

6 Ways to Protect Your Home in a Lawsuit



Don't let the memories and money you've invested in your home get taken away. Find out how to protect your home from business creditors.

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The following excerpt is from Mark J. Kohler's book The Tax and Legal Playbook. Buy it now from Amazon | Barnes & Noble | IndieBound | Entrepreneur Books

There are more than six ways to defend your home, but some can be quite expensive and aggressive and aren't usually used by mainstream lawyers and planners. The list below comprises what I believe to be the most common, effective, and legally accepted methods to protect your home, though they'll vary

based on the state you live in, your marital status, and the amount of equity involved.

With all these strategies, it's critical to implement them or at least consider their effectiveness in your situation *before* a cause of action arises. Please note I didn't say "lawsuit" but "cause of action." For example, you can't start trying to protect your home the day after a car accident, even though the lawsuit over the accident may occur years later.

Asset protection for your home needs to start now, when there's a clear blue sky, not when the storm clouds come.

1. Maximize the Homestead Exemption

This is a statutory exemption available in most states that protects a certain amount of the value of a person's home from a creditor or bankruptcy. Essentially, if a creditor comes after you in a lawsuit and forces the sale of your home, they only get what's left after selling fees, the mortgage balance, and your homestead exemption amount.

Forty-eight states have a "Homestead Exemption" to one degree or another, and the amount and rules on how to qualify for and satisfy the requirements of the exemption vary. For example, 21 states require that a homeowner file the appropriate paperwork to qualify for the exemption.

If homeowners want to take advantage of this exemption, it's essential they have a general understanding of their state's law and consult with their asset-protection professional.

2. Protect the Home with Tenancy by the Entirety

If your state allows it, you can title your personal residence as "tenancy by the entirety," which offers unique

protection: If one spouse is sued, the property cannot be attached or bifurcated by the lawsuit. Essentially, tenancy by the entirety holds that if a husband gets into a terrible lawsuit, it's not fair that the wife loses the house when the lawsuit had nothing to do with her (or vice versa). There are approximately 15 to 20 states that have this law on the books, including Hawaii (as if you needed another reason to move to the Aloha State).

3. Implement an Equity Stripping Plan

Equity stripping is the strategy of placing a lien on your home with a mortgage and removing the equity by replacing it with a loan. This makes your home much less attractive to a potential creditor who wants to take it to satisfy a judgment.

The trick is in the implementation of the loan. Ideally, a traditional home equity line of credit or even a first mortgage lien, wherein you use the loan proceeds to invest and create additional wealth, can be a perfect fit. It's legitimate, and it's difficult for a creditor to challenge in court and step in front of a valid lien holder on the title to your primary residence.

Some homeowners implement a "smoke and mirrors" strategy by creating a shell company and place a lien on their home with the shell company. This essentially clouds the title and gives the public (i.e., anyone doing a title or asset search) the impression that your home is liened to the hilt and there isn't any equity to be had in a lawsuit. This strategy can be successful in dissuading a lawsuit, but in a court battle, a judge or plaintiff's attorney would slice right through the structure once they discovered the lien wasn't tied to an actual loan with a third party. While this strategy may not hold up in court, there is no tax ramification and nothing illegal about lienning your own home. It's simply a way to put

the public face you desire on the amount of potential equity in your home.

4. Create a Domestic Asset Protection Trust (DAPT)

A DAPT is a self-settled trust created and protected under certain state statutes that offers another method of protecting assets. As a nation, we're becoming more and more comfortable with this type of trust. More than 15 states have these laws on the books, and each year, another state adopts some version of DAPT law. The DAPT is excellent for protecting a personal residence, cabin, beach house, or farm that you plan on keeping for life (or making very minor moves or changes, if necessary). In most states, the longer you keep the assets in a DAPT, the better protection the DAPT provides.

5. Put the Home Title in the Low-Risk Spouse's Name

In some situations, one spouse may have a "risk issue" with their lifestyle or business, and removing their name from the title of the home could help protect it. The effectiveness of this strategy varies dramatically from state to state; it's critical to consult with an attorney who understands the law in your state or can at least research it to confirm your current standing.

6. Purchase Umbrella Insurance

Umbrella insurance is just that—it's insurance that covers a variety of situations that could possibly create a claim. It can be very affordable, whether designed as a personal umbrella, a business umbrella, or both. I'm a huge fan of

ensuring my clients have proper insurance coverage. Any attorney or CPA who recommends you simply rely on legal structures and not buy insurance is taking a serious risk on your behalf.

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