

## The 5 Biggest Mistakes Property Owners Make in Asset Protection

Everyone knows it's a litigation jungle out there. It is estimated that a new lawsuit is filed every two seconds in America today. With that many lawsuits being filed it is the wise and prudent medical professional who will take all the steps necessary to protect all of their personal and their professional assets. Obviously, 100% asset protection is needed, regardless of the nature of the lawsuit you might face.

Advisors: Help or Hindrance?

Usually the best course of action is to engage the services of highly effective legal and financial advisors. There really is nothing better than using experienced, highly specialized, well-trained advisors.

However, the cliché, caveat emptor – or, buyer beware, prevails in the open marketplace of legal and financial advisors as much as anywhere. Many simply do not have the specialized knowledge required to implement all of the right strategies, the right entities, or the right methods needed to provide the complete and total asset protection you are looking for.

Most owners will set up their business or practice to reduce personal liability. Unfortunately, all too often the wrong structure or weaker entity is chosen to provide 100% asset protection.

Many attorneys and financial advisors are all too often not well trained in the strategies required for 100% asset protection. Law schools teach how to seize assets, place liens against property, and otherwise take assets away through lawsuits. Equally as inadequate to the task of asset protection is the training many financial advisors receive. They learn the strategies and techniques for reducing taxes, increasing savings, and otherwise building wealth. Asset protection tends to be nothing more than a side benefit at best.

Given the realities of their training and background, it's no wonder some legal and financial advisors are described as "well meaning incompetents." He knew they meant well, but they simply did not have the knowledge necessary to implement a plan providing 100% asset protection.

Here are five common mistakes we've been told property owners are frequently making.

### **Mistake #1: 100% Asset Protection is Impossible**

There are many advisors who will tell their clients it is impossible to 100% protect your assets in the case of a judgment against you. They'll tell you that some strategies and techniques might slow the creditor down, but you can't prevent your professional or personal assets from being taken once a judgment has been made against you for an amount greater than your liability insurance.

They might advise the use of some simplistic asset protection strategies such as using joint ownership, titling property as tenants in common, or if you're in one of twenty-four states that recognize titling as tenants by the entirety you might be directed to use that strategy.

However, none of these strategies will provide 100% asset protection. Advisors might even admit that and then go on to explain that nothing can do that. The truth is, the advisor is wrong and you can learn what it takes to achieve 100% asset protection.

### **Mistake #2: Putting Assets in Your Spouse's Name**

One of the most frequently used strategies recommended by less-than-experienced advisors is to put assets in a spouse's name (or perhaps the name of the children or even someone else). Many professionals are advised that the laws in their particular state are strong enough and unique enough to protect the assets by using this strategy.

This may provide a modest amount of protection in the event of a lawsuit but there are substantial drawbacks to this strategy. While it's true that individual states' laws differ, there are at least five significant drawbacks that would leave the assets vulnerable regardless of any state's laws.

First, it must be realized that courts carefully scrutinize conveyances between relatives. Across the nation it is widely recognized by the courts that husbands and wives, as well as other relatives, have exceptional opportunities to commit fraud on creditors. In fact, the very relationship between husband and wife has been found to be sufficient to show fraud and invalidate the transfer of property regardless of when the conveyance took place.

Second, recognize that even if the conveyance of the assets is done properly, your spouse may not be as insulated from the lawsuit as you hope. Let me give you one experience of a friend of mine. In an effort to protect his assets, he had put everything in his wife's name. He was a medical professional, and the lawsuit did come. At first, he was not worried. Then, during the course of preparing for trial, it was discovered that his wife wrote checks and performed a number of other bookkeeping-type tasks. She was declared an implied officer in his corporation and named in the lawsuit. The shield of protection he thought he had was immediately pierced and he was about to lose everything.

Third, transferring the ownership of assets into someone else's name will place them in control of your assets and you could end up losing everything. You increase and expand your liability for their actions and if they are sued your

assets could be seized to pay any judgment against them. For example, in one case, a widow placed her home in her son's name so he would receive the property when she died and avoid probate. Unfortunately, long before her death a customer of the son's automobile repair shop won a judgment against him and her home was seized to satisfy the debt.

