

What You Need to Know About Asset Protection

Steps should be taken to protect both business and personal assets



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Physicians looking to maximize the safety of their assets need to consider both the practice or business side as well as the personal side.

Many medical professionals only consider their own individual holdings when creating a plan for asset protection. Yet the medical practice or business has its own set of assets and legal steps should be taken to protect these as well.

Most are familiar with personal holdings such as real estate and securities. The medical practice has its own set of holdings which typically include real estate, medical equipment and receivables. In order to maximize asset protection at all levels, the medical practice should focus on these key business assets.

Separate LLCs or corporations can be created for practice real estate and medical equipment which in turn can be leased back to the practice. The goal in segregating the real estate and medical equipment is to ensure that these assets are not subject to a lawsuit judgment against the practice.

Another part of the plan can be to protect receivables. One technique that may accomplish this is for the practice to borrow from a lender and pledge its receivables to the lender to secure the debt. Should there be a judgment against the practice, the lender's lien on the receivables has priority over a judgment creditor.

How a physician protects his or her own individual assets also figures into maximizing the asset protection plan.

Professional liability insurance is always the first line of defense. However liability insurance has inherent limitations.

Every medical professional can face the possibility of that nightmarish scenario where a

judgment far exceeds the liability limits covered by the insurance policy.

To protect personal assets from a judgment, estate planning/asset protection attorneys will explore several options. First is to look at state and federal laws that exempt assets from creditors. For example, in Missouri assets are generally protected if held in a qualified retirement plan such as a 401(k) plan or IRA.

For married individuals in Missouri, property owned jointly with their spouses is generally regarded legally as "Tenancy by the Entirety Property" and is not subject to the creditors of just one spouse. As such, it would not be subject to a malpractice judgment against just one of the two spouses. However this option does have limitations and if a spouse suddenly dies, 100% of protection is immediately lost.

Another technique is to use limited liability companies to own groups of assets. In this example a physician owner of the LLC can continue to manage the assets that are transferred to it, such as securities or real estate.

However, should a judgment occur against one of the owners, the owner may have what is termed "Charging Order Protection" meaning a creditor cannot get to the assets inside the LLC.

In that case, a creditor could only attach distributions from the LLC which the physician owner can control.

Not all states are created equal when it comes to charging order protection. Some provide stronger laws than others. Delaware, Wyoming and Nevada are among the states offering the best protection. An experienced estate planning/asset protection attorney can help select the location best suiting the physician's needs.

Lastly, a further technique is to combine an

LLC plan with either a domestic asset protection trust or an offshore trust. A number of states, such as Delaware, Alaska and Nevada, have strong domestic asset protection trust statutes.

Individuals who transfer LLC assets to a domestic asset protection trust can continue to manage their assets as they would normally. The trust can be structured so the physician can enjoy the beneficial use of the assets. In this technique, the LLC created for charging order protection is transferred to the domestic asset protection trust providing another layer of protection.

Keep in mind that the time to create an asset protection plan is *before* there is a problem.

Once a lawsuit or material threat of a lawsuit occurs, the planning that can be done, if any, becomes much more limited. Among other things, transfers of assets may be set aside as having been made in fraud of creditors.

Medical practitioners enjoy a satisfying and fulfilling calling but also deal with a high liability risk. An estate planning/asset protection attorney can help determine the best plan of action to maximize asset protection for both you and your practice.



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