Assets in a Headlock

Don't Let Poor Planning Wrestle Away Your Health

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Don't let poor planning wrestle away your wealth

If you've amassed any kind of substantial net worth, it's essential to protect your assets. Your property can be threatened and even wiped out in a heartbeat.

Hulk Hogan, the professional wrestler, had built a reported personal fortune of $30 million. You would think he was set for life. Then his son was involved in a terrible car accident, injuring another young man. The victim suffered traumatic brain injuries in the crash and requires a lifetime of medical care. But the limit on Hogan's auto policy was a paltry $250,000 – not much protection for a substantial net worth. Hulk entered into an undisclosed out-of-court settlement, but the threat to his assets was clear.

Asset protection is all planning in advance to place your assets beyond the reach of potential future creditors – with a big emphasis on "advance planning." Asset protection generally won't work once you are already facing the threat of a lawsuit.

After someone has threatened to sue you, asset protection measures can be nullified. For example, the people pursuing your assets might successfully argue that you are engaging in a "fraudulent conveyance." They only need to show that the transfer of your assets would render you insolvent – so you can't pay any judgment that ultimately might be assessed against you. If a court finds that you engaged in these transfers, it likely will reverse your protection measures, leaving your assets vulnerable to creditor claims. Instead, plan and act in advance.

The Basics

With the proper planning, there are a variety of techniques available to protect your assets. First, determine the particular risks you may face. Some people don't engage in any particularly risky business. They face the same general threats we all do, like getting in a car accident or having someone slip and fall in their house. Other people sit on the boards of publicly traded companies, own commercial real estate or own a business that creates extraordinary exposure to lawsuits. Each asset protection plan should be designed for your situation.

When you don't face any special risks, the following asset protection measures are suitable for almost everyone:

Insurance: A good excess liability insurance policy can add millions of dollars of protection at relatively reasonable costs. Typically, these policies are used to add extra protection for accidents that arise at your house or in the use of your cars. They can also cover second homes, boats and other items. Also, you often can obtain this extra protection for your business. If your employees are on the road, driving company or personal autos while on company business, extra coverage can be invaluable.

Titling assets: If you're married, you can title your house and other assets as "tenants by the entireties." Property held "T by E" is generally insulated from a claim against your or your spouse. Of course, if someone is making a claim against both you and your spouse, then this property is vulnerable. But T by E ownership can provide tremendous protection if the attack is just against one, but not both, of you. You'll need expert advice when employing any of these measures, especially because they may conflict with other objectives, such as your estate planning.

State and federal law protections: You should also be aware of special asset protection that may be available under applicable law. In certain states, you can protect all of the equity in your home from the claims of your creditors. Congress tightened up this exemption by adding a multi-year holding period requirement and eliminating the exemption for certain types of claims. But if you have owned your house for several years and aren't guilty of misdeeds like securities fraud, you may be able to protect a substantial amount of your net worth by paying down your mortgage and turning your house into a relatively bullet-proof piggy bank. These protections will vary from state to state. One state allows you to sock away an unlimited amount of money in a life insurance policy, provided the beneficiary is your spouse or children. Also, under federal law, there are more exemptions, notably for retirement plan assets such as money in a 401(k) plan.

Advanced Techniques

When considering advanced protection, review of your particular situation is even more important. Consider the following measures:

Owning assets in entities: If you own commercial real estate, it is almost always a good idea to own each property in a separate entity. Certainly, don't title the property in your own name – absent some special estate planning or similar need. Set up properly, these entities should limit most liabilities generated at that property to just your equity in the property. You don't want a problem at one property to "infect" your other assets.

Contract practices: Every business presents certain risks. But you can reduce those risks and help protect your assets by engaging in certain precautions. In addition to obtaining the right insurance, consider obtaining indemnification obligations from opposing parties and making sure they are adequately insured. You may even want the other side to add you to its insurance policy or provide a bond that guarantees a third party will step in and perform if the other side doesn't. You may also be able to limit your liability in the contract by having the other party waive certain rights against you or even cap your total liability regardless of how you perform.

D&O protection: If you serve as a director or officer of a company, particularly a publicly traded company, you face considerable risk. Shareholders often sue directors and officers when things go bad with a company. Even if you have done nothing wrong, you can run up an enormous legal bill defending yourself. Make sure your company provides you with coverage under a directors and officers liability policy, get a copy of the policy and confirm that the insurance premium is paid.

There's More

There is plenty more depending on how much protection you need and how far you are willing to go. The universe of asset protection includes exotic devices like off-shore trusts. These trusts attempt to put your assets beyond the reach of creditors by placing your assets with a trustee in another country with laws that won't recognize a judgment issued by a U.S court. If the creditor goes to the trouble of suing you in that foreign country, the trustees – to whom you have transferred assets – will move your assets to another country. The whole scenario is designed to frustrate and wear down your creditors so they abandon their claims or settle cheaply. But these trusts are expensive, elaborate and sometimes unsuccessful. Expert guidance is key.

There are also common sense measures that one should never overlook, like watching what you sign. One prominent developer had a habit of guaranteeing the loans of his proteges. When a severe recession hit, those guarantees came back to haunt him and wiped out much of his fortune.

Remember that good asset protection is customized to fit your particular circumstances. What works for one person won't necessarily work for another. $250,000 in auto insurance may be enough for some, but it surely wasn't enough for Hulk Hogan. If you want to protect your assets, consult with the right experts, develop sound strategies and then implement your plan.

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