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Keep Your Hands Off My Stuff

Protecting Your Business and Personal
Assets From Creditors

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Keep Your Hands Off My Stuff

Protecting Your Business and Personal Assets From Creditors

I. ASSET PROTECTION PLANNING – KNOWING SOME GENERAL CONCEPTS MAY SAVE YOUR CLIENT MILLIONS

“My wife and I don’t really have a whole lot, especially if we want to retire anytime soon. We are both sixty-eight and we have no debts. Sure, our house is paid for and we have some money in the bank, but our retirement and investments are only worth about five million dollars.” That is what Mr. Jones (or at least that is what I will call him to protect identities) told me one Tuesday morning around 9:45 a.m. He and his wife were meeting with me to discuss estate planning. Fast forward to 11:00 a.m. that same morning when my next estate planning clients arrived. “My husband and I have worked so hard our entire lives,” Mrs. Smith began. “We have a house that is paid for, a house that we rent to someone, and we have a lot of money in the bank—one-hundred and fifty thousand dollars. That is a lot of money, and we need to protect it!” Mr. and Mrs. Smith were both in their late sixties as well. Two different couples. Two different situations. Two different views on wealth and assets. But one thing in common—they both needed an asset protection plan.

It doesn’t take long to see estate planning clients come in many varieties. In fact, there are as many varieties of clients as there are people because each client’s situation is different from the next. Whether one inherits assets at a young age, finds opportunity or gets lucky early in life endeavors (I’ll leave it up to philosophers to debate luck versus opportunity), a lifetime of hard work and endurance finally leads to success, or anywhere in between, the accumulation of assets can often lead to one important question: how do I protect my stuff? But protecting assets isn’t just for the wealthy. In fact, protecting assets may be even more important for individuals who don’t necessarily have much. Of course, “wealth” is a relative term. Anyone with something to lose will benefit from implementing effective asset protection strategies.

A \$100,000 judgment entered against a multi-millionaire may not matter much to that person. It wouldn’t have been a devastating situation for Mr. and Mrs. Jones. But to a family with a small home, a rental property, modest savings, and a modest income it could lead to financial disaster. It would have for Mr. and Mrs. Smith. No matter where one falls on the spectrum of “wealth,” figuring out how to protect and preserve one’s assets presently and for future generations is an important consideration and should be at the forefront of an effective estate plan.¹

¹ Many different legal practice areas can be involved in and impact asset protection planning, including but not limited to estate and trust planning, family law, personal injury, and business/corporate law. In many instances it may be important to consult multiple attorneys who work together to develop a plan that is best for each individual circumstance. When it comes to helping a client, issue spotting is critical. Spotting potential risks

Everyone needs some type of asset protection planning as part of their estate plan. Nobody is immune from creditors or even lawsuits. Every day in the United States, accidents or other events happen that create the potential for personal liability. Even if one is not at fault a person may find himself knee deep in attorney fees and potential liability. Years of potential or actual litigation can take its toll eventually ending in financial ruin. In Texas, 2020 saw almost 49,000 injury/damage cases involving motor vehicles, almost 13,000 injury/damage cases other than motor vehicles, and almost 190,000 landlord/tenant cases filed.² Even if one is ultimately successful in defending the suit against them, the costs of that defense can lead to financial ruin. That is why **it is important to have a plan to protect assets** so that if that worse case event happens, there will be resources available when the dust settles.

A. What is “Asset Protection?”

The term “asset protection” can be used to describe any number of legal and lawful techniques and financial structures to ensure a person’s assets are safe from things such as creditors, divorce, lawsuits, judgments, and even long-term care costs.³ How might these situations arise? If you are involved in a vehicle accident and are the negligent party (even if only partially at fault) you might be subject to a lawsuit. Other situations might involve contract disputes, partnership disputes, professional negligence, personal injury actions, or the inability to meet financial obligations.

Different types of asset protection strategies typically involve some type of arrangement, either through business structures or trusts, where the owner of the assets exchanges certain levels of control over or ownership of assets in exchange for protecting the asset from creditors. Giving up certain levels of control over or title to the asset to someone else or another legal entity is a key component to providing a legal distinction between you and the asset such that the asset is protected from creditors. Done properly, asset protection mechanisms place assets beyond the reach of anyone seeking to take assets from you. Generally speaking, if you don’t own the asset or have control over the asset, your creditors cannot take it from you, and it will be beyond the scope of recovery from any judgment. While you might lose a lawsuit, you don’t have to lose your assets.

Creditors and judgments aren’t the only concern. A more common concern for many is the potential costs of long-term care. Long-term care costs are skyrocketing and will only get higher. All too often individuals are faced with the need to spend their hard-earned life savings to pay for

when discussing estate planning with clients is extremely important. If you don’t spot the issue to begin with, you can’t even begin discussing a solution. This article is not intended to provide a complete list of asset protection risks or solutions. Rather, it is intended as a guide to help the reader identify common issues clients might have and some basic and general concepts and strategies that can be implemented to help resolve those issues. There are many more details that must be considered than are discussed in this article and that are beyond the scope of this article.

² See Annual Statistical Report for the Texas Judiciary, Fiscal Year 2020, https://www.txcourts.gov/media/1451853/fy-20-annual-statistical-report_final_mar10_2021.pdf.

³ Asset protection planning is not defrauding creditors, hiding assets from the IRS in offshore accounts, or any number of other unscrupulous or illegal activities. Legitimate mechanisms are in place for legitimate purposes.

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