

Avoid These 10 Major Asset Protection Planning Mistakes

TOP
10

AVOIDABLE
ERRORS



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The following are ten of the most common asset protection planning mistakes people make. By being aware of these correctable errors, you can avoid (or help your loved ones avoid) catastrophic unforeseen or even unforeseeable business and personal loss.

So, here are ten of the most common asset protection mistakes:



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ASSET PROTECTION MISTAKE:

01

Thinking you
don't have
enough assets
to protect.

There is a misconception that Asset Protection is only for the uber-wealthy. The super-wealthy, however, actually have less need for Asset Protection than individuals worth \$300,000 to \$3,000,000. If an individual worth \$20,000,000 dollars is sued for \$500,000 to \$1,000,000, they can probably absorb the lawsuit without a change in their standard of living. Meanwhile, an individual with \$300,000 to \$3,000,000 would likely see a significant reduction in their standard of living if they were hit with a \$500,000 to \$1,000,000 judgment.



ASSET PROTECTION MISTAKE:

02

Relying on insurance — alone.

While insurance is a helpful addition to an Asset Protection plan, it is not a replacement for an Asset Protection plan. Insurance protects you from certain types of claims or from risks associated with a certain activity, whereas an Asset Protection plan will protect your property **regardless** of the reason for the lawsuit.

Additionally, insurance companies may attempt to escape paying a claim if a large judgment is rendered against you. Your Asset Protection plan will remain in full force regardless of whether or not your insurance is available.



ASSET PROTECTION MISTAKE:

03

Relying on a Will or Revocable Living Trust to protect assets.

Everyone needs a Will or Revocable Living Trust as a bare bones estate plan. However, a Will and Revocable Living Trust will not protect assets from claims of creditors during your lifetime. A Will comes into effect at the death of an individual and, for this reason, provides **zero** Asset Protection during life. Similarly, because a Revocable Living Trust is just that -revocable- it provides **zero** Asset Protection for the Settlor.

ASSET PROTECTION MISTAKE:

04

Failure to consider state law exemptions.

Each state has different statutory exemptions. These include homesteads, IRAs, life insurance, annuities and other asset classes. The extent of the protection depends upon the state where the debtor resides. Louisiana is a very creditor-friendly jurisdiction that **encourages** rather than discourages lawsuits and has limited exemptions from seizure and sale of personal assets.

Exemptions in Louisiana include one cow (literally), tools of the trade, pets and a wedding ring. With the exception of retirement plans, life insurance, annuities and the like, virtually any personal asset, including your home, can be seized and sold by a creditor in Louisiana. For married couples, **all** community property is available to satisfy the separate debts of either spouse. Against this backdrop, Asset Protection planning should be a key consideration in every estate or business plan for residents of Louisiana.

ASSET PROTECTION MISTAKE:

05

Failing to protect your home.

Your home is **not** a protected asset in Louisiana and can be seized and sold to satisfy claims of creditors. O.J. Simpson bought a house in Florida for a reason – to shelter his personal assets in the wake of a money judgment against him. Because Louisiana offers little protection for anyone caught in a legal crisis, one should employ every means possible to protect the most sacred of assets – home sweet home.

Proper Asset Protection planning provides this security and Theus Law Offices has developed a trademarked method to help **protect** your home in a manner that still allows you to retain the homestead tax exemption.



ASSET PROTECTION MISTAKE:

06

Not utilizing a charging order protected entity, such as a Limited Liability Company.

With very few exceptions in Louisiana, owning assets in your own name subjects them to attachment by creditors. A great way to avoid direct ownership of assets and thereby reduce exposure to lawsuits is to establish and fund a “charging order protected entity” like a Limited Liability Company (“LLC”) that you control and manage.

In the event a judgment is rendered against you, a creditor would only be entitled to a “charging

order” against the LLC, which is a lien issued by a court that entitles a creditor to distributions (if any) from the LLC. However, if you maintain effective control over distributions, the creditor may receive nothing unless and until you decide to make a distribution. In the meantime, the creditor: (i) cannot compel a distribution from the LLC; (ii) cannot seize any of the LLC’s property; (iii) cannot obtain or inspect the books and records of the LLC; and (iv) will be subject to income tax on income of the LLC, whether or not a distribution occurs. For this reason, a creditor will often settle claims quickly and for a much lower dollar amount. As discussed in the next section, charging order protection may not be available for single member LLCs in Louisiana, so it is critical to properly structure and layer your LLC with other carefully designed components to maximize the benefits of charging order protection in Louisiana.

