Protect Your Assets!

By: Rachel Weinrib, Esq.

It's not news to hear that we are all constantly living in fear of being one lawsuit away from a financial catastrophe. One of the hardest parts of successfully protecting your assets is figuring out which of your assets actually need protection. Once you narrow that list down, it is time to sit down and begin estate planning. The most opportune time to develop an asset-protection plan is when there isn't a pending threat; for instance, a malpractice lawsuit if you are a professional, or a creditor knocking on your door.

A well-known popular asset-protection tool is the use of a trust; there are different types of Trusts, each with their own particular features and benefits. The two basic types of trusts are revocable and irrevocable. A revocable trust is one wherein the grantor reserves the right to modify the trust by amendment, or to dissolve a part or all of the trust by revoking it. The grantor has no such rights with an irrevocable trust. Once you draft an irrevocable trust it cannot be changed; which is good news for those who do not like surprises. The grantors intentions will have to be complied with even after his death. It is this precise lack of control that makes the irrevocable trust a powerful asset-protection tool. You can't be sued for assets you no longer own or control. Therefore, if you place an asset into an irrevocable trust, it will be instantly protected from creditors and judgment liens and may be protected from bankruptcy and divorce as well. (Common misconception: you do not have to be dead in order for your family to enjoy the benefits of your irrevocable trust)

There are other benefits to utilizing the tools of estate planning besides from just protecting your assets against a potential immediate threat. Contrary to popular belief, trusts are not intended for use exclusively by the upper class of the population. Even if you're not a one percent-er, you may be able to benefit from the tax-saving benefits of an irrevocable trust. Perhaps one of the most common uses for an irrevocable trust is the avoidance of federal estate taxes. An irrevocable trust or the beneficiary of the trust pays the income taxes on what its assets earn. When you die, the trust property is not part of your estate and will not be subject to death taxes. The federal estate tax can be one of the largest expenses incurred by a decedent's estate. Solely for this reason, if you are willing to forgo the flexibility of a revocable trust you should take advantage of the tax breaks that an irrevocable trust can offer.

The three most common reasons for individuals not beginning asset protection are: (1) the particulars seem complex and confusing, (2) concerns the process itself may be expensive, and (3) the process may be time consuming and it is easier to just procrastinate. All three reasons work against individuals resulting in a common scenario – continuing the day-to-day with little or no protection, and also failing to maximize financial growth. What you will likely be surprised to find is that once you have the right team in place to assist with you asset protection needs (team being, your attorney, financial planner and accountant), the process is often straightforward, reasonably priced and handled expeditiously. Be sure when looking for your team to ask in the first instance for an estimate of potential costs, and to make sure you understand all billing practices. You should be presented with a written retainer agreement that details all potential costs anticipated when interviewing a potential attorney or accountant.

In sum, taking steps to ensure your assets are protected is a process many may not have the luxury to postpone. When talking asset protection, once life circumstances force you to consider protection, oftentimes it is too late.

About the Author

Rachel Weinrib, Esq. manages K&K's Trust and Estate's Department and focuses on preparing estate planning documents. For more information on asset protection or general estate planning visit our website or contact Rachel.

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