Fourth, it's important to consider what would happen if the spouse gets sued. While the strategy might provide some protection if the high-risk dental professional is sued, the consequences could be devastating if the spouse were involved in a car accident and someone was killed. A lawsuit follows and every single asset in the spouse's name is now at risk.

Putting assets in the name of another person might work, but the risks are tremendous. Invest the time and become informed about strategies and techniques that will better protect your assets.

Or, what would be the results if one of the assets is being held in the spouse's name were sued? If, for instance, there were some rental property owned in the spouse's name and one of the tenants was injured on the property there would almost certainly be litigation. In the ensuing lawsuit, if the owner is found negligent, not only is the rental property at risk but with everything being held in the spouse's name there's virtually a road map completely drawn out pointing to all of the other assets as well.

Finally, as unpleasant as it is to think about, remember that the national average for divorce is well over 50% today. High-risk professionals with increased stress and pressures of their careers tend to divorce at a rate 10 – 20% higher than that. If all your assets are in your spouse's name and a divorce occurs you may have a very difficult time recovering your deserved portion of the assets. Or, worse yet, if your spouse ever becomes angry and vindictive enough, all of your assets may simply disappear when your spouse runs off with someone else or simply runs off.

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### **Mistake #3: Using a Living Trust for Asset Protection**

Many advisors will suggest the use of a living trust to protect their client's assets. While living trusts are effective tools for avoiding probate and estate taxes, they are not as effective as other tools for asset protection. Consider a typical, generic example.

Presume the wife is more vulnerable to lawsuits. If she conveys her assets to her husband's living trust those assets will not generally be reachable by her creditors unless the transfer is found to be fraudulent. The longer the assets are held in the name of the husband's trust, the greater the degree of protection from a claim by the wife's creditors. However, the assets are vulnerable to attachment and seizure, if the husband is sued. A living trust cannot protect the assets of the trust owner from the creditors of the trust owner.

The living trust is an excellent financial and estate planning tool, when used for the right reasons. Providing 100% asset protection is not one of them.

### **Mistake #4: Structuring Your Practice with the Wrong Entity**

Many professionals will understand the necessity of setting up their business or practice under another entity to reduce personal liability and increase tax savings. However, all too often the wrong corporate structure is used or a weaker entity is chosen when considering asset protection. Vital to both your asset protection plan and your tax reduction plan is choosing the right entity for structuring your practice.

Typically, a combination of entities will be the best course to take, rather than the use of a single corporation or a single limited partnership. An advisor needs to be aware of how to gain the best tax advantage and ensure 100% asset protection through the use of multiple entities.

There's no question that it takes more time to learn and is more complicated, but the payoff in terms of asset protection is well worth the investment. Anyone wanting 100% asset protection must understand the use of multiple entities.

### **Mistake #5: Failing to Avoid Capital Gains Taxes**

If you've ever sold a business, a professional practice, or real estate you've probably felt the tax bite of Uncle Sam in the form of capital gains tax. Did you know, however, that you could completely and absolutely avoid capital gains tax when you sell any asset that would otherwise be subject to taxation? It's true.

You must take steps early on to prepare for the day you will sell your practice, real estate, or other investment-type asset. Through the establishment of a Charitable Remainder Trust and perhaps even a Family Foundation, you can completely avoid capital gains tax and still retain the use of the asset throughout your lifetime. Learn and prepare now for the almost certain occurrence of selling your practice and avoiding capital gains tax.

**Conclusion**

Many are sued every day. Legal and financial advisors are not always sufficiently knowledgeable or well-trained to implement the right strategies and right techniques required to accomplish the task of 100% asset protection. Most simply must learn for themselves what it takes to protect both their personal and professional assets.

Thousands of property owners have learned what many legal and financial advisors have not. Through the educational materials and training programs available through AOA, many have established sound, reliable asset protection plans for both their personal and their professional assets.

***The below article was written by Jay W. Mitton, MBA, president and founder of the National Foundation for Tax Planning and Asset Protection.***