

“Asset Protection”

Asset protection is something that most people don't think about until it's too late. Over the years, we've had six or seven clients who have been going along, operating their business or their real estate portfolio, who suddenly find themselves embroiled in a serious litigation matter. This could be as a result of business operations, or it could be a result of something that happened in their personal life. Regardless of the circumstances, the cardinal rule in asset protection is that once you're sued or a lawsuit is threatened, it is too late to do any significant asset protection.

As part of our planning, we explore the various aspects of our clients' financial life to determine, first of all, what exposure they might have to potential litigation and then, whether or not there's an opportunity to protect some or all of that client's assets. We've had clients who chose not to implement asset protection measures, and later regretted it, and we've had the good fortune to implement asset protection measures that resulted in client assets being protected when a lawsuit later occurred.

One client that comes to mind is a real estate developer who did a tremendous job in their development projects. Everything was first class. Everything was done right.

For a number of years after establishing an integrated plan, we had been holding annual reviews, and each time we met we would discuss asset protection and suggest that they remove some of their assets from harm's way. Unfortunately, as a result of the recent real estate crash, they saw most of their outstanding loans called, and because of illiquidity, they were unable to meet those loan calls. They ended up turning most of their property over to a number of different banks who held loans, even though they had apparently done everything right, and were actively selling their properties.

In addition to losing their properties, most of the banks came after them personally, and because they had signed personal guarantees, they lost a substantial percentage of their personal assets. There are a number of completely legal techniques to prevent this sort of thing from happening.

It just takes some forethought and a little bit of additional complexity for most people to be able to put aside a nest egg that would allow them to start over, even if a devastating litigation took the majority of their existing assets.

By contrast, another of our clients was a physician. She was an anesthesiologist who was involved in an operating room disaster. This was a situation where a patient actually died as a result of the operation. Ultimately, it was determined that the physician that we represented was not at fault and no settlement was ever made.

But during the entire course of the litigation, which continued for almost three years, the physical and emotional toll that the litigation took on this doctor was unbelievable. Throughout the litigation, however, she told us that she was relaxed about at least one aspect of her life – the financial.

Several years earlier we had counseled her to put in place some asset protection strategies, which she did. She knew that if things went absolutely against her so that she was found responsible at some level for the death of this patient, she would probably lose some of her assets. However, she also knew that, as a result of the asset protection planning, she would be able to protect a nest egg which would allow her and her husband and their family to continue on, or start over from scratch if necessary.

So the question for most of our clients is, “Which position do you prefer?” Do you want to be the real estate developer who never had time to implement asset protection strategies and ended up losing almost everything they had? Or perhaps you’d prefer to be like the physician who, even through a tough period of litigation, took comfort in knowing that some of her assets would be protected, and that she would be able to start over if she had to.

A comprehensive review of your goals and objectives can highlight the dangers lurking around you. It can also uncover missed opportunity. By delaying the decision to do integrated planning your risk is compounded year after year. This is where we can help you make a difference for the better.