

Why Asset Protection?

Although so many real estate investment deals have gone underwater, states and banks are slowly but surely getting through the foreclosures dockets based on their loans.

When they arrive at yours, almost every state will allow the creditor–mortgagee to get a deficiency judgment, which means that after the foreclosure sale’s proceeds (which, because of so many properties being available, have been lower than expected) are applied to what you owe, the creditor can get a judgment against you personally for the rest. And the rest by this point includes creditor’s attorney and court costs, title search costs, and the costs of having the sale.

All of a sudden, you have not only lost the property, you’ve probably got less cash out of the equity you had in the home due to the foreclosure sale, and you have a bank chasing you down.

Isn’t My Insurance Enough?

The answer depends on how much risk you are comfortable with. Consider these risks:

1. **The insurance company bankrupts.** (One hurricane, not named Katrina, bankrupted 12 insurance companies single–handedly.)
2. **You are sued for something and your insurer tells you it is not covered, or limited.** (More than half of claims wind up this way—uncovered or uninsured.)

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However, there are effective asset protection strategies that you can engage in that will give the banks a hard time in recouping the grossly–inflated amount they claim you owe.

And for the record, none of them are “transfer everything you own to your spouse who didn’t sign the mortgage, so the bank can’t get to anything.” Creditors can get around that. And besides—what if you get *divorced*?

“Asset protection provides unlimited coverage for the rest of your life for a one–time fee.”

3. **Your insurer defends you, but the settlement or verdict is more than your coverage limit.** (Remember, the contingent lawyer picks when and if to settle!)

Remember that insurance provides limited coverage for a set time in exchange for paying a deductible and the continued monthly/yearly payment of premiums. Asset protection provides **unlimited** coverage for the **rest of your life** for a **one–time fee**, with recommended check–ups at **your convenience**.

But before you cancel your policy outright...

Insurance and Asset Protection

The perfect amount of insurance once you have an asset protection plan in place is just enough to cover the defense of a lawsuit. The next section explains why.



How Contingent Lawyers View Asset-Protected Defendants

Contingent lawyers may be a lot of things, but at their core, they are business people. Their business operates on a “contingent basis,” meaning they get a certain amount (often one-third) of any recovery they manage to get for their clients. No recovery, no legal fee for the attorney. In fact, no recovery often means a **bill** for their clients for the court costs anyway. So they don’t invest their time in a case unless they reasonably expect to get a pay-out. It is a gamble made by the contingent lawyer. Is it worth it for them to pull the lever on your slot machine?

Here is how a plan effects a contingent lawyer’s judgment in bringing suit:

1. Before filing suit, the contingent lawyer will do some investigation of you to see whether you have the capacity to pay a judgment. They can find out your assets within minutes, and can investigate to see what you have transferred and to whom.

“It is a gamble made by the contingent lawyer. Is it worth it for them to pull the lever on your slot machine?”

2. Your asset protection plan may segregate out valuable assets to reduce your apparent capacity to pay a judgment, and may discourage the contingent lawyer sufficiently to kill the lawsuit outright.

However, a potential client can consult multiple contingent lawyers, and may eventually find one desperate enough to accept. Then...

3. Your defense attorney, as quickly as possible after identifying the contingent lawyer, contacts them to let them know that an asset protection plan is in place, and that any judgment will be discharged in bankruptcy or take forever to collect.
4. Even if the contingent lawyer continues, a solid asset protection plan complemented by just the right amount of insurance induces a contingent lawyer to settle within the amount and move on, instead of running up defense costs. They’re reducing their own pay-day.
5. Perhaps—through ignorance, foolishness, or sheer desperation—the contingent lawyer will push to verdict and get a jury award, even in an eye-popping dollar amount.

Then, the real fun for them begins...

Collecting From an Asset-Protected Defendant

Some contingent lawyers just won't see a good thing on the settlement table and take it. (Ask any defendant.) They might press on all the way through to a verdict, hoping for a massive McDonald's-coffee-lady style amount from the jury.

What doesn't make for such interesting newspapers as the verdict amount is the work that contingent lawyers need to do to collect on a judgment. And having an asset protection plan in place before the lawsuit will make that battle so uphill as to be not economically feasible for the contingent lawyer.

Furthermore, although contingent lawyers are good at identifying deep pockets, they aren't necessarily good at getting their hand into the pocket to plumb the depths. After waiting the years until verdict and award, and waiting for a check for the judgment that hasn't come yet, they may have to refer their clients to an attorney focusing on debtor-creditor law or collections law. The new attorney will be between flustered and frustrated at the amount of work that would be required to **even possibly** collect on any judgment.

