Introduction to Asset Protection

Asset protection is the process by which you protect the financial assets you have worked so hard for from being taken away from you by creditors of various types. This may be someone suing you, someone to whom you owe money for whatever reason, or even from being lost in divorce or other personal and financial catastrophes. It is important to understand that this is a separate goal, although often related, to the process of estate planning. Estate planning on its own has two purposes. First, to ensure your assets are used in the way you would like upon your death and second, to minimize the effect of income taxes during your life, and estate taxes after your death.

A typical physician often has conflicting financial goals. As an investor, he wants to maximize his investing returns. As a taxpayer, he wishes to reduce his taxes as much as possible. He realizes, of course, that the real goal is to maximize his after-tax return. The best way to minimize taxes is to lose money (rather than make it) on your investments. Likewise, some solutions that may provide the best asset protection may not be best for estate planning, tax planning, or investing. For example, you can provide some asset protection for your house by having it be owned by a family limited partnership. But you then lose the ability to deduct the mortgage interest
on your taxes. There is no “one-size-fits-all” product that will best provide for all of these sometimes conflicting goals.

It is also important to realize that asset protection issues tend to be very state specific. For example, in Texas, there is an essentially unlimited homestead exemption. That means creditors can’t seize your house. So from an asset protection standpoint, you may be best off keeping your money in your house by buying a large house and paying down the mortgage.

Buying a big house, of course, may not be best from a saving/investing standpoint and may create all kinds of estate planning issues for you. In Tennessee, the homestead exemption can be as low as $7500. A physician in this state looking for asset protection may be better off keeping money in retirement plans like 401Ks and cash value life insurance and minimizing the amount of equity in his home. You can learn more about your state’s asset protection laws here.

The first issue to address in any asset protection plan is to have adequate insurance. Have high liability limits on your auto, boat, and property insurance. Add an umbrella policy on top of those. Not only does this provide more protection for you from large claims, it also brings you the benefit of having the insurance company’s highly paid, experienced attorneys on your side. Carry an appropriate amount of malpractice insurance for the same reasons. Most of us worry about a malpractice suit ruining us financially. The truth is very few malpractice claims exceed the physician’s malpractice insurance policy limits, and those that do usually could have been settled for less than the policy limit. Malpractice suits and settlements are very unlikely to affect you financially. Don’t get me wrong, being sued for malpractice is likely to drastically affect your life and practice of medicine (especially if you get sued enough that you can’t get credentialed at a hospital or can’t get insurance at a reasonable rate.) But one or two suits are unlikely to have a significant financial on you. You’re much more likely to meet
financial ruin from divorce, stupid, undiversified investments, and problems with your practice. Perhaps we ought to include such things as a prenuptial agreement in this section on insurance. Certainly, if you are getting married to someone after either of you has accumulated a significant amount of assets, you ought to get a prenup.

The second issue in any asset protection plan is to use your retirement plans. Most states protect 100% of your assets in 401Ks and IRAs from creditors. Not only does this help protect your assets, but it facilitates your estate planning, reduces your taxes, and maximizes your after-tax investing returns. Max out your retirement plans if at all possible, and certainly before worrying about all the intricacies of trusts and Nevada corporations.

Third, be cognizant of the effects of how you title your assets. If you put the boat in your wife’s name, and someone sues you, they’re not going to get the boat. Of course, if your wife leaves you she’ll probably take the boat with her and you won’t have much of a claim on it. When you title a home, if you can, use “joint tenancy in the entirety.” This means that both you and your spouse own the entire house, so a creditor can’t force you to sell it to get your share of the money out. Of course, while this may provide some asset protection benefits, it may also complicate estate planning, especially if there is a complicated family situation (such as children from a previous marriage.)
Fourth, you need to have an asset protection plan in place before you need it. If you try to protect assets AFTER a claim against you arises, you’re almost surely not going to be successful. The statute of limitations for fraudulent transfers and conversions is generally about four years, so you need to set this stuff up at least that long before you need it.

Fifth, realize that some assets are dangerous. They should be separated from the rest of your assets as much as possible. For example, a rental property or a business opportunity should be placed inside a corporation, so that if there arises a claim, only the value of that property or business is subject to the claim, rather than all of your other assets. A limited liability corporation is often used for this purpose. A medical practice and an office building are both dangerous assets. In general, they should be owned by separate legal entities so a financial catastrophe affecting one won’t affect the assets held by the other. Other dangerous assets include boats, ATVs, snowmobiles etc. Cover them with a large umbrella insurance policy and/or have them owned by a limited liability corporation.

Last, when you have a significant amount of assets, you’ll need to meet with an appropriate professional (almost always
an estate planning attorney or one who specializes in asset protection) to consider forming trusts, family limited partnerships, corporations etc. You probably don’t want to do this yourself or with some type of planner doing this on the side. You’ll have to pay the attorney on an hourly basis, and it will be costly, but worth it. You don’t need to do this the day you walk out of residency, of course. There’s usually plenty of time. Remember, no assets, no need for asset protection.

It doesn’t do you any good to work hard, save well, and invest wisely if you lose years of effort to one little suit. Protect what you have earned so it will be there for you when you need it. Future posts on asset protection will run from time to time on the blog.

What do you think? What is your asset protection plan? Comment below!