Top 16 Asset Protection Moves For Doctors

Want to get the attention of doctors? Start talking about asset protection. While this is a topic I rarely address on this site (for reasons you’ll read below), it is one of intense interest to financially naive doctors. As I go around the speaking circuit, it is always a sure-fire attention getter. Unfortunately, that same interest also leads doctors to spend a lot of money on less than ideal solutions to their asset protection worries, not to mention a lot of sleepless nights.

Asset protection is actually an interesting ethical dilemma when you really think about it. You’re trying to figure out a way NOT to pay someone you have hurt what you owe them. The idea is to discourage lawsuits, cover any possible payouts with someone else’s money, and/or be able to declare bankruptcy and stiff your creditors without losing anything. Most doctors don’t care though. They view it as “not losing their hard-earned money to a stupid system.”

Before we start, there are two principles of asset protection that are critical to understanding. The first is that all tort law is state specific. With asset protection, we’re talking about civil law (money) not criminal law (jail). This is tort law. When someone hurts you, you sue them. If you win, the
other person pays you, they don’t go to jail. These laws are all passed by state legislatures and thus are different in every state. When putting together your asset protection plan, it is critical that you understand the relevant laws in your state. It’s best to read the actual laws in your state and pay attention to any possible changes, but here are some quick summaries that are mostly accurate in my experience:

- Asset Protection Society
- Chart
- Asset Protection Book
- Asset Protection Planners
- Nolo

The second principle is that any asset protection moves you make have to be done in advance and usually have to be done for a reason OTHER than asset protection. The reasons are typically for easier estate planning or better business management. All right. Let’s get into it.

**Best Ways to Protect Your Assets**

Here are the top 16 ways to prevent other people from taking away your money, ranked from best (generally most effective, simplest, cheapest) to worst.

**# 1 Date Night**
Weren’t expecting this one at the top of the list, were you? It turns out you are far more likely to lose assets to your spouse than you are to your patient. The divorce rate for a couple where one member is a physician is 24%. That’s actually better than most professions, and it gets even lower if you marry another doc. But that number is still three orders of magnitude larger than your risk of being sued above policy limits. If you look at 1000 situations where doctors lost money to another person, 999 of them were divorces — not being sued successfully for an amount above policy limits.

Of course, a good asset protection plan also provides some comfort during those 5 years of sleepless nights while you go through a typical malpractice lawsuit, but the likelihood of a complex, expensive asset protection plan actually being needed is so close to zero, it can almost be ignored.

So your best asset protection move is actually to make sure that marriage lasts your entire lifetime. Make it your highest priority and spend plenty of time together. Date night may very well be your best asset protection move.

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# 2 Pre-nuptial Agreement

On the same subject, a **pre-nup** is a very good idea for a physician. Certainly, it is a no-brainer for anyone looking at a second marriage, anyone who already has kids, or anyone who has already accumulated substantial assets prior to marriage. However, even for the young and poor, it gives you a chance to have control over how assets are divided in that 24% of the time the marriage ends in divorce. You get to make these decisions while you still love each other without interference from the state. You might be surprised what your spouse would want in a divorce. I know I was. It turned out what each of us view as “fair” are two very different things. You can do a **post-nup**, but it’s a little tougher to get what you want since you’re no longer negotiating from a position of strength!

# 3 Malpractice Insurance

In any lawsuit, insurance is your first line of defense. It pays for any judgments that may result, but it also pays for your defense (often a six-figure amount). “Going bare” is not a great idea given that the costs of the vast majority of lawsuits are completely covered by **malpractice insurance**. Nearly every doctor will get sued and many will have a judgment against them. Malpractice isn’t about your skills and
competence, it’s about a transfer of money. Make sure you’re playing this game with someone else’s money. Buy a policy as large as that of others in your specialty and state.

# 4 Umbrella Insurance

Just like malpractice insurance covers work-related liability, personal liability coverage (inherent in renter’s, homeowner’s, and auto insurance but also including an “umbrella” policy stacked on top of those insurances) covers non-work related liability. The good news is that a typical umbrella policy costs <5% of what your malpractice policy costs and works just as well.

