

What's Hot and What's Not: Holding On To What You've Got

By William Gibney, Attorney At Law

Hot babes, hot cars, hot vacations, hot stars. Whatever made last year's list of what's hot suddenly lands on this year's list of what's not. Madison Avenue can hardly keep up with Americans' fickle taste. Besides cocktail parties, pink lipstick, and pet spas, Wall Street is back on the hot list this year. Squeamish investors who had dropped out of the market are jumping back in, buckling up for a bullish ride. Stocks and mutual funds are warming up nicely after a serious bout with frost-bite. We expect economic and lifestyle trends to ebb and flow. But there's nothing trendy about protecting our assets; what's hot stays hot and never dare mix it with what's not.

Take the Temperature of Your Assets

A "hot" investment isn't necessarily a hot asset in terms of legal protection. Hot assets carry the greatest risk of lawsuits. Cold assets are those least likely to cause injury. So no matter how lucrative or "hot" your securities investments might be, your portfolio is considered a cold asset with regards to liability. It's highly unlikely that anyone would ever slip and fall on one of your mutual funds and sue you. Ironically, even though it's a cold asset, that nice little nest egg you're building, left unprotected, could all be lost if someone gets hurt on your property.

Real estate is considered a "hot" asset because it carries a high risk of lawsuits. Accidents happen in homes and businesses every day. More often than ever before, property owners, whether negligent or not, are prime targets of lawsuits. Without effective protection, a plaintiff could lay claim to all of your assets—whether hot or cold.

LLC Protection

That's why the limited liability company (commonly called "LLC") has become the most popular and most effective method of asset protection in the country. Arizona's LLC law prohibits a creditor or plaintiff from attaching assets outside the limited liability company that actually causes an accident or injury. For example, if you cause a car accident that kills someone and you are not asset protected, everything you own could be at risk. If, however, you had placed your assets in LLCs, your financial exposure would be minimized. A plaintiff would not have access to any LLC assets.

Separate Hot from Cold

I advise my clients to separate their ‘hot’ assets, such as vehicles, equipment, and real estate from ‘cold’ assets, such as stocks, art collections, and expensive jewelry. Your small business—no matter its purpose—is a hot asset because it is highly vulnerable to lawsuits by employees, customers, creditors, even Uncle Sam. Protect it with one LLC, and place the profits from the business that you invest in the stock market—a cold asset-- in a separate LLC. By minimizing your exposure, you maximize your protection. Certain qualified plans, such as 401Ks and IRAs are already creditor-protected by state and federal law, and need no additional LLC protection.

Separate Hot from Hot

It’s dangerous to combine hot assets. If you hold several rental properties in one LLC, for example, a tenant who sues could acquire the other properties. By placing the properties in separate LLCs, only the property where the injury occurred is at risk.

Combine Cold Assets

In most cases, it’s safe and practical to combine your cold investments in one LLC. Since stocks, bonds, mutual funds, cash, promissory notes, deeds of trust, art, and jewelry are all relatively harmless to other people, they don’t need to be separated. But they must be protected. Even if your business assets are in limited liability companies, your personal assets are at risk if you cause an accident in your home or personal vehicle. By placing your cold assets in a separate limited liability company, you are minimizing your exposure.

Insure Your Assets

LLC protection does not negate the need for insurance. I urge all of my clients to purchase one umbrella policy for their personal assets and another for their business assets. Insurance offers peace of mind for minor claims. But never underestimate the power and might of a greedy creditor or plaintiff. Every asset that is exposed is vulnerable. The bottom line is simple. Figure out what’s hot and what’s not. Even if what you’ve got is not a lot, it’s all you’ve got, so protect it as you ought.

See Your Attorney

Although the forgoing applies to most cases, this information should not be deemed a legal opinion, because every client’s circumstances are different and could dictate varying applications of legal advice. Please consult an estate- planning attorney who specializes in asset protection regarding your individual needs.

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