



Family Legacy Protection Planner

THE SHOCKING TRUTH ABOUT ASSET PROTECTION PLANNING

Some view asset protection planning with a skeptical eye. They believe there is a moral obligation to pay one's debts. They think that asset protection planning is immoral because it prevents a creditor from collecting on a judgment entered by a court.

The truth is the U.S. justice system is unpredictable. Defendants are faced with ever-expanding theories of liability, being sued just because they appear to have "deep pockets," and judgments entered against them based on desired outcomes instead of the law.

In this issue you will learn:

- What asset protection planning is, and what it is not.
- You have already engaged in traditional asset protection planning, and it is likely not enough.
- Attorneys may ethically and legally help you protect your assets from future creditors, predators, and lawsuits.

What Asset Protection Planning Is, and What It Is Not

Asset protection planning is a legitimate form of wealth planning. Attorneys who engage in asset protection planning help their clients preserve and protect their property in advance of a claim, or the threat of a claim.

The goals of asset protection planning are to provide an incentive for settling a claim, improve your bargaining position, offer options when a claim is asserted, and, ultimately, deter litigation.

On the other hand, asset protection planning is NOT about avoiding taxes, keeping secrets, hiding assets, or defrauding creditors.

Planning Tip: Asset protection planning will not be effective to shield your property from an existing claim. It must be done long before there is even the hint of a claim. An attorney who

attempts to help you protect your property after a lawsuit has already been threatened or filed could potentially be subjected to professional misconduct, malpractice, civil liability, or even criminal punishment.

What Traditional Asset Protection Planning Is, and Why It Often Fails

You have undoubtedly engaged in traditional asset protection planning at some point in time. The most common type is the purchase of liability insurance – automobile, homeowners, umbrella, officers and directors, malpractice, and the like. Unfortunately, liability insurance may actually encourage a lawsuit since it is perceived as “easy money.” Aside from this, liability insurance often fails due to inadequate coverage, extensive policy exclusions, or the carrier becoming insolvent.

Another common type of traditional asset protection planning is the use of a business entity, such as a corporation, to segregate business assets and liabilities from personal assets and liabilities. While a corporation may shelter personal assets from a lawsuit filed against the corporation, the opposite is not true – if you, as the shareholder of a corporation, are personally sued, your shares of stock in the corporation are not protected from a judgment entered against you. Of course, it is possible that if certain corporate formalities are not observed, then the “corporate veil” may be pierced and the shareholder’s personal assets will become vulnerable to a judgment entered against the corporation.

Finally, many states allow their residents to exempt specific assets from the claims of creditors. This may include protection for property owned jointly by spouses (“tenancy by the entirety” ownership), a primary residence (“protected homestead”), the cash value of life insurance, investments held in a retirement account, and annuities. Nonetheless, these state exemptions are often subject to limitations, such as placing a cap on the value or land area of the protected homestead.

Planning Tip: Despite their limitations, you should not overlook traditional forms of asset protection planning:

- When possible, you should use liability insurance as the first line of defense against a claim.
- While a corporation that fails to observe corporate formalities may not provide adequate protection for your personal assets as a shareholder, other types of business entities, such as a limited partnership or a limited liability company, may be used to shield your personal assets from liabilities.
- If you are married and reside in a state that recognizes tenancy by the entirety, or own property located in a state that recognizes it, then you and your spouse need to make sure your property titled jointly with each other is owned as tenants by the entirety and not as joint tenants.
- You need to be aware of the limitations of your state’s creditor exemptions and expand your protection beyond these exemptions where applicable.

When Done Right, Asset Protection Planning is Completely Legal and Ethical

Using all legal tools available to help a client protect their assets from future claims is consistent with the rules of professional conduct that govern the actions of attorneys. In fact, these rules require attorneys to pursue representation of their clients with diligence and advocacy. What these rules do not allow, however, is assisting or counseling a client in fraudulent or criminal conduct.

In order to insure that your asset protection plan does not involve any fraudulent activity and will work if it is ever needed, an asset protection attorney will carefully interview you as a potential client to determine if:

- You are about to be, or have already been, sued.
- You are about to, or have already, filed for bankruptcy.
- You are delinquent in reporting and/or paying taxes.
- You are being audited by a taxing authority.

- You are directly or indirectly liable for any loans.
- You are solvent and will remain solvent after any property transfers.

Planning Tip: Asset protection planning is a complex area of the law. Your advisors must be knowledgeable about debtor/creditor laws, fraudulent transfers, tax planning, civil litigation, property laws, bankruptcy, and other related areas. Aside from this, your advisors should do their due diligence in vetting you as a potential client and be well-versed in both the design and the defense of asset protection plans.

The Final Truth About Asset Protection Planning

You may drive carefully and avoid getting into barroom brawls, but you can never completely avoid all activities that create liability. Asset protection planning is not only an ethical and acceptable form of wealth planning, but your attorney and other advisors who do not advocate this type of planning are doing you and your family a disservice.

Our office is experienced at creating asset protection plans that are custom-tailored to your family situation and financial status. Please call us if you have any questions about this type of planning and to arrange for an asset protection consultation.

ENSURE YOUR FAMILY IS PROTECTED

If you want to ensure that your family is protected, please schedule your complimentary Estate Planning Strategy Call with San Francisco's premier estate planning attorney, Matthew J. Tuller.

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With an emphasis on developing and maintaining relationships with our clients and allied professionals, our firm collaboratively provides comprehensive estate planning and administration solutions to every client. Our firm provides the full spectrum of estate planning solutions. This includes creating and implementing a comprehensive estate plan, maintaining that plan through life, and administering the plan in the most effective and efficient manner.



