efficiency and innovation. Parties to a lawsuit spend so much time meeting with lawyers and fighting with the other side that nothing gets accomplished. As businesses are dragged under by the

burdens of litigation, our whole society suffers.

If you are engaged in any business or real estate activity or you have a professional practice, you absolutely need asset protection because chances are that sooner or later you will be sued. And if you are sued, everything that you have worked so hard to create will be placed in jeopardy. The costs of defending even a frivolous suit can easily range from \$50,000 to \$100,000. Once you get to court, you will find that the system is heavily weighted toward the sympathetic plaintiff. Judges and juries are continually expanding theories of liability, and stratospheric damage and punitive damage awards are now routine. It is no longer uncommon for awards in negligence cases to exceed \$1 million.

Our legal system should hold people responsible for their acts. If someone causes injury, that person should be required to fairly compensate the victim for his loss. Not many people would object to this principle. The problem is that this general principle bears no relationship to what is actually occurring in the legal system today.

Does Asset Protection Planning Work?

In most situations, a properly structured asset protection plan that integrates asset protection planning with estate planning results in a better outcome than without. This result depends, however, upon several variables. These variables range from your net worth, your goals, the nature of the assets transferred, the skill with which the asset protection plan was drafted and defended, and the asset protection vehicles selected to implement the asset protection plan.

While the goals of asset protection planning may vary, the plan must be user-friendly or it may be doomed from the beginning due to your discomfort with an unfriendly plan. Since being a party to a lawsuit is often a loss from the get go, plans must be drafted to deter litigation. The plan must provide an incentive for an early and cheap settlement if it fails to deter the litigation in the first place. The net effect of the deterrence or an early settlement is to level the litigation playing field between the plaintiff and the defendant.

The standard applied in determining whether the asset protection component of an asset protection plan "worked" is usually defined by reference to where you would have been, financially, had you not engaged in asset protection. The ultimate goal of asset protection planning is realized when you weather a legal storm at least moderately better than you otherwise would have in the absence of any planning.

Next month, this continuing article will focus on how to know if you are an attractive lawsuit target and when asset protection planning may already be too late. Then in November, we will discuss actual asset protection strategies.