# 5 Tenants by the Entirety

One of the coolest asset protection “tricks” out there. In half of states, a married couple can title their home as “William and Mary Jones, Tenants by the Entirety” (or sometimes “William and Marry Jones, Husband and Wife.”) In fact, in 18 states, you can title your personal property (like brokerage and bank accounts) as tenants by the entirety. When you title your property as tenants by the entirety, it means both you and your spouse each own the entire property by yourselves. So if only one of you is sued, that asset cannot be taken away by your creditor because the spouse who wasn’t sued owns the whole thing. I know, it sounds weird, but that’s the way it works. This is a nearly free, very simple, and very powerful asset protection technique.

These states allow tenants by the entirety titling for all property: AK, AR, DE, DC, FL, HI, MD, MA, MS, MO, NJ, OK, PA, RI, TN, VT, VA, WY.

These states allow tenants by the entirety titling for real estate only: IL, IN, KY, MI, NY, NC, OR
In most states, retirement accounts like 401(k)s and IRAs (including their Roth equivalents) receive exceptional asset protection. Sometimes the amount protected is limited to an amount that a judge thinks you need to support yourself, which is probably less than you think you need to support yourself. In some states, 401(k)s receive significantly more protection than IRAs do.

This protection allows for a fair number of asset protection techniques. The first is simply to max out your retirement accounts before investing in a taxable account. The second is, in states where it helps, to roll IRAs into 401(k)s. This may also facilitate doing Backdoor Roth IRAs. The third is to do Roth conversions. From an asset protection standpoint, on an after-tax basis, a Roth conversion allows you to take an unprotected asset (the cash used to pay the conversion tax bill) and place it into an asset protected account. It might not make sense from a tax perspective, but it almost always makes sense from an asset protection perspective.

Bear in mind that other tax-protected accounts such as HSAs and 529s provide much more limited asset protection. Know your state laws.
# 7 Give It Away

Here’s another great way to protect assets from your creditors–give them to someone else. If you don’t own it, your creditors can’t take it from you. This technique often leads to the classic physician asset protection move of titling everything in your spouse’s name. While that is hard to recommend given that the risk of divorce is so much higher than the risk of a judgment above policy limits, it probably is an effective means of stymying your creditors. Also, if you’re planning to give something to your kids anyway, just give it to them now. Within a year or two, that asset is no longer available to your creditors. If you wish to still maintain some control over the asset, consider using UTMA/UGMA accounts (a taxable investing account for your kids that becomes theirs at age 18-21) or an irrevocable trust. Obviously, this technique doesn’t work for assets you actually want to use for you. Also keep gift tax laws in mind, although it is rare for a doc to have a federal estate tax problem anymore.

# 8 Asset Protection Trusts

A domestic asset protection trust is an irrevocable trust where you are both the trustee and the beneficiary (i.e. self-settled.) This can be a good option, particularly in the states that allow these but do not allow tenants by the entirety titling (in bold below). Downsides include the cost of setting it up, funding it, and maintaining it among others. It is relatively new and unproven with very little case law.

The following states offer some form of domestic asset protection trust: AK, DE, HI, MS, MO, NV, NH, OH, RI, SD, TN, UT, VA.
# 9 Limited Liability Companies and Corporations

A Limited Liability Company (LLC) and a corporation are business structures that are separate entities from the owners of the business. They can be used to shield “toxic assets” from the personal assets of the owner. A toxic asset commonly owned by physicians is a rental property, which is best placed into an LLC. Like everything else in asset protection, LLC law is state-specific, but generally provides both internal (protects the assets in the LLC from malpractice lawsuits against an owner) and external asset protection (protects the personal assets of the owners from lawsuits associated with the rental property.) The best protection occurs when there are multiple non-spouse owners of the LLC, but in some states, even a single-member LLC provides some protection.

