

The Savings Game

By Elliot Raphaelson



Asset protection plans important

It is not easy to create an asset base that will allow you to retire comfortably and leave some assets to your beneficiaries. And if you do succeed, you certainly don't want to put it all at risk from personal liability.

That's why asset protection strategies are important. Asset protection refers to sheltering your home, investments, real property, business and any other assets you own from lawsuits and other claims. You may not be able to guarantee that all of your assets are fully protected, but you can take steps to minimize the chances you can be sued successfully and/or lose your assets in other ways.

An excellent source is the book "Asset Protection Secrets" (revised edition, 2013, Brookline Press) by Hillel Presser. His advice is: Shelter your wealth. Think defensively and realistically. And that advice is not just for the rich or for those in professions considered risky.

He points out that litigation in the U.S. has reached epidemic proportions; by his estimation, 100 million lawsuits are filed each year. People in all kinds of lines of work and businesses are exposed to significant liability without necessarily realizing it. You cannot predict what you could lose in a major lawsuit. A plaintiff who

wins a few dollars in actual damages may be awarded millions in punitive damages.

Presser's book explains different ways to protect family homes, non-residential real estate, investments (including retirement accounts), estates and inheritances, businesses and other assets. Here are a few ways you can take to protect yourself.

— Tenancy by the entirety. When a married couple buys a home, there is a range of options for holding it. Of the types of co-ownership, tenancy by the entirety (TBE) provides the most meaningful asset protection. TBE is available only to a husband and wife. It offers right of survivorship and may protect the asset in certain states, provided only one of the spouses is sued. This is because, in most states, under TBE their ownership interests are indivisible and may not be transferred without the other spouse's consent. Thus, most states do not allow a creditor to attach TBE property without the consent of both spouses. Your attorney can advise you as to the restrictions in your state.

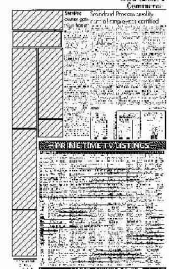
— Limited partnerships. Investments are at risk for liability suits when they are owned in individual names. There are other options to title investments and other liquid assets.

Presser strongly suggests limited partnerships. A limited partnership has one or more general partners and one or more limited partners. As a limited partner, you can control the assets, protect your ownership, maintain operating flexibility, allowing you to plan your estate better and reduce estate taxes. The most important point, from an asset protection viewpoint, is that your limited partnership interest cannot be claimed by your creditor. There are other alternatives, such as limited liability companies (LLCs), and Presser does a useful job of discussing their advantages and disadvantages.

— Truly protected retirement accounts. The extent to which retirement plans are lawsuit-proof depends on state law. Some retirement plans established under the Employee Retirement Income Security Act of 1974 (ERISA) are protected from creditor claims. However, not every ERISA pension plan is lawsuit-proof. You should review the protection with your plan administrator. IRAs, Roths and SEP IRAs are not ERISA protected. Your protection depends on state law. There are options to protect you if your plan is not lawsuit-proof. For example, many states exempt annuities from lawsuits but don't protect IRAs. Your attorney should be able to advise you based on the law in your state.

— Trusts. One of your objectives should be to ensure that your assets will pass to your beneficiaries free of lawsuit or creditor claims. Titling assets jointly with right of survivorship is one option. Presser also discusses the use of an irrevocable trust that you fund before you have creditors.

As a court mediator who has served for over 12 years, I can tell you that most defendants do not expect to be sued. It is best to err on the safe side, and take preventative actions to protect



your assets. I recommend discussing the subject of asset protection with your attorney.

(Elliot Raphaelson welcomes your questions and comments at elliograph@gmail.com.)

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