

## BUSINESS & CORPORATE SERVICES

# Smart Asset Protection Strategies for Business Owners

Courtesy of Lawrence Kamin, LLC

## INTRODUCTION

Chances are, you know someone who has been sued. Maybe that someone is you.

The fact is, your enviable position as a successful business owner comes with a major downside: You are a potential target for lawsuits (some of which may be frivolous and unfounded) and other attacks that can wreak havoc on your business operations and finances.

To arm yourself against these threats, you have got to take action steps to protect the assets you have worked so hard to build. Otherwise, you may jeopardize the financial security for yourself, your company and your family.

## WHY YOU NEED ASSET PROTECTION

The logic of asset protection planning is clear: You build a wall around your assets that is as difficult as legally possible for litigators, creditors and others to get past. When you do this, a potential litigant will likely forego a court battle that could take months or years with a high risk of losing, and instead see that the only reasonable legal option may be to settle for pennies on the dollar—or, ideally, to leave well enough alone.

Asset protection is not meant to “hide” money in any way. To the contrary, you want anyone who might come after your assets to clearly see what you have done, because it shows them the difficult legal path they would have to take to get to your wealth, thereby motivating them to settle, negotiate or throw up their hands and walk away.

As an astute and experienced business owner, you are likely aware of the potential threats to your wealth from others. More than 85 percent of successful business owners say they are concerned about becoming the target of unjust lawsuits or being victimized in divorce proceedings.

Here’s the bad news: Only about a quarter (27.5 percent) of successful business owners have put a formal asset protection plan in place to safeguard against legal action. The percentage is even lower among those business owners who say they are concerned about protecting assets. Given the risks you and your peers face in today’s litigious culture, these numbers are likely far lower than the reality.

Half of the successful business owners who indicated they are not concerned actually *do* have formal asset protection plans in place. It makes sense that having these plans reduces business owners’ trepidation about being unjustly sued, and gives them confidence and peace of mind that they are well-protected.

## FIVE KEY ACTION STEPS TO PROTECT YOUR ASSETS

If you are one of the many business owners who are dragging your feet on putting an asset protection plan in place—or you are curious as to whether your existing plan is up to snuff—consider these key action steps to make sure your business and wealth are protected.

1. **Get protected *before* a claim against you is made.** You can do a lot to protect your wealth before a liability arises—but thanks to a concept known as “fraudulent conveyance,” there is very little you can do after. As with insurance, the time to have asset protection in place is well before you need it, or even think you might need it.
2. **Cover the basics.** Evaluate your liabilities and other related insurances and maximize them as best you can. The fastest, easiest (and perhaps cheapest) move you can make is to take out a large umbrella policy to safeguard assets. Another simple but powerful strategy is to place your assets in someone else’s name, such as a family member, or in the name of a trust. If you are sued, those family-controlled or trust-owned assets are often untouchable.

Be sure you have a great deal of trust in your spouse and your children before transferring ownership of assets to them. In a divorce, your spouse could potentially walk away with those assets—or you could be forced to fight for them at least as hard as you would fight a creditor who went after them.

3. **Consider advanced asset protection strategies.** Super wealthy business owners often take more sophisticated steps to protect their wealth once they have covered the basics. Options to consider include:
  - **Equity stripping.** Some ultra-wealthy business owners protect their assets from unjust and frivolous lawsuits by using bank loans to strip out the equity. Conceptually, it’s simple: You take out a loan from a bank and secure the loan with the assets (such as equipment or real estate). This way, the bank has preference over judgments obtained by creditors. For creditors to get to the encumbered assets, they would first have to pay off the bank loan.
  - **Captive insurance companies.** A captive insurance company is a closely held insurance company set up to insure the risks of the parent company. The owner of the parent company wholly owns the captive insurance company, which means you—the business owner—controls the operations of the captive insurance company (including underwriting, claims decisions and the investment policy).
  - **Onshore and offshore trusts.** Currently, a number of states allow for domestic asset protection trusts, while countries such as the Bahamas, Belize, The Cook Islands and Nevis (among others) are good locations for offshore trusts. Assets placed in these types of trusts are generally out of reach of creditors. That said, the rules governing these trusts vary greatly depending on the jurisdiction you select. Understanding the specifics of the jurisdiction is critical.
  - **Limited Liability Entities.** Operate businesses using limited liability entities and maintain “corporate” formalities in order to avoid personal liability. Or, segregate your assets into several corporations or other limited liability entities in order to protect those assets from creditors or lawsuits.

4. **Avoid big mistakes that will trip up your asset protection efforts.** Many of these more advanced asset protection strategies are complex and require a deep familiarity with and understanding of how they work in order to set up and execute them effectively. If poorly structured, asset protection strategies will have no “teeth” when they are needed most—and business owners’ assets won’t be nearly as safe as they assume.

**EXAMPLE:** Some business owners do not appreciate the need for protection on both the professional side *and* the personal side. Take real estate developers, for example, who commonly place each of their development projects in separate limited liability companies (LLCs). That way, if one project incurs a lawsuit, the others are protected.

The problem: Those LLCs are many times set up so the developers own them directly. If they get hit with a personal lawsuit—say, they’re involved in a drunk driving accident or their children smash a car into a school bus—all the assets in the LLCs could be up for grabs in the lawsuit.

## SIX MORE STRATEGIES FOR SAFEGUARDING YOUR WEALTH

There are many strategies—ranging from simple to sophisticated—that you may consider implementing as you build a rock-solid asset protection plan. Here are just a few additional strategies often used by successful business owners:

- Ascertain appropriate utilization of risk transfer through property-casualty insurance (homeowner’s, auto, rental, personal excess liability [umbrella], health, disability insurance, life, long-term care, directors’ liability and professional liability insurances).
- Use state law and tax exemptions effectively—for example, the homestead exemption, cash value of life insurance policy, retirement plans and annuities.
- Consider various forms of ownership that either put an asset beyond the reach of a creditor or make these assets less desirable for creditors.
- Examine the potential benefits of restructuring your current business.
- Discuss gifting assets when there are no current creditor issues to lessen the likelihood of raising fraudulent transfer issues.
- Strategically structure any expected gifts and/or inheritances in a way that protects them from claims of creditors.

## CONCLUSION AND KEY TAKE-AWAYS

Consider your industry and the current propensity for lawsuits filed against your peers or competitors. If they are getting hit with lawsuits, or if there is a lot of risk attached to what you are doing as a business owner, then it is time to start seriously looking at these advanced asset protection planning strategies.

Asset protection is not about giving in to fear. It is about preparing a plan that empowers business owners in the face of risk. When done right, asset protection builds a wall around your wealth that creditors, litigators, ex-spouses and others can’t breach.

Avoid the mistakes that trip up many business owners and could leave your wealth exposed to those who would take it unjustly. Contact Lawrence Kamin at 312.372.1947 to determine which asset protection strategies might be right for your situation.

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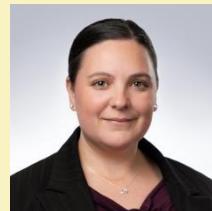
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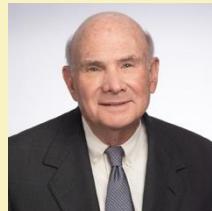
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