6 techniques for asset protection

Asset protection is an important consideration for some estate planning clients. Many people believe a revocable trust will protect their assets from creditors, but this is not the case.

There are, however, ways to protect your assets, but they usually come with a sacrifice. Consider these six techniques.

1. Insurance.

It's perhaps the most common way to protect your assets. You protect your car and personal liability with auto insurance. Health insurance is designed to assist with medical expenses. The type and amount of insurance you need depends on your circumstances and asset composition, but the goal is to safeguard your assets by providing funds to cover your losses.

2. Tenancy by the entirety.

Titling your assets as husband and wife affords asset protection. In about half of states, including Missouri, assets titled as such only can be subject to creditor claims if there is a judgment against both the husband and wife. Otherwise, tenancy by the entirety is not severable. If the couple divorces or one spouse dies, then the asset protection disappears.

» Understanding your options for **protecting your assets is key.**

3. Gifting program.

Gifting assets to children, grandchildren or charities is another way to protect your assets from creditors. What you do not own, you cannot lose. However, you need to take action before there is a lawsuit on the horizon, or a creditor may be able to set aside a gift as a transfer in defraud of creditors. An individual may gift $15,000 of value, or a couple may gift $30,000, to as many people as desired without paying any gift tax. A couple with three married children and six grandchildren could gift $270,000 out of their estate annually. If estate taxes are not a concern, which it is not for most people since the unified credit has increased to $11.2 million ($22.4 million for a married couple), you may be able to gift a great deal more with no tax consequences. Before making gifts of appreciated property, however, consult a tax adviser.

4. Entities.

Limited liability companies, limited partnerships and corporations, whether C or Sub-S, will afford protection of your personal assets, with some exceptions. In the case of an LP, the general partner is

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personally liable, and consideration should be given to have an entity such as a corporation serve as general partner. Combined with appropriate insurance, an entity may be effective in safeguarding your assets.

5. Asset protection trusts.

Missouri has a very favorable asset protection law, enacted in 2004. A person may now establish an irrevocable trust, which cannot be changed. The person setting up the trust, called the grantor, may not be the sole beneficiary of either the income or principal of the assets. The trust needs a spend thrift clause, which prohibits assignments of the grantor's interest in the assets and bars attachment of the assets by creditors. Distribution of income and principal must be left to the total discretion of the trustee, who should be someone other than the grantor. While the Missouri asset protection law does not prohibit the grantor from serving as their own trustee, it is not recommended.

The general rule is that creditors can reach the assets that a beneficiary can reach. If the beneficiary serving as trustee can simply take income and principal, then the creditor can attach the assets as well to the same extent. As a result, few trusts are drafted to appoint the grantor as trustee for fear a court might not uphold the spendthrift provision.

The decision to establish an asset protection trust should not be taken lightly. The main advantage is to protect your assets, but the fact the trust is irrevocable and that you should not serve as trustee, makes it a more difficult choice.

6. Joint qualified spousal trust.

Missouri also has codified very favorable rules relating to joint trusts. Before passage of the law, there was uncertainty if the tenancy by the entirety protection afforded to married persons also applied when their assets were placed in a joint trust. Missouri law now provides that assets in a joint trust, meeting a few simple requirements, are treated as if they were still in the name of the married couple.

Understanding the options for protecting your assets is the first step in securing the future for yourself and family. Each technique has its own set of advantages and drawbacks, and consideration of the options should take place with your professional advisers.

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