The reason is layering, and the concept is familiar to anyone who's been in a Buffalo winter. Even if the snow or gusts can get through the coat, it then has to penetrate the sweater, the shirt underneath and the undershirt. Each layer provides more armor, and an effective asset protection plan is built like a tank.

"Each layer provides more armor, and an effective asset protection plan is built like a tank."

The contingent lawyer will need a whole lot of this damn fine coffee to collect from an asset-protected defendant.



They are limited to a few options to recover from an asset-protected defendant:

1. They can attempt to prove a transfer was fraudulent—if within their jurisdictions' statute of limitation. Generally this is four years from transfer, but in New York it is six.
2. They can attempt to "pierce the corporate veil" if the assets are owned by a company—by doing a lot of work, they may be able to show this if you are misusing your separate and legally distinct corporate entity.
3. If assets or cash is being held overseas and they can demonstrate that you still have personal control over it, they can petition a court to imprison you until you bring back the assets (called "repatriating.")

A famous case involved a person who refused to repatriate, and was imprisoned for several years as a consequence. He could have sprung himself at any time by bringing the money back, but refused to. Effective asset protection planners are aware of this and the first large case about this, and ensure that you cannot be confined to a debtor's prison.

Note that there's one creditor we can't protect you from—the Internal Revenue Service. No asset protection planner can do that by "hiding assets" or "moving them out of the country" without exposing both you and the planner to criminal liability.

Your Big, Secret Advantage over Your Bank

The biggest strength you have when you're facing a deficiency judgment is the *process itself*.

Lenders are required to navigate the state and federal laws enacted to protect homeowners during the subprime mortgage crisis. This results in a long, drawn out path from your first missed mortgage payment to the bank getting a deficiency judgment against you.

You absolutely must take full advantage of this time, because if the creditor is anywhere near the deficiency judgment, most asset protection strategies and methods will be ineffective to you because the creditor will be able to un-do any transfer of money on the grounds that it was fraudulently transferred to prevent their collection efforts.

Naturally, it is best if your asset protection plan is in place before you sign the mortgage. The great fear is the personal guarantee they want you to sign—and our asset protected clients have a lot less to fear when they sign personally.

The earlier your asset protection plan is in place, the more likely it will be able to protect you because the statute of limitations on whether or not a transfer of money or property can be undone begins to run from the date of transfer. In most states, it is four years. If the lender hasn't navigated the long judicial foreclosure, sale, deficiency judgment, and debtor's examination processes within the four years, they lose the right to try to un-do your transfer and get at the moneys you have protected!

Why use an Asset Protection Attorney, not a Financial Planner?

Attorneys are the only ones with whom you will receive attorney-client privilege. And in this area, it is important. Compare the following:

Creditor Counsel: "Under penalty of perjury, with whom if anyone did you discuss your plan to put all of these assets into this LLC?"

Debtor: "(My accountant/my financial advisor/my uncle)."

Creditor Counsel now puts your accountant/your financial advisor/your uncle through a deposition, or calls them to the stand.

Creditor Counsel: "Please describe all conversations you have had with Debtor regarding the creation, formation, and contribution of assets to this LLC."

Accountant/Financial Advisor/Uncle: "Debtor asked me to help protect assets from your client."

Creditor Counsel: "Under penalty of perjury, with whom if anyone did you discuss your plan to put all of these assets into this LLC?"

Debtor: "My attorney."

Creditor Counsel now puts your attorney through a deposition, or calls them to the stand.

Creditor Counsel: "Please describe all conversations you have had with Debtor regarding the creation, formation, and contribution of assets to this LLC."

Your counsel either objects to this and is sustained, or...

