

Asset Protection Planning

Accumulating and retaining sufficient assets that can provide for a lifetime of living expenses, medical care, and other financial goals is at the core of wealth planning. Asset protection planning is designed to mitigate the risk of losing these assets through unforeseen events. In today's litigious society, asset protection planning has become an integral aspect of financial and estate planning. Retaining control and enjoyment over assets, while sheltering those assets, to the extent possible, from the claims of creditors, is the key focus of these techniques.

There are three basic asset protection techniques: insurance, statutory protection, and asset placement. None of these techniques is a complete solution by itself, but they may make sense as one limited component of an asset protection plan.

Insurance

Proper insurance coverage can be a significant way to reduce your personal risk by transferring some of it to an insurance company. Umbrella insurance protects from many personal injury claims above the liability limits set by your homeowners or auto insurance. Business owners should also make sure their companies are adequately insured for both liability and property loss. Review your existing coverage and consider purchasing or increasing coverage as appropriate. You should be adequately insured against:

- Death and disability
- Medical risk, including long-term care
- Liability and loss of property (both personal and business)
- Other business losses

If you are expecting an inheritance, you may want to speak with the person leaving you the inheritance to suggest that it be left in trust rather than receiving it outright. If an inheritance is left outright, it will be exposed to existing creditors and may remain exposed to potential future creditors. Conversely, an inheritance received in trust could be shielded from creditors and free from future estate tax for the portion of the inheritance not consumed, so long as you properly structure the trust.

Statutory Protection

An additional basic asset protection strategy is increasing the use of assets that are generally exempt when satisfying the claims of a judgment creditor. Creditors cannot enforce a lien or judgment against property that is exempt under federal or state law. While exemption planning cannot offer total protection, it can provide some shelter for certain assets.

Both federal and state laws govern whether property is exempt or nonexempt in non-bankruptcy proceedings. When examining exemption laws, be sure to determine the extent of the exemption allowed for a particular type of property, as it may be completely exempt, exempt only up to a certain amount, or subject to some restrictions.

For instance, your interest in an IRA (Individual Retirement Account) or Roth IRA may be exempt from creditors in many states.

Effective April 1, 2025, new, higher limits for bankruptcy exemptions will protect a greater portion of individuals' retirement savings. The total bankruptcy exemption for assets in traditional and Roth IRAs has increased to \$1,711,975. This significant limit, which applies to cases filed on or after the effective date, reflects a 13.2% cost-of-living adjustment (COLA). Assets held in employer-sponsored retirement plans, such as 401(k)s, continue to enjoy unlimited exemption from creditors in bankruptcy.

These funds generally receive complete protection, provided all contributions were made correctly in accordance with the law. This typically does not include inherited IRAs unless they are specifically protected under state law, as is the case in Ohio, Florida, and other states. Michigan does not offer protection for inherited IRAs except through specific trust structures. ERISA (Employee Retirement Income Security Act) qualified pension plans are also generally exempt. Therefore, your retirement plan at work should be exempt from creditors until you retire and begin withdrawals from the account. Additionally, life insurance and annuity contracts are typically exempt from creditors in Ohio, Florida, and Michigan to the extent of their value.

In certain states, such as Florida or Michigan, a husband and wife should own their joint property as tenants by the entirety, rather than as joint tenants with rights of survivorship, if their goal is to protect their assets during their lifetime. In Florida or Michigan, creditors of only one spouse cannot reach property held as tenants by the entirety; however, they can get assets held in other forms of joint ownership. Therefore, to evidence your intention to own property as tenants by the entirety, you should speak with counsel to sign a tenancy by the entirety agreement.

Asset Placement

Asset placement refers to transferring legal ownership of assets to other persons or entities, such as corporations, limited partnerships, and trusts. The basis for this technique is simple – creditors cannot reach property that you do not own or control. Repositioning assets to make it legally difficult for potential future creditors to reach them does not extend to actions that hide assets or defraud creditors. 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.

To avoid violating the fraudulent transfer laws, consider the following guidelines.

- Make sure your plans are made for legitimate business purposes or to accomplish legitimate estate planning objectives.
- Carefully document the legitimate business and estate planning purposes of any arrangements you make.
- Put your plans into effect before you have any problems with creditors.
- Do not implement a plan at a time when a lawsuit is imminent or pending or at a time when you have an outstanding debt that you believe you may be unable to pay.

Separate personal and business assets, with the intent of thereby separating their respective risks. For instance, by placing business assets in a limited liability company, family limited partnership, or other corporate shell providing personal liability protection, you may be able to shield or veil your personal assets from business or professional liability litigation.

The chart below outlines key factors to consider when determining whether to establish a business entity.

Outright Ownership	Entity Ownership
No separation of business & personal assets for creditor protection purposes	Provides asset protection by separating business & personal assets
Unlimited liability	Potential for limited liability, depending on the entity chosen
Retain personal responsibility rather than dividing roles	Formal structure can define sharing of income, roles, & responsibilities
Simplicity in ongoing administration	Adds complexity to create & operate

Although liability protection is a desirable goal for business owners, some businesses are unable to achieve it. These businesses are typically professional practices where the owners remain personally liable for their own malpractice or negligence under state

law. State law often restricts physicians, attorneys, accountants, and other professionals from forming organizations that would limit their personal liability for their own malpractice. However, many states have created variations of liability protection for professionals to protect them from vicarious liability. These business forms include professional corporations (PCs), limited liability partnerships, and limited liability companies (LLCs).

The Corporate Transparency Act (CTA), passed as part of the NDAA and effective January 1, 2024, originally aimed to prevent money laundering by requiring most U.S. and foreign entities to report beneficial ownership information to FinCEN. In a significant policy shift effective March 26, 2025, the Financial Crimes Enforcement Network (FinCEN) issued an interim final rule that exempts all U.S.-formed companies (including most LLCs and corporations) from the federal beneficial ownership information (BOI) reporting requirements.

Family Asset Protection Structuring

For married couples, balancing assets is a crucial tool to help increase the applicable exclusion amount for each spouse while simultaneously removing assets from a potential debtor's estate. Alternatively, it may be more beneficial to title assets in the name of the spouse who has less creditor risk. If you have high exposure to potential liability because of your occupation or business, it may be advisable for you to shift assets to your spouse. Your spouse would retain the assets that are subject to the exposure as his or her separate property, and you would retain assets that enjoy statutory protection, such as the homestead, life insurance, and annuities, as separate property. Furthermore, shifting assets to a spouse or children may help achieve other estate planning goals. To avoid complications if your marriage ends in divorce, both you and your spouse should agree to the division of assets in writing. This is especially important in community property states, as property and income acquired or earned by spouses during their marriage, while domiciled in a community property state, are considered to have been acquired or earned by both spouses equally, regardless of which spouse contributed to or earned it, with limited exceptions.

Advanced Techniques

In addition to these basic asset protection strategies, numerous more sophisticated techniques are available. Potential strategies include Domestic Asset Protection Trusts (DAPT), QTIP trusts (Qualified Terminable Interest Property), Qualified Personal Residence Trusts, Family Limited Partnerships, and spendthrift provisions. If you are interested in further exploring these options, we can assist you in further navigating the asset protection landscape.

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