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Asset Protection for Women: Beyond Insurance

Generally, an asset protection strategy should dissuade potential creditors from pursuing an action against you, and protect your personal assets from being seized to satisfy a creditor's judgment.

As women continue to work and earn money, become the main breadwinners, and run their own businesses, it's important to take measures to protect your lives, businesses, and simply the things you own. That's why asset protection planning has become so vital for women.

Asset protection planning is the process of arranging your financial affairs to prevent or at least minimize the risk of your assets being used to satisfy claims of future creditors or claimants. Asset protection is not intended to hide assets, defraud creditors, or evade the payment of taxes. In fact, if a court finds that your asset protection plans were made with the intent to defraud, it will disregard those plans and make the assets available to creditors.

Why is asset protection planning important for women?

Women, now more than ever, need to consider asset protection planning because:

- Women live longer than men and will likely need their money to last longer
- At some point in their lives, women may have to manage their own finances due to divorce, widowhood, or remaining single
- Many women are successful business owners
- A good asset protection plan can help you achieve financial security and independence, and give you an opportunity to have enough money to provide for your comfortable support and that of your dependents

Insurance as part of your asset protection plan

Often, the simplest way to protect assets is by shifting the risk to an insurance company. This should generally be your first line of defense. However, insurance may not provide all the protection you need, or it might not be available.

Other asset protection strategies generally involve transferring legal ownership of assets to other persons or entities, such as corporations, limited partnerships, and trusts. The logic behind shifting ownership of assets is fairly straightforward: your creditors can't reach assets you don't own.

C corporations

You might be a business owner, or thinking about starting a business. If so, choosing a business entity is an important decision. One option is a C corporation. The law views a C corporation as a separate legal entity. As such, business assets owned by a C corporation are considered separate from your personal assets, which will generally not be at risk for the liabilities of the business.

However, protection from liability may be lost if the business does not act like a business, such as when the business acts in bad faith, fails to observe corporate formalities (e.g., organizational meetings), has its assets drained (e.g., unreasonably high salaries paid to shareholder-employees), is inadequately funded, or has its funds commingled with shareholders' funds.

Caution: *A number of issues should be considered when selecting a form of business entity, including tax considerations. Consult an attorney and tax professional before shifting assets to a corporation or other business entity.*

Limited liability company (LLC)

An LLC is a hybrid of a partnership and a C corporation. An LLC is generally taxed like a partnership with income and tax liabilities passing through to its members (and not double-taxed as with a C corporation), but it is viewed as a separate legal entity and can be used to own business assets, protecting your personal assets from business claims against the LLC. While the legal formalities are based on state law, the legal requirements to form and maintain an LLC are usually not as involved as those associated with a C corporation.

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Professional corporation (PC), limited liability partnership (LLP)

Many professionals, such as lawyers, doctors, dentists, and accountants, face liability for damages that result from the performance of their professional duties. While no business structure will protect you from personal liability for your own professional activities, states have enacted laws allowing professionals to join together to form professional corporations wherein all participating corporate members are of the same profession. An alternative form of business entity suitable for professionals is the LLP. Both an LLP and PC protect you from the professional mistakes of your partners. That is, if one of your partners is sued for negligence, and the PC or LLP is also named in the lawsuit, the partner sued may be liable personally for any judgment, but the PC or LLP should protect your personal assets from the reach of any judgment creditor of the entity.

Family limited partnership (FLP)

An FLP is a limited partnership formed by family members only. Assets that you own, such as a closely held business or any real estate (other than your residence), may be placed in the partnership. Generally, a creditor can only obtain a charging order against the FLP, which allows the creditor to receive any income distributed by the general partner (who is usually a family member). It does not allow the creditor access to the assets of the FLP. Thus, a charging order is not an attractive remedy to most creditors, and consequently, its limitations might convince a creditor to settle on more reasonable terms than might otherwise be possible.

Protective trusts

Protective trusts are intended to protect your assets and/or estate from creditor claims, lawsuits, an unwanted beneficiary, or other threats. Generally, protective trusts work to pay income to the beneficiary you name in the trust. The trust also can be set up to pay out for a specific purpose, such as education expenses, or care for a beneficiary with special needs. In fact, you can name yourself as the beneficiary to ensure payment of income while protecting the trust assets from creditors and lawsuits.

Your creditors are only able to reach assets in the trust to the extent of your beneficial interest in those assets. If you have no right to the assets of the trust, your creditors can't reach them. On the other hand, if you're entitled only to trust income, that's all your creditors can seek to attach.

Irrevocable trusts

For an irrevocable trust to be effective as an asset protection tool, you must not be able to revoke or change the trust once you establish it. This means you can't dissolve the trust, change beneficiaries, remove assets from the trust, or change its terms. But because you relinquish control over the assets you place in the trust, they're generally beyond the reach of your creditors as well. In addition, by adding special language to your trust through a spendthrift clause, you can further protect trust assets from your beneficiaries' creditors.

Caution: *A revocable trust, unlike an irrevocable trust, generally does not protect trust assets from creditor claims since you have control over those trust assets.*

Domestic self-settled trusts

The laws in a few states, such as Nevada, Alaska, and Delaware, enable you to set up a domestic self-settled trust. You can create this type of trust, transfer assets to the trust, and name yourself as beneficiary. The key to a self-settled trust is that it gives the trustee discretion over whether or when to distribute trust property or income to beneficiaries. Creditors can only reach property that the beneficiary has a legal right to receive. Therefore if you, as a trust beneficiary, don't have access to trust property, your creditors will be unable to reach it as well.

Offshore (foreign) trusts

Many foreign countries have laws that make it difficult for creditors to reach trust assets held in that foreign country. In order for a creditor to reach assets held in a foreign or offshore trust, a court must have jurisdiction over the trustee or the trust assets. A trust that is properly established in a foreign country generally does not allow jurisdiction of a U.S. court over the trustee. A U.S. court will be unable to exert any of its powers over the offshore trustee. For a creditor to assert a claim against trust assets, the suit must commence in the foreign jurisdiction, with a lawyer licensed to practice in that foreign country. In addition, the creditor will probably have to post a bond with the foreign court. Taken as a whole, these obstacles have the general effect of deterring creditors from pursuing actions in the foreign court.