

Asset Protection Techniques – 10 Maxims and Discussions with your Attorney

1. Maxim: Look at INSIDE and OUTSIDE liability. Watch for risks UPSTREAM and DOWNSTREAM
Discussion: Protecting against risks from all directions is a foundational, but often overlooked facet of asset protection. Ensure you have discussed all types of risks as you analyze your asset protection plan.
2. Maxim: You cannot turn-over what you don't control
Discussion: Don't give full governance rights to your assets held in an LLC or small corporation. Consider the protections available in a jurisdiction to Single Member vs Multi-Member LLCs and single owner corporations.
3. Maxim: Don't hinder or delay your creditors.
Discussion: Only transfer or encumber assets if you are solvent and the transfers won't lead you illiquid or open to fraudulent transfer or voidable transactions claims. Transfer assets before you are even threatened with an issue in court, and never transfer assets once a lawsuit begins.
4. Maxim: Don't hide your assets or it hurts worse.
Discussion: While it is acceptable to keep your privacy and not disclose more information than required, never hide your assets from creditors.
5. Maxim: You cannot be sued for what you don't own.
Discussion: Hold in a company that is owned by an asset protection trust or special power of appointment trust over which you do not have control.
6. Maxim: You cannot be sued for everything you own.
Discussion: Creditor Exemptions and nest egg protection are available in many states. See what is exempt from lawsuits in your state.
7. Maxim: Shift your risks.
Discussion: Carefully select liability insurance, and in your contractual negotiations, always require indemnification from parties who have insurance themselves.
8. Maxim: You can't squeeze blood out of a turnip
Discussion: If you are operating a business and it makes sense to encumber properties for business purposes, encumbrances can make assets unattractive to creditors. Apart from financing, consider UCC security filings.
9. Maxim: Death and Taxes are unavoidable.
Discussion: Plan for your estate, minimize taxes and protect your assets simultaneously with your asset protection planning. Seek to balance all of these objective.
10. Maxim: Carefully choose a jurisdiction and consider the ongoing administrative requirements.
Discussion: Asset protection plans are not a "set it and forget it" transaction. They require ongoing maintenance. Ensure you are familiar with the requirements before proceeding.

Disclaimer: These maxims and discussion points are not case specific and you should consult with an attorney to ensure that your asset protection plan is correctly structured.