8 Things You Must Do to Protect Your Assets

Asset protection isn’t complicated. Just follow these tips.

May 21, 2019 5 min read

Opinions expressed by *Entrepreneur* contributors are their own.

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

Every year I’m in practice, I’m further convinced that fundamental asset protection begins with implementing affordable, tried-and-true strategies and simple habits. There’s no need to reinvent the wheel. There are already laws on the books you can easily implement that will provide you with incredible protection in the event of a claim or lawsuit.

Here are the eight critical strategies to consider as part of your personal asset protection plan:

1. Choose the right business entity. There will certainly be multiple tax-planning considerations, but operating as a sole proprietorship definitely isn’t your best choice for asset protection. As a sole proprietorship, your personal assets are completely exposed to a potential lawsuit. Setting up an entity, such as an S corporation or limited liability company (LLC), is an important step in the development of your business and protection of your assets.

2. Maintain your corporate veil. If you’ve set up an entity, don’t think that just having the entity’s articles of incorporation in your drawer will save you when a lawsuit

comes. You need to maintain a separate bank account and checkbook for your business; use the company name on all documents; title the property in the name of the company if necessary; and, most important, maintain corporate records and log the minutes at your annual meeting. Moreover, LLCs are not exempt from performing this type of annual maintenance.

3. Use proper contracts and procedures. One of the easiest ways for creditors to pierce the corporate veil and attack your personal assets is if you act negligently or fraudulently. This can be avoided by having good lease agreements for your rentals, placing property and equipment titles in the company name, having subcontractor agreements and contracts on every project, not relying on emails for terms in an important relationship, and never hiring people to work under the table. Only use licensed, bonded, and/or insured professionals to help you in your business. This includes but is not limited to asset protection specialists, legal and tax advisors, contractors, and repairmen.

4. Purchase appropriate business insurance. Insurance is an important part of your business and should be included in your startup budget. Insurance gives you the ability to take care of an incident in your business and gives plaintiffs another target. Moreover, make sure you get the correct insurance policy. Owning a rental property vs. a professional practice or retail store requires very different types of insurance.

5. Obtain umbrella insurance. This type of insurance can be personal or business, and it functions as an “umbrella” over any other type of insurance you may carry. It costs an average of $300 to $500 a year for $1 million to $2 million in coverage. That said, don’t assume you can throw caution to the wind because it will protect you in every instance. As a rule, umbrella insurance won’t cover fraudulent, criminal, reckless, or negligent action.

6. Place certain assets in your spouse’s name. If one spouse

has a riskier occupation or lifestyle, it can be extremely strategic to place assets in the other spouse's name. Generally, the creditors of one spouse cannot reach the separate assets of the other. Therefore, asset protection in the context of marriage requires a strategy whereby valuable assets are held as the separate property of the spouse with the least exposure to risk. This is where a prenuptial or postnuptial marital property agreement can be beneficial.

For example, in most states, if the husband is a business owner who incurs liabilities, the couple can enter into an agreement that certain valuable assets will be the wife's separate property, thereby shielding those assets from the husband's creditors. Obviously, if both spouses agree to be co-debtors on a loan, such as when spouses both sign the family home mortgage, then both spouses would be jointly liable.

A word of caution with this planning strategy: When conducting marital or estate planning, you should carefully consider the implications of deeding property into one or the other spouse's name. By protecting your assets from a creditor in this way, you could be seriously affecting the division of your assets if you divorce.

7. Consider the homestead exemption. One of the most powerful exemptions available is the protection afforded to our individual personal residence, commonly referred to as 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.

8. Look into tenancy by the entirety. If your state allows it, you can title your personal residence as "tenancy by the entirety," which means if one spouse is sued, the property cannot be attached or bifurcated by the lawsuit. The beauty of this strategy is that it is also statutorily based, meaning you don't have to pay big bucks to implement or maintain the

designation. Just make sure your property is titled properly, and you can protect your home in this way if your state allows for such a provision.

https://www.entrepreneur.com/article/244627