

Woulda Coulda Shoulda: The Asset Protection Nightmare

By William Gibney, Esq.

We've all been guilty of the "Woulda Coulda Shoulda" syndrome. When that remote piece of property I could have bought for \$20,000 ten years ago sold for over \$500,000 last week, I nearly cried. But if I had bought that property and watched its value soar over the years, only to lose it to a tenant who fell through a broken rail on a balcony, I would probably kick and scream all the way to my grave—knowing I could have protected myself from the financial disaster.

Insurance: False Sense of Security

Many people think their assets are protected because they have business insurance or a personal umbrella policy. That's a dangerous mistake. Judges and juries are awarding outrageously high judgments in personal injury cases today. While good insurance is essential to cover the small claims, adequate coverage for all of your assets is likely cost-prohibitive and may not cover a claim. But a properly executed limited liability company (commonly called LLC), combined with a revocable living trust, provides a relatively inexpensive, effective shield against even the largest lawsuit. Often, a potential plaintiff will decide against filing a lawsuit when he learns that the offending party's assets are LLC-protected.

Risky Real Estate

Small business owners, particularly people who own real estate, need solid asset protection. John and Jane Doe, for example, own a rental property worth \$150,000. One of their tenants dies in an explosion caused by a gas leak in the house. His family sues John and Jane and they are awarded a \$1.5 million judgment. If John and Jane had formed a limited liability company (LLC) to own the rental property, their exposure would have been limited to \$150,000--the value of the home---and their other assets would have been protected. Instead, John and Jane had to liquidate everything they owned and borrow money to satisfy the judgment.

Automobile Accidents

Mr. Smith (fictitious name) caused a car accident that killed two people. Frightened over the possibility of a major lawsuit against him, he came to me for advice about protecting his assets. If he had called a week earlier—*before* the accident---we could have formed one or more LLCs to shield his assets. But the damage was done. Since Mr. Smith waited until after the liability, my hands were tied.

Creditor Claims

Another client, Mr. Jones, had accumulated nearly \$500,000 in debt against about \$200,000 equity in real estate. Creditors were threatening foreclosures and other lawsuits to collect on past due principle and interest. Jones came to me in a panic—hoping to deed some of the land to relatives to remove it from his estate. I couldn't help him. Transferring property, whether real or personal, to avoid a known creditor is known as “fraudulent conveyance,” which is illegal. A conviction carries serious consequences. An important lesson from this case: when a property is mortgaged, you have a known creditor. Because Mr. Jones failed to plan ahead, I could offer him no better option than to file bankruptcy.

Don't Wait Until It's Too Late

Asset protection is a lot like buying insurance. You don't wait until your house burns down to purchase fire insurance. Nor can you buy life insurance on someone who is already dead. When it comes to protecting your assets, after-the-fact legal maneuvering is usually futile as well. If you wait until a lawsuit is imminent or a creditor comes pounding on the door, it's too late. Save yourself a lot of agony and heartache by protecting your assets now—before the gavel drops.

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 experienced attorney who is knowledgeable about asset protection regarding your individual needs.

Bill Gibney is an estate-planning attorney who specializes in trusts, LLCs, and other means of asset protection, who can be reached at 602-953-0006 or

Bill@wgibneylaw.com.