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Magazine



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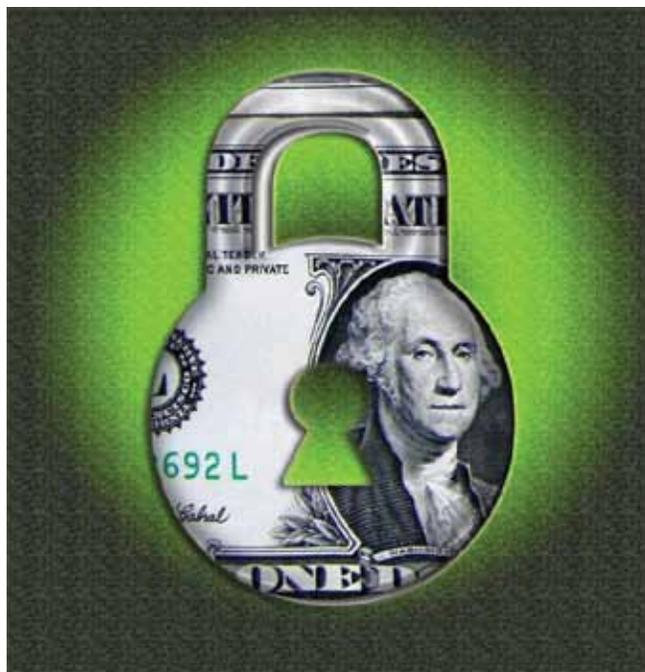
Asset Protection Basics For Accountants

One pressing area in which clients are increasingly seeking feedback from their accounting and financial advisory team is Asset Protection. Part of that stewardship is making sure that the growth and savings you are fostering, as well as the balance of your clients' assets, are protected from lawsuits. This threat actually increases in the type of tough economic conditions we are now experiencing here in the Southwest and is more dangerous than ever given the multiple attacks on the wealth of those we serve including:

- Current Economic Conditions Affecting Earnings and Revenue
- Increasingly Hostile Litigation System that Targets Your Clients' Wealth
- Stalled or Negative Investment Momentum that has reduced both savings and home equity by as much as 50%
- Increasing Overhead and Liability Insurance Costs
- Increasing Employee Lawsuit Exposure (suits against medical employers, as just one example, have tripled in the last ten years!)
- Increasing Burdens of Income and Estate Taxes

These factors create a business landscape that requires more careful wealth preservation planning than ever before. Some clients have obvious exposures, such as a physician's potential malpractice exposure or the enduring liability that a large commercial contractor faces. Other sources of exposure are more insidious, such as merely being wealthy and visible, owning income property, or something as simple as

your client (or their kids) owning and driving a car every day. The numbers are staggering; we are at a point in our litigation system where we have over 70,000 lawsuits filed per day in the United States alone, many without any real merit. Unfortunately being



“right” or careful is not enough to keep your clients safe. Below are some basics I teach to attorneys, CPAs and financial advisors nationally.

Realize your client's value as a target and make them do something NOW. This is pre-planning, best analogized a “Net Worth Insurance”. They cannot do any effective or legal planning after a lawsuit has been filed or a demand has been made. The time to act is now when waters are calm. Hoping that it won't happen is not a plan. When should they start? There are many simple ways to analyze this, but here is an easy one. Make them answer these questions:

- If you lost what you have today, or some significant portion of it, are you at an age, earning level and financial condition that will allow

you to maintain your family's goals and expenses?

- Do you have assets that would be difficult or impossible to replace given your age, health and economic conditions?

- Are you financially and legally prepared for a lawsuit that is either uncovered by liability insurance or which often produces verdicts above the limit you are carrying?

If your client is uncomfortable with their answers, it's time for them to take responsibility for their financial future.

No, Nevada Corporations do not work. In fact, they are increasingly viewed as presumptively fraudulent due to a long history of abuse and tax fraud. Thousands of consumers have purchased them under false promises of secrecy, bearer share anonymity and tax advantages.

Almost all these promises are completely fictional. Unless your client lives there, does business primarily from or in the state of Nevada and has the assets in question housed in the state, a Nevada LLC will not help them, especially if it lacks a real business purpose as explained below.

