Asset Protection And Your Estate Plan

Preserve And Protect Your Wealth For Your Heirs

Asset protection is about preserving your hard-earned wealth in the face of unreasonable creditors' claims, frivolous lawsuits or financial predators. It's not about evading legitimate debts, hiding assets or defrauding creditors.

Thankfully, there are many asset protection strategies you can implement. If your business, professional or personal activities expose your assets to attack by unscrupulous litigants or creditors, consider incorporating these strategies into your estate plan.

Are Your Assets At Risk?

The first step in creating an asset protection plan is to assess the risk that creditors, former spouses or opportunists will go after your assets or those of your beneficiaries. If your risk is relatively low, but you seek added peace of mind, you might consider simpler techniques, such as changing the way assets are titled or gifting them to your loved ones.

If your risk is higher — for example, if you own a business, are in a profession with a high degree of malpractice risk or are involved in other activities that expose you to potential financial liability — you might consider more sophisticated approaches.

What Are Your Options?

When it comes to asset protection, there's a wide variety of techniques to consider. Here are several, from the simple to the complex:

Buy Insurance. Insurance is an important line of defense against potential claims that can threaten your assets. Depending on your circumstances, it may include personal or homeowner's liability insurance, umbrella policies, errors and omissions insurance, or professional liability/malpractice insurance.

Give It Away. If you're willing to part with ownership, a simple yet highly effective way to protect assets is to give them to your spouse, children or other family members, either outright or through an irrevocable trust. After all, litigants or creditors can't go after assets you don't own (provided the gift does not run afoul of fraudulent conveyance laws). Choose the recipients carefully, however, to be sure you don't expose the assets to *their* creditors' claims.

Contribute To A Retirement Plan. You may be surprised to learn that maxing out your contributions to 401(k) plans and other qualified retirement plans doesn't just set aside wealth for retirement, it protects those assets from most creditors' claims as well. IRAs also offer limited protection: In the event of bankruptcy, they're protected against creditors' claims up to a specified amount (currently, about $1.5 million). Outside bankruptcy, the level of creditor protection depends on state law, which varies from state to state.

Establish a DAPT. A domestic asset protection trust (DAPT) can be an attractive vehicle because, although it's irrevocable, it provides you with creditor protection even if you're a discretionary beneficiary. DAPTs are permitted in around one-third of the states, but you don't necessarily have to live in one of those states to take advantage of a DAPT. However, you'll probably have to locate some or all of the trust assets in a DAPT state and retain a bank or trust company in that state to administer the trust. The amount of protection provided by a DAPT varies from state to state.

Choose The Right Strategies

Bear in mind that for these strategies to work, you must implement them at a time when there are no pending or threatened claims against you. Otherwise, you may run afoul of fraudulent conveyance laws. Before acting, contact your estate planning advisor. He or she can help you implement the right asset protection strategies for your specific situation.

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