# 10 Stealth Wealth

This is a simple, cheap, and possibly effective asset protection technique, although it has some downsides. The idea here is that you simply try to avoid letting people know you’re wealthy. If you aren’t viewed as having deep pockets, then maybe there will never be a lawsuit in the first place. This doesn’t work so well for malpractice, but may work great for personal lawsuits. This can be as simple as avoiding vanity license plates (“Plastics MD” or “Orthopod” are probably bad ideas) to as complex as placing assets inside revocable trusts. While a revocable trust provides no protection against a lawsuit once discovered, it is possible that a superficial search for your assets may not uncover it. Living in a small house, driving a beater, parking your boat somewhere else, dressing like a slob, and whining about your terrible financial condition may all help give the impression that you are far poorer than you actually are. As you can tell as we progress down this list, my enthusiasm for each
# 11 Avoid Risky Situations

Are you scared? You’re not nearly scared enough. I know what hunts you. In reality, most docs are too scared of losing personal assets in lawsuits.

Here’s another method of avoiding lawsuits in the first place—don’t do or have anything that brings on lawsuits. No trampolines, pools, boats, jet skis, 4-wheelers, second homes, dogs, alcohol, or rental properties. Drive the speed limit. Move close to work. Install excellent outdoor lighting and use ice melt. Don’t live and practice in litigious places like Florida and Illinois. Don’t let your teenagers drive. Carried to an extreme, this technique might make your life rather dull, but it probably does have serious asset protection benefits.
# 12 Whole Life Insurance

Regular readers know I’m no fan of this hybrid insurance/investment product and its cousins universal and variable life insurance, but in about half the states, there is at least some asset protection provided for its cash value. If you value the asset protection benefit more than the higher returns available in real investments (and you probably shouldn’t) then go ahead and buy some whole life insurance. Just don’t blame me if you end up regretting your purchase.

# 13 Family Limited Partnerships

We’re getting down to that place on the list where these techniques are getting more and more complex and expensive. A family limited partnership is technically an estate planning technique with secondary asset protection benefits. The asset protection benefits come from the fact that like an LLC, non-family members (like creditors) can’t own or control the assets inside the partnership. Attorneys love these things, but they have a serious conflict of interest. There are downsides, so make sure you know them before going down this route.

# 14 Annuities
In a few states, the cash value of an annuity is protected from creditors. This is much less commonly protected than permanent life insurance cash value, so be sure your state actually protects annuity cash value before buying one for asset protection. Annuities have serious downsides too.

# 15 Equity Stripping

Some states protect large amounts of home equity from your creditors via “homestead laws.” In those states, it often makes sense from an asset protection standpoint to pay off the mortgage rather than invest in a taxable account exposed to your creditors. Equity stripping is done in states with weak homestead laws. Basically, you borrow your home equity out and place it somewhere else that is protected from creditors such as retirement accounts or whole life insurance.

Other similar techniques can be invented once you know your state asset protection laws. If retirement accounts are protected but whole life insurance isn’t, perhaps you can borrow against your whole life cash value (or surrender the policy) and use it to max out retirement accounts or do Roth conversions. Or if whole life insurance is protected but 401(k)s aren’t, you can borrow against your 401(k) and buy whole life insurance. The variations are endless and generally come with a downside such as paying interest. Given the very low risk of a judgment above policy limits, it’s tough to recommend most of these techniques for any but the truly paranoid.

# 16 Offshore Trusts

Moving assets overseas involves a lot of cost and hassle, but may keep creditors from both discovering and acquiring your assets. One previous guest poster even advocated for a “portable” offshore trust, where you don’t move the assets overseas until you’re actually sued. Like every other asset
protection technique, this one isn’t iron-clad and has serious downsides making it hard to recommend to the typical physician.

The best asset protection plans are simple, inexpensive, and effective. Treat your spouse, patients, and neighbors well, buy lots of liability insurance, max out your retirement accounts, use tenants by the entirety titling where available, place rental properties into LLCs, and learn your state asset protection laws. If you have more than $1 Million in assets not protected in some other way, consider some of the more “advanced” asset protection techniques discussed above such as asset protection trusts, family limited partnerships, or whole life insurance.

What do you think? What is your asset protection plan? Have you ever been sued successfully above policy limits? Do you know anyone that has? What happened? Comment below!

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