

AN OUNCE OF PREVENTION: PROTECTING YOUR ASSETS FROM LAWSUITS

By Bob Prior



We live in a litigious society. Each year, 15 million civil cases are filed in the United States. That should take your breath away. You can be sued for anything, at anytime, even if you did nothing wrong. For professionals like doctors, lawyers, architects, and business owners, lawsuits are even more likely. If a lawsuit results in a judgment against you, the plaintiff can seize your assets - your financial accounts as well as your home and business - to satisfy the judgment.

Fortunately, when it comes to protecting your assets, an ounce of prevention is worth a pound of cure. For those who are willing to plan, there are tools available to protect your assets from future litigation and would-be creditors. Proper planning can make you a less attractive target to someone who is eager to sue and, if you are sued, can increase the likelihood of a favorable settlement.

Adequate insurance is the first line of defense when it comes to protecting assets. Ensure you have sufficient coverage for your home, cars, and other belongings. If you own a business, your commercial general liability coverage should be checked and updated regularly. If you are a professional, be sure you have adequate professional liability insurance. Over and above your normal homeowner's and auto insurance, you should have an umbrella policy. Umbrella insurance

is extra liability insurance, designed to protect you from major claims and lawsuits. For example, if you are in a major car accident and the damages exceed your auto policy limits, your umbrella policy would pick up the difference.

Transfer assets to your spouse, but cautiously. If one spouse works in a high-risk profession, consider transferring assets to the name of the other spouse. However, there are significant drawbacks to this approach. First, consider the possibility that the spouse who is not in the high-risk profession can also be sued. If everything is titled in their name the same risks apply. And if you wind up getting divorced, the divided property could become the subject of disputes.

Establish separate business entities. The law in this area has developed specifically for the purpose of segregating liabilities and protecting your assets. When you own everything under your own name or under the name of one company, a single lawsuit can result in a catastrophic loss. The better approach is to hold your most valuable assets in separate entities, which may require multiple limited liability companies, other business entities, or various trusts. This way, only the assets owned by the entity involved in the lawsuit are at risk. Consider it cheap insurance.

Create irrevocable trusts. If you give assets away, they cannot be

seized by your creditors. Creating irrevocable trusts for the benefit of your children or grandchildren and giving up sufficient control of the trusts puts assets contributed to the trusts out of reach of your creditors. Of course, you lose access to these assets as well, so this approach is not appropriate for everyone.

Consider out-of-state or offshore planning. For those with significant wealth, even more sophisticated planning tools are available. An increasing number of states allow individuals to establish protective trusts that insulate assets from creditors' claims, known commonly as domestic asset protection trusts. And going offshore puts even more distance between your assets and creditors. A foreign asset protection trust is a trust held in another country, placing some of your assets out of the reach of U.S. courts. Lawsuits targeting assets held in offshore trusts have to be litigated in foreign jurisdictions. This aspect alone can be enough to dissuade someone from filing a suit.

With all of these techniques, timing is critical. If you wait until after you are sued to begin employing the techniques, it is likely the courts will find any transfers to be fraudulent and set them aside.

Not all of these strategies are appropriate for everyone, but just one or two can dramatically decrease the losses you'll risk in the event of a lawsuit. Talk to an estate planning professional to determine what's best for your situation.



Bob Prior is a partner in the Athens law firm of Prior, Daniel & Wiltshire, LLC. His practice is focused on estate planning and elder law. Mr. Prior is a former Marine infantry officer and JAG and has been in private practice for twenty years.

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Robert T. Prior, Sr., J.D., LL.M.

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Prior, Daniel & Wiltshire, LLC



706.342.0606

bprior@pdwlawfirm.com