



Asset Protection

Recent statistics show that the average American will be involved (either directly or indirectly) in as many as five lawsuits in their lifetime. Failure to plan for the very real exposure to a lawsuit can result in the loss of a individual's life savings. Unfortunately, once a lawsuit has been filed, it is generally too late to take proactive action as the law protects creditors against a debtor's attempt to engage in fraudulent transfers. The age old adage that "an ounce of prevention is worth a pound of cure" is most appropriate in the context of asset protection.

Due to the continued increase in litigation in our society, asset protection has unfortunately become necessary for everyone, from small business owners to the average homeowner, in order to protect their savings, investments and other accumulated assets that have become attractive targets for over-zealous attorneys. The U.S. legal system stacks the deck against the defendant and in favor of the plaintiff. This is especially true if the plaintiff (or the plaintiff's contingency attorney) has deep pockets to pursue you. Frequently it is the party with the most financial holding power that will prevail.

As asset protection attorneys, we operate under the maxim that a plaintiff can only take what the defendant owns. How does a plaintiff's attorney determine "what you own"? Very easily, they hire one of many firms that specialize in locating assets for attorneys. They can locate bank accounts, real estate, brokerage accounts, auto, businesses etc., all in your name. In fact, many times a contingency fee attorney will do an asset search on you before he even bothers to sue. He wants to make sure you have something of value before he spends his time and money.

This is why proper asset protection planning, before litigation is filed, is so crucial. How do you minimize the chances of losing assets? By becoming a smaller target. How do you become a smaller target? By giving the appearance that your estate is small. You do as John D. Rockefeller said "Own nothing and control everything". That is the key to asset protection.

Asset protection is the process of organizing one's assets and affairs in advance to guard against the risks to which the assets would otherwise be subject in litigation. Asset protection planning involves figuring out and applying a lawful series of techniques that protect your assets from claims of future creditors. The techniques are designed to deter potential creditors from going

after you, and frustrate them if they do, generally by making it difficult or impossible for future creditors to grab hold of your assets or collect judgments against you. There is no one asset protection planning tool or technique that universally protects all of a client's assets, so a plan needs to involve a mix of the various tools and techniques available to the planner.

Although asset protection planning has made recent strides, it was often done in isolation without regard to the client's overall estate plan. Similarly, many estate planners did not provide for the "asset protection" side of estate planning. In other words, without regard to lifetime asset preservation, many estate planners focused on tax mitigation at the time of death, avoidance of probate, the smooth transition of property, and making sure the deceased's dispositive wishes were followed. This approach is shortsighted. Unless proper "asset protection" tools are implemented to protect the assets, the client runs the risk of losing the "assets" in a lawsuit before the estate planning provisions are ever implemented. In this regard, simple estate planning tools only take the client half way towards full asset protection. As planning principles and concepts have evolved, the wealth planning community is uniting these two disciplines more and more into one integrated estate planning process. This is known in the legal community as Integrated Estate Planning (IEP).

If you are concerned regarding the present state of your estate plan or are interested in obtaining greater protection for the assets that you already have (or plan to obtain), then you need to consider IEP for your estate.