



## Can Asset Protection Strategies Help Shield Your Wealth?



### KEY TAKEAWAYS

- Asset protection planning seeks to stop lawsuits from happening in the first place by making it hard for creditors to get at wealth.
- Transparency is crucial to effective asset protection planning.
- A multipronged approach with plenty of flexibility can help make asset protection especially effective.

If you're a high-income professional or entrepreneur—or if you simply have a substantial net worth—you probably realize that in today's litigious culture, you're an attractive target for unfounded or frivolous lawsuits.

But what have you done to actually reduce the risk of losing your wealth if you get sued? In our experience, far too many affluent individuals and families don't act to protect their assets, livelihoods and lifestyles.

**The good news:** There are many strategies that can help safeguard your wealth against those who would unjustly seek to take it. Here's a look at the world of asset protection planning and how you might be able to leverage it to your advantage.

### The aim of asset protection planning

For starters, it's helpful to know that there's no formal body of law called asset protection planning. Instead, it's a series of strategies and tools that are part of the category known as legal risk planning—which itself falls under the broader umbrella of risk management (see Exhibit 1).

EXHIBIT 1  
Risk Management



Despite being a smorgasbord of strategies, asset protection planning focuses on realizing two main outcomes:

1. **Discourage and deter a possible lawsuit *before it even begins*.** If possible, you want to eliminate or mitigate possible litigation in the first place. The most potent asset protection plans we've seen are never even contested. Litigation is avoided or everything is settled before there are any judgments.
2. **Motivate creditors to agree to a settlement that's favorable to you.** If a lawsuit does move forward, you want to minimize any loss of wealth. When there are judgments, for example, a powerful plan can make it extremely challenging for a creditor to collect the money from you should the creditor win in court. If a creditor is highly uncertain about the ability to collect, the odds of a settlement that's favorable to you can rise significantly. Add in the time involved dealing with the courts and attorneys—and the associated financial costs—and you can see how smart asset protection planning motivates a creditor to settle, or perhaps even walk away with nothing.

#### First steps

As valuable as asset protection planning can be, it probably should not be your first line of defense for safeguarding assets. Before taking steps to legally insulate your wealth, consider options such as:

- Increasing your personal umbrella policy to (if possible) equal or exceed your net worth. This is usually a highly effective and relatively inexpensive risk management solution.
- Getting high-quality business liability insurance if you are an entrepreneur.

## Tips for effective asset protection planning

True asset protection planning doesn't seek to "hide" wealth. It should be done transparently and out in the open in order to be effective. The fact is, you *want* creditors (or anyone else who might try to take your assets) to clearly see what you have done. If they can easily grasp how difficult a legal path they'll likely have to take to get to your wealth, they may be much more motivated to settle for anything they can get.

**Watch out:** Some so-called asset protection strategies are promoted with the idea of secrecy. These strategies aren't true asset protection solutions—they're probably more akin to offshore tax evasion strategies that could land you in serious trouble with the IRS.

You also may need to adequately justify to governmental authorities, a judge or a jury any asset protection planning actions you take in order for your strategies to be effective. That can be tricky. For example, except in bankruptcy cases, the law is generally not very accommodating of the idea of insulating assets from legitimate creditors. However, doing asset protection planning because you want to pass wealth to your heirs is often seen as a viable explanation by the powers that be.

**Another vital step:** Implement these strategies before you need them—or even think you may need them. Put a plan in place after trouble arises (or even shortly before a lawsuit that seems imminent) with the intent of dodging creditors, and you might find your strategy negated by a judge. Worse, you potentially could be charged with contempt, fraud or civil conspiracy for engaging in "fraudulent conveyance."

**Note:** Because evidence of intent is nearly impossible to prove, judges typically look for *badges of fraud*, such as:

- Was the asset transfer to an insider such as a family member?
- Did the person become insolvent because of the asset transfer?
- Was the asset transfer hidden from current or potential creditors?
- Was there a claim at the time of the asset transfer?
- Was there the threat of litigation before the asset transfer?
- Are the assets still available for use after the transfer?

## Three key asset protection planning factors

There are three other important aspects of asset protection planning to keep in mind as you explore your options:

- **Be flexible.** Your asset protection plan should be modifiable, to the extent possible, so you can adapt it as laws and circumstances change.
- **Use multiple asset protection strategies.** Redundancies tend to increase your ability to effectively insulate your wealth. What's more, you can tackle asset protection in multiple ways. For example, some estate planning strategies—whose primary goal is to transfer wealth to heirs—also provide creditor protections. Therefore, implementing an estate plan can potentially be one way to strengthen asset protection efforts.
- **Be cost-effective.** Asset protection solutions' upfront costs include initial planning and implementation. Some strategies have ongoing costs, as well. Get a good handle on the full range of costs before you move forward to determine whether the benefits justify the expenses.

## Finding high-quality guidance

When creating an asset protection plan, it's crucial to work with an expert you trust. As noted, there are many different types of protection solutions out there—some of which are on more solid legal ground than others. What's more, there are no designations that you can use to identify professionals who offer asset protection planning. Ultimately, you need to find someone who is highly capable and who can clearly show how a proposed solution is likely to succeed in a variety of circumstances. Ideally, that expert will be able to share actual examples of how solutions he or she has implemented in the past have generated the desired outcomes.

## Regularly review your asset protection plan

Like any fundamental component of a broad wealth management plan, an asset protection plan is not a "set it once and forget it" type of solution. If you have a plan in place, you need to revisit it regularly to determine whether it's still correctly positioned to pursue the outcomes you seek.

The reason: Asset protection planning is regularly in a state of flux. Changes in laws and regulations can make existing strategies less (or more) effective, while also setting the stage for new, novel approaches. Meanwhile, asset protection planning experts are constantly seeking ways to shield the wealth of the affluent—while creditors and their professionals are always looking for ways to collect.

Clearly, you can't create an asset protection plan and then let it sit in a drawer or on a hard drive for the rest of your life! Commit to revisiting your plan whenever major circumstances change—such as when new tax laws are introduced or when your own personal or professional wealth situation changes. If you haven't revisited your plan for more than five years, chances are it's time to do so. And if you're wondering whether your plan is still

structured to pursue your specific goals, consider stress testing it by asking your advisor to review how it is likely to behave in various scenarios you might face.

## Next steps

Contact your us to discuss your possible asset protection needs and how to best address them.





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