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How Your Clients Can Shield Their Assets from Lawsuits

Asset protection attorney says your client, and therefore you, can lose your assets quite unexpectedly, but measures can be taken

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It goes without saying that if your client loses all his wealth, then you lose too.



For that reason, financial advisors should not be indifferent to actions clients can take to legally safeguard their wealth, says asset protection attorney Hillel Presser, (left).

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Although the regulatory environment is in a state of flux, it is imperative that RIAs adhere to their compliance obligations. To ensure compliance, RIAs and IARs must fully understand what those obligations are.

Whistleblowers

A whistleblower is any individual providing the SEC with original information related to a possible violation of federal securities law. The Dodd-Frank Act established a whistleblower program that enables the SEC to reward individuals who voluntarily provide such information.

"There are over a hundred million lawsuits every year. One in three people will be sued in the next 12 months. The average person and business is sued five times over a life time," Presser says in an interview with AdvisorOne.

The principal of the Presser Law Firm, a national practice based in Deerfield Beach, Fla., says the frequency of lawsuits is also on the rise.

"Here's the deal," he says. "It's a bad economy. A lot of people are losing their jobs. The people lucky enough to keep their jobs are making less money. Why not sue somebody? You can hire a lawyer on contingency and if you win it's usually tax-free money."

"Welcome to America," he adds sardonically. Not just the quantity but the absurdity of today's lawsuits is enough to inspire thoughts of asset protection. He cites the example of a man who struck and killed a teenager

with his luxury car and then sued the victim's family for damage to the bumper.

Presser tells of another case where someone damaged his car hitting a deer crossing the road. The driver sued the state because the deer did not cross at the place of the deer-crossing sign.

Defendants, whether private or governmental, often find that it's just more cost-effective to settle such cases in order to avoid paying astronomical legal fees.

To avoid such unpleasantness, Presser says you've got to be proactive. "No one gets up in the morning and expects to get sued. You can't buy health insurance after you get sick and you can't buy auto insurance after you get into a car accident," he says.

The solution, he says, is to own nothing but control everything, and he argues that financial advisors can play a key role by educating themselves on what can be done to protect client assets from a financial *and* legal standpoint.

The first step for an advisor is to refer the client to a capable asset protection attorney. This is not to be confused with a trust or estate attorney he says.

"An estate attorney deals with what's going to happen when you die. We talk about making sure that what you have now is protected," Presser says. There might be a thousand estate attorneys in a city, but there may be 10 to 15 asset protection attorneys in the country, Presser says.

The asset protection attorney's first step will be to help clients inventory their wealth so that all assets are accounted for.

"Most people have a lot more than they think they have," Presser says, citing valuable domain names, telephone numbers and intellectual property as assets that might not come as readily to mind as potential inheritances and other liquid and non-liquid assets.

The next step is to choose from an array of protective entities and strategies within a broad range of cost and protection levels. "It's a cost-benefit analysis. It's just a matter of finding the right fit," Presser says.

One such strategy popular with clients is converting non-exempt assets into exempt assets.

"A non-exempt asset might be cash in the bank or stocks and bonds. Exempt means it is protected by state law," Presser explains, adding that a client in certain circumstances could sell stocks and buy an exempt asset like an annuity, life insurance or a house.

What is exempt can differ from jurisdiction to jurisdiction, he adds, noting that a person's personal residence is shielded from creditors in Florida, but is ripe for the taking in New York. "If you owe someone money, Florida's a great place to live," he says.

A second popular strategy is transferring assets to a protective entity. By placing your checking account, brokerage account, real estate or business into an LLC, trust or limited partnership, you keep control of the asset but no longer personally own it.

A third strategy is what Presser calls "equity stripping – making whatever you have value-less. Take out lines of credit, mortgages. Make yourself as unattractive for a lawsuit as possible. Nobody's going to sue you if there's nothing to get," he says. He cites a million-dollar house with a \$950,000 mortgage as an example of this kind of protection through liens.

The bottom line, Presser says, is that an advisor's client can easily and unexpectedly be wiped out financially. "They can get in one car accident and lose everything. They can get a divorce and lose everything. They can own one rental property and lose everything [to someone who injured himself on that property]."

Presser says he works with financial advisors on a daily basis. "The clients appreciate it because it shows their advisor is going above and beyond their duty" by making a referral to someone who does have the expertise.

"An investment advisor shouldn't be a jack of all trades and master of none. An investment advisor's job is to help grow the investment assets of a client." But they should be educated on the legal aspects of investment protection. Advisors visiting his website can request copies of Presser's books at no cost, he adds.

"Know there is something that can be done to protect your clients assets," Presser says.

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