Maintain a legitimate business purpose for all legal tools. We see good tools misused by clients and inexperienced planners on a daily basis. In order to take advantage of the full protection the law affords, clients must maintain legitimate business purpose for the tools we use. The use of Limited Partnerships for investment management and LLCs to hold investment or commercial real estate are two examples of well proven and tested business usages. Amateurs typically promote systems that “force

fit” estate planning tools into an Asset Protection role and layer the family with useless entities. In many cases, less is more. A prime example of this is the personal vehicles LLC; it serves no business purpose for almost any client not running it as a leasing company.

Transfers to a spouse, child or relative are not effective. This is especially true if the transfer is made after an exposure has occurred. A thinly disguised “gift” will easily be reversed and the property seized by the court in the event of a judgment. Further, these types of transfers are rarely legitimized by the appropriate recording and tax reporting formalities. If your client gave their 18-year-old a \$1 million home at full equity you better have a gift tax return illustrating that and it better have been done well in advance of the harm complained of. Even if the gift is legally made and memorialized, all they have done is given away something they want to protect and exposed it to another person’s personal liability.

“Just” an S-corp. or an LLC is not enough. Single member or closely held corporations with just one or two owners are exactly the type of entity commonly referred to when you hear the phrase “piercing the corporate veil”. If a business has only one or two owners who closely manage and control the operations of the business on a daily basis, or even worse, which are also directly responsible for a harm or injury, it is relatively simple for a court to pierce the veil and grant access to the owner’s personal assets. This is especially true with successful small businesses and family businesses that often don’t maintain the formalities of keeping personal and business expenditures completely separate, bolstering the argument that

the person and the corporation are one and the same.

Get professional, individual help. There are a wide variety of skill levels in every profession, including the law. Many so-called Asset Protection professionals are not attorneys or are attorneys who apply bits and pieces of knowledge from other fields of practice that may actually diminish legal protections in existence. Every plan must be uniquely tailored to the individual, their activities and the unique nature of their assets. There is no one-size-fits-all solution, even though clients with similar assets may have similar looking plans.

Don’t try to combine tax planning and Asset Protection. In most cases, the tools used are tax neutral and do not provide substantial tax advantage or tax liability. Many times abusive tax structures are disguised as Asset Protection, often promising tax free growth in various trusts, jurisdictions or plans. You already know that putting money into a plan tax free, growing it tax free and pulling it out tax free is rarely, if ever, possible.

Don’t forget about income and receivables – protect the source. Very often we see individuals that are concerned about protecting everything they have been fortunate enough to accumulate while ignoring ways to protect their future income. We find that many clients, even those

with a very high net worth, often have fixed business and personal overhead commitments based on the expectation of a certain income level. If many of them suddenly had that cash flow tap turned off, they would not be able to sustain their current monthly expenditures. This forces them into a situation where they are often selling off assets in a down market, going into qualified plans early and making substantial lifestyle changes.

Don’t draw liability in. In many cases clients and advisors unintentionally escalate their value as a target. How many of your clients have vehicles that they or their spouse drive leased in the name of their business? Which of the following three defendants is most exciting to a plaintiff’s lawyer: John Smith, Dr. John Smith, or Smith Cosmetic Surgery, Inc.? As you can see, the corporate defendant is often the most exciting, deepest pocket. In order to fix this, transfer the vehicle to the client’s name and have them take a car allowance from the business if you think it’s beneficial. Remember, with a good plan in place your client won’t have substantial exposed assets anyway.

This article just scratches the surface of Asset Protection and provides some generally applicable rules and issues to be aware of. When you and your clients are ready to explore the solutions available, seek qualified counsel that has a proven record of experience in this specific field.



Attorney Ike Devji has over 8 years of experience exclusively in the area of Asset Protection law and works closely with CPAs, lawyers and accountants that serve affluent clients. Ike helps protect a national client base of thousands of clients and billions of dollars in assets, is a regular continuing education speaker on the subject and a contributor to a variety of publications including Advisor Today, WORTH Magazine, and Physicians Practice to name just a few. Mr. Devji and his associates protect thousands of doctors of all types as well a large group of HNW business owners and other affluent individuals. He may be reached at (602) 808-5540, through Linked-In, or through his website: www.ProAssetProtection.com.