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Cover Your Assets

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It's not what you make—but what you keep—that counts. That old adage normally is heard in the context of income and savings, cautioning us to spend less than we earn to get ahead. But it applies equally to wealth accumulation and preservation—whether your wealth is in the form of a business, real estate or an investment portfolio.

My column typically focuses on investment portfolio management. However, truly successful financial planning requires integrating your investments with other areas, such as wealth management and estate planning.

Recent surveys suggest one of the biggest fears of affluent Americans is losing their wealth as a result of a lawsuit. Divorce and its impact on wealth is a fact of life. With many threats to maintaining your wealth, it is time to review approaches to "asset protection" planning.

Asset protection is particularly important to entrepreneurs risking capital in their own businesses and to high risk professionals—such as physicians—for whom a lawsuit from one mistake can wipe out a lifetime of savings, jeopardizing lifestyle and a secure retirement.

A Variety of Tools.

There are a number of techniques available to protect property from the reach of creditors—from the simple and economical to the complex and expensive. The first line of defense

Summary: Cover Your Assets

Successful financial planning requires integrating your investments with other areas, such as wealth management and estate planning. One crucial aspect of such integrated planning is risk management, which is usually covered by insurance and related products. Have the appropriate—but not too much—coverage can mean the difference between keeping your portfolio intact or not.

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Your Way to Prosperity

is adequate insurance, both business and personal. Business owners and professionals need an excellent agent who frequently reviews the sufficiency of the coverage for their particular activities. You also should obtain the maximum coverage you can afford for auto and homeowners policies along with a personal umbrella to increase the liability limits on both.

Forms of Organization.

There is a veritable alphabet soup of business entities which can be utilized to shield an entrepreneur from personal liability in the event of a claim against the business. There are "S" and "C" corporations, plus LLCs, LLPs and FLPs (family limited partnership): each has different characteristics. Consult an experienced business attorney before choosing and establishing the proper form. And, take care to scrupulously maintain the separate identity of your chosen entity to avoid an action to "pierce the corporate veil."

Exemptions.

All states—with extensive variations—exempt certain property (such as a homestead) from execution by creditors. In addition, federal bankruptcy law exempts certain kinds of property in a bankruptcy. Notably, in 2005, Congress established a $1,000,000 exemption for retirement accounts—such as 401(k)s and IRAs; suggesting another solid reason for maximizing contributions.

Trusts.

Trusts—which separate ownership from the beneficial interest in property—are used extensively for asset protection. In estate planning, trusts are often established for the benefit of heirs with "spend-thrift" provisions, prescribing that assets are beyond the reach of creditors, including divorcing spouses.

"Self-settled" trusts are a more difficult matter. These trusts—generally *irrevocable*—are established by the owner of property for the benefit of *himself*. Laws vary considerably from state to state and in bankruptcy on the effectiveness of these devices. Often the very wealthy move property off-shore to a country with laws hospitable to such practices. Extreme care and expert advice must be taken in executing this strategy.

Beware Fraudulent Transfers.

Asset protection is nearly impossible after a claim has arisen. Most states and the bankruptcy code incorporate prohibitions against "transfers in fraud of creditors." These transactions can be undone by courts and civil and criminal penalties can be imposed—against the debtor and accomplices.

Investment Products.

While there is considerable debate regarding the advisability of annuities or insurance products as investment vehicles, under some circumstances these products offer better protection than securities held directly.

Courts are justifiably leery of leaving an injured party uncompensated, making it impossible to be absolutely certain that an asset protection plan will work in its entirety. And, claimants exhibit different levels of persistence in pursuing their claims. Nevertheless, a good plan will provide obstacles, negotiating leverage and may preserve sufficient wealth to achieve your goals, even under a myriad of threats.

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