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Sheltering your assets from creditors is a vital part of every business and estate plan. When most of us think of asset protection, we think of protecting our assets from creditors such as mortgage companies and the like. But the truth is, anyone who has a legal claim or judgment against you is considered a creditor.

That includes judgments obtained against you as a result of a lawsuit, as well. Indeed, protecting assets from legal liabilities is a shared concern for many clients, especially business owners. If done properly, asset protection planning can prepare you for even the most complicated legal matters. Here is what you need to know.
**WHAT IS THE GOAL OF ASSET PROTECTION?**

Asset protection is simply the process of examining your assets and rearranging them in a way that protects them from loss. Depending on the extent and nature of your assets, your asset protection plan may be complicated. Regardless, as long as your asset protection plan is created and executed correctly, you will be prepared for the unpredictable situations that occur, which may put your estate at risk. What an asset protection plan does not do, is include any type of tax evasion or fraud.

**WHEN TO START ASSET PROTECTION PLANNING?**

Effective asset protection must be established before any legal claims arise. Otherwise, if you start trying to move all of your assets once a lawsuit has been filed, you may be found guilty of making fraudulent transfers. Once you have been served with a lawsuit, or received a demand for payment of a valid claim from a creditor, it is most likely too late to plan.
LIABILITY INSURANCE IS STILL IMPORTANT

Asset protection should never be an alternative for maintaining liability insurance. This is especially true for business owners. In fact, liability insurance provides its own form of asset protection against lawsuits.

Your insurance carrier will be responsible for financing your defense and paying to settle the claim, if possible. A basic asset protection plan, alone, will not deter lawsuits or pay legal fees. This is why an asset protection plan should not be a substitute for liability insurance.
**ISOLATE PERSONAL ASSETS FROM BUSINESS ASSETS**

An important step to take in protecting your assets from legal claims is to keep your personal assets separate from your business assets. An important principle in business is not to comingle your money. When handling assets follow this basic rule: trusts are for personal and business assets and business entities are solely for business assets.

Also, there are specific types of business entities, such as corporations and limited liability companies, that are intended to protect the business owner’s personal assets from liabilities arising out of the business.
EARLY ASSET PROTECTION TECHNIQUES

Trusts, other than Revocable Living Trusts, are the most common type of estate planning instrument used for asset protection. Once you transfer your assets to the trust, they are effectively removed from your estate, placing them out of the reach of creditors and judgments. Trusts are also extremely flexible, allowing them to be customized to meet your specific needs.

PROTECTING YOUR HOME FROM JUDGMENTS

The first concern most people have when they are faced with a lawsuit, is whether they will lose their home. Of course, this is a reasonable concern, as your residence is likely the most valuable asset you have. In light of that fact, most states have a homestead exemption that protects an individual’s primary residence, up to a certain value, from legal judgments. Now, some people forfeit this protection by transferring the title of their home to a spouse or child, when faced with a lawsuit. In those cases, the transfer may be considered fraudulent, ultimately resulting in loss of the home.
PROTECTING RETIREMENT ACCOUNTS FROM LEGAL JUDGMENTS

In most cases, the funds maintained in certain retirement accounts, such as IRAs and 401k plans, are protected from a legal judgment. However, if any of the money is withdrawn from these accounts, it will likely become accessible to satisfy a judgment. Employer-sponsored retirement plans, however, are protected from judgment creditors, unless the plan is solely for the business owner and his or her spouse.

If you have questions regarding protection from lawsuits, or any other asset protection planning issues, please contact Anderson, Dorn & Rader, Ltd., either online or by calling us at (775) 823-9455.
About the Author

Bradley B. Anderson

Prior to founding his own firm in 1995, Mr. Anderson served as a senior counsel for two major financial institutions and witnessed the often devastating effects of ineffective estate planning with many customers of those institutions. When he eventually decided to venture out on his own, this experience led him to focus exclusively on estate planning, providing his clients with a full range of basic and advanced planning options.

Mr. Anderson began his professional life as a teacher of mentally-challenged, visually impaired students. After four years as a special education teacher, Mr. Anderson returned to school to obtain his law degree and begin a second career. Upon finishing law school, he went to work for a civil litigation firm, spending five years handling litigation, probate and wills work. He then moved on to Wells Fargo Credit Corporation where he served as senior counsel. In 1990 he accepted a position with the First Interstate Bank Legal Division, where he had responsibility for several divisions, including the Trust Department. In 1995, he began his own practice as Bradley B. Anderson, Attorney at Law. The firm has continued to grow into the premier estate planning law firm we see today.

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