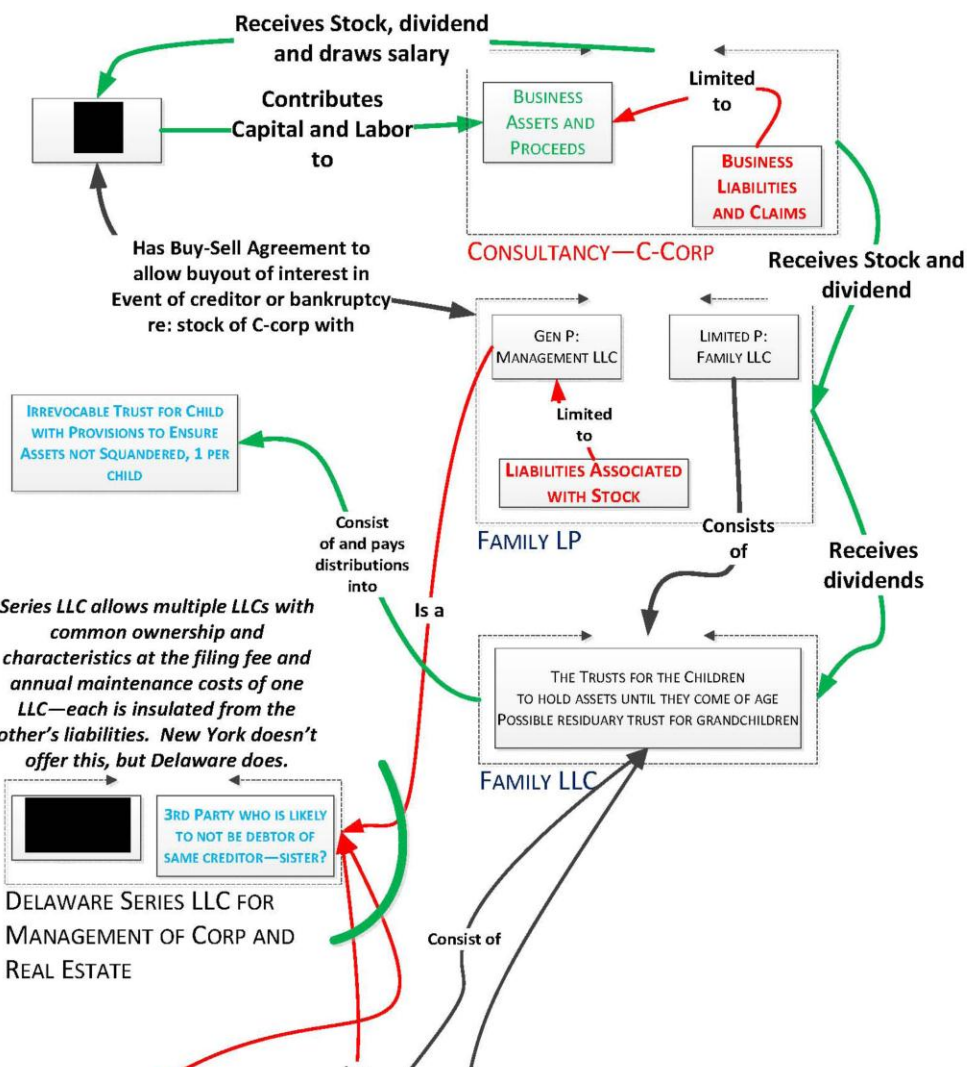
Attorney: "I refuse. All of the above is covered by attorney-client privilege."

Although asset protection planning is entirely legal, if it becomes manifestly clear (as it will when your advisor is forced to disclose all conversations between you and them) that your intent is to defraud creditors, all of the protection planning in the country will be unable to save you. You'll have to either pack your bags permanently or expect a trip to the cleaners or federal prison, depending on the creditor.

A Comprehensive Asset Protection Plan

This is a partial example of a comprehensive asset protection plan. Our office uses a detailed questionnaire and follow-up interview to learn about your business, your needs, and your desires and hopes for an asset protection plan, and we incorporate these into a master plan you can use to get a “bird’s eye view” of your business and its asset protective entities.

We can begin work on this plan for you today for a special consultation charge of \$250, a reduction from our hourly rate. We accept Paypal, Google Checkout, and credit cards, as well as personal check and cash. These plans take about 2 to 3 hours, depending on the complexity of your business and your family. The plan also includes all anticipated start-up costs, annual fees, and professional fees associated with keeping the plan running.



The GILBERT Law Office, PC
 Confidential Attorney
 Work-Product
 Protection Plan for:

Legend:
 Red are assets that result in liabilities that the plan manages
 Green are assets or the flow of assets, as well as shields that protect against red liabilities
 Blue are individuals
 Black are entities

Some notes:
 The Family LLC is only a limited partner in everything and is never the general partner in anything. This is designed such that the Family LLC should never have a claim be able to be made against it, so long as corporate formalities are adhered to.

To retain limited partner status, it is imperative that the limited partner not engage in the management of assets within the limited partnerships. The LP agreements will be written to support this completely.

All LLCs will be structured such that a member who is pursued by creditors or suffers certain other events may be bought out by the others to ensure control remains in the family.

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Visit us at:
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Can I Afford Asset Protection?

Wealth is very relative. The right questions to ask yourself are these: "How long did it take me to earn what I have?" and "How would I feel if it were taken from me?"

Hard economic times are hard all over, and can pressure people who wouldn't sue otherwise to sue. If you own assets that could be taken by a lawsuit, you can't afford not to protect them.

Being cautious and kind will not save you. You can do everything right and still be sued, because a potential plaintiff doesn't have to foot the bill for the lawsuit. And everyone runs out of luck, eventually.

An American has a one-in-five chance of being sued this year. An American business owner has a one-in-three chance of being sued this year.

Can you afford to become a lawsuit's victim?



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