

Asset-Protection Planning for the Modern Client

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Only the very wealthy and those in high-risk professions need asset protection planning. Right?

That's a myth.

In reality, we all need asset protection. Why? Because we all can be sued and lose everything we have. A car accident, business failure, foreclosure, medical crisis, or injured tenant can result in a monetary judgment that will decimate your client's finances.

This month our goal is to provide an overview of asset-protection planning fundamentals to illustrate how planning can benefit all of your clients, not just the wealthy and not just doctors, lawyers, and real estate investors.

What Exactly is Asset-Protection Planning?

In its most basic form, asset-protection planning is the process of taking assets that are vulnerable to creditors, predators, and lawsuits and positioning or repositioning them as assets that are less vulnerable or, ideally, are not vulnerable at all.

Planning Tip: Invite Your Clients to Work with an Experienced Advisory Team.

At first glance asset-protection planning may appear to be straightforward; however, asset-protection strategies hold traps for novice planners.

- When done correctly, an asset-protection plan serves as a valuable bargaining chip.
- When done incorrectly, the plan can be unwound and assets seized, with clients (and potentially planners) held in contempt and thrown in jail.

Therefore, it is imperative that clients work with an advisory team, specializing in asset-protection strategies. Each client's individual risks and benefits must be fully assessed and clients assured that the plan they ultimately put in place will work.

Basic, Everyday Asset-Protection Planning

Many of your clients may already be taking advantage of basic asset-protection strategies and not even realize it.

For example, the first line of defense against liability is insurance, including homeowner's, automobile, business, professional, malpractice, and umbrella policies.

Clients need to review their insurance policies on an annual basis to confirm that coverage is sufficient and that important benefits have not been stripped from their policies to maintain existing premium levels.

Another type of basic planning, available in some states, including Virginia, is a joint ownership between married couples called "tenants by the entirety" or "tenants by the entireties" (TBE). A creditor of just one spouse cannot attach a judgment to the couple's TBE property.

- In Virginia, TBE titling is applicable for both real estate and personal property such as a stock portfolio.
- As a team, we can assure that your clients' properties are correctly titled.

Because TBE benefits will be negated if a judgment is entered against both spouses or if one spouse dies, this type of ownership should not be the centerpiece of a married couple's asset protection plan.

Another type of basic planning your clients are probably already taking advantage of is holding a portion of their assets in a 401(k) or IRA.

- Under federal law, tax-favored retirement accounts (excluding inherited IRAs) are protected from creditors in bankruptcy and tort or contract claims.

Planning Tip: Know the Asset Protection Rules.

Be knowledgeable about which assets are and are not protected from creditors. This knowledge will help you move the needle forward on asset protection planning discussions with clients who are already taking advantage of basic strategies but really need a more sophisticated plan.

Sophisticated Asset-Protection Planning

Clients who need to go beyond basic asset-protection planning must understand that sophisticated planning involves more give than take.

- Clients must give up some, or even all, control and ownership of the property to be protected.

- Ideally, the spouse, children, and grandchildren will also lack control, but may maintain a beneficial interest in the property, such as the right to income and principal for health, education, and maintenance.

To make property untouchable, or, at the very least, more difficult for creditors to seize, sophisticated asset-protection planning will often involve a layering of multiple techniques, including:

- Beneficiary Trusts
- Domestic or foreign limited liability business entities (Limited Liability Partnerships or Limited Liability Companies)
- Irrevocable Trusts, including Domestic Asset-Protection Trusts (DAPTs)
- And Asset-Protection Trusts outside the U.S. (off-shore trusts). Off-shore trusts are expensive to set up and manipulate and are used by “high roller” clients. For most clients interested in the level of protection, a Virginia DAPT is probably the most cost-effective choice.

Planning Tip: Since the laws governing limited liability business entities and irrevocable trusts vary from state to state and country to country and are constantly in flux, the use of advanced strategies requires the expertise of legal advisors who understand all the applicable laws of fraudulent transfers and specialize in the implementation and maintenance of sophisticated asset-protection plans.

The Bottom Line on Asset-Protection Planning

First, clients require your assistance so they are aware that they need asset-protection planning.

Second, they must understand that, to be effective, an asset-protection plan must be put in place before a lawsuit arises. Such a plan is not a quick fix for existing legal problems.

In fact, there may a period of time before an asset-protection plan becomes effective (these time frames vary from state to state), and under bankruptcy laws there is a 10-year look-back for transfers into certain types of trusts.



An Invitation

We'd like to team up with you to offer comprehensive asset-protection planning, and we are ready to answer your planning questions. We are happy to help you advise your clients on their options for implementing an asset-protection plan that will work.

Please call our office now to set up a complimentary, no obligation meeting.

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