Assets transferred to a limited liability company don’t have to be business assets. They can be cash, investment accounts, real estate, life insurance and just about any other asset class. There is no good reason to make your assets easily available to creditors when it is so simple to form and maintain a charging order protected entity, such as a Limited Liability Company.

ASSET PROTECTION MISTAKE:

07

Relying on a Single Member LLC.

Some states, like Alaska, specifically provide that charging order protection exists for single member limited liability companies (“SMLLCs”). Unfortunately, Louisiana law does **not** provide this protection.

The policy behind charging order protection is that it would be unfair to the non-debtor member(s) and the LLC to be subjected to the claims against a debtor member. When there is only one member of the LLC, the policy of protecting innocent members and the company does not exist. There have been multiple court cases arriving at this conclusion and, thus, allowing the single member LLC to be pierced. A Limited Liability Company is a great way to reduce your exposure to lawsuits in Louisiana, but a single member LLC standing **alone** will not likely provide sufficient Asset Protection in Louisiana. A full Asset Protection plan employs other layers.

ASSET PROTECTION MISTAKE:

08

Failing to use the right type of Trust.

Many people have the misconception that any type of trust can provide asset protection. That is not the case. Revocable trusts provide **zero** Asset Protection for the Settlor. Irrevocable trusts can provide Asset Protection if properly structured. However, one cannot put their own assets in trust for their own benefit (self-settled trusts) in Louisiana and obtain any creditor protection. Irrevocable trusts can protect property placed in trust *if* properly structured.

Most trusts are drafted to give the trustee the power to make distributions to the beneficiaries for their health, education,

maintenance and support. These trusts are often called support trusts. Depending upon state statutes and case law, support trusts are often available to certain classes of creditors, including divorcing spouses. A discretionary trust, on the other hand, gives the trustee absolute discretion over distributions and thus generally protects the assets from all classes of creditors.

Many trusts are drafted to give children staggered distributions at different ages. This needlessly subjects the trust assets to the creditors and divorcing spouses of the beneficiaries. Alternatively, the trust can be designed to continue for the beneficiary's lifetime in a way that affords the beneficiary effective control throughout their lifetime.

Dynasty Trusts are used to provide Asset Protection and divorce protection for the beneficiaries for as many generations as applicable state law allows. Just as attorneys should use lifetime trusts for the first generation, the same concepts apply to future generations as well. There is no reason not to protect your assets for grandchildren, great-grandchildren and other beneficiaries.

ASSET PROTECTION MISTAKE:

09

Choosing the wrong Estate Planning Lawyer & not discussing Asset Protection Planning.

For many estate planning attorneys, unless the client or prospective client asks about Asset Protection, it never gets discussed. Instead, conversations tend to center around wills or revocable trusts. This hurts both the client and the attorney since there is usually a need for some Asset Protection. The client should look for an attorney who acts as an advisor, not one who just takes directions from the client.

Many attorneys claim to provide Asset Protection services, however, there are very few attorneys with the resources and capabilities to provide effective Asset Protection. In selecting an Asset Protection attorney, you should look for an attorney who truly specializes in Asset Protection in order to provide you with the most advanced tools and advice for protecting yourself and your family.

At Theus Law Offices, we use only the most trusted and tested Asset Protection tools available, and our clients are guided by the nation's top Asset Protection attorneys and experts, which include J. Graves Theus, Jr. In addition to being a certified specialist in Estate Planning & Administration, as well as Tax, with over 20 years of experience, J. Graves Theus, Jr. is the only certified specialist in Louisiana who is also licensed to practice law in the State of Alaska — the first state in the United States to adopt domestic asset protection legislation and universally considered a top-tier Asset Protection jurisdiction. As such, Theus Law Offices is uniquely qualified to offer Asset Protection solutions and advice of the highest caliber.

ASSET PROTECTION MISTAKE:

10

Doing nothing or not planning in advance.

Asset Protection planning is like a vaccine. It works best when administered in advance. The time to start an Asset Protection plan is when you are solvent and not facing any threats from existing creditors. A properly designed Asset Protection plan protects you from *future* creditors. The most effective plan is implemented long before any creditor claims arise because a plan can be set aside if the primary purpose is to hinder, delay or defraud a *known* creditor.

Unless you have no assets to protect or you are not concerned with protecting your hard-earned assets, you should take steps now to protect yourself and your family.