

**MINTO LAW GROUP, LLC &  
WEALTH MANAGEMENT ROUNDTABLE, LLC**

**PRESENT:**

Seven Great Basic Asset Protection Tools  
A Business Owner Can Immediately Implement

# WHAT IS ASSET PROTECTION PLANNING?

IT IS THE DELIBERATE AND LEGAL ARRANGEMENT OF BUSINESS AND PERSONAL ASSETS SO AS TO PLACE THEM BEYOND THE REACH OF CREDITORS.

## **EXAMPLE**

The clients, husband and wife, sat nervously in my office as we discussed the lawsuit naming them and their company as defendants. The clients are the owners of a successful contracting business and they have two children just entering college. The lawsuit demanded over \$1,800,000 in damages as a consequence of an alleged breach of contract. They were referred to me for an asset protection review by the attorney handling the lawsuit on their behalf after it became clear that the claims would not be covered by insurance. The clients, as shareholders of the corporation, were also named as defendants in addition to their corporation. Their corporate books are a shambles and they have no shareholder agreements between themselves. Also all of the business assets are held by their contracting business. They have joint bank and securities accounts. Their net worth before the lawsuit was just over \$1.5 million dollars, but a jury verdict for the \$1,800,000 would bankrupt both them and the business they had worked years to build. A review of their asset structure revealed that all of their assets would be available to pay a judgment should they lose the lawsuit.

## **EXAMPLE CONTINUED**

The referring lawyer has indicated that they have indeed breached the contract, but that damages are probably around \$800,000 to \$1,000,000 and not the \$1,800,000 demanded in the complaint. Moreover, there is less than a 30% chance that judgment will be entered against the clients individually as shareholders. The settlement value has been set at \$750,000 by the clients and their counsel and legal fees will be approximately \$100,000. We are in the early stages of the litigation and it appears settlement or judgment will not occur for at least one year. It is obvious that this lawsuit will financially cripple the clients.

**KEEP THIS STORY IN MIND AS WE  
WORK OUR WAY THROUGH THE  
MATERIALS.**

# WHY SHOULD WE USE ASSET PROTECTION PLANNING?

1. THERE ARE 12,000 LAWSUITS FILED EACH DAY, AND AS BUSINESSMEN OR BUSINESS COUNSELORS KNOW, THE COST OF LITIGATION IS STAGGERING, AND THE AWARDS CAN BE PREPOSTEROUS.
2. BUSINESSES ARE VERY HEAVILY REGULATED, AND RUNNING AFOUL OF A REGULATION CAN SPELL FINANCIAL AND PERSONAL RUIN.

# CONTINUED.

3. Having your assets in a protected position allows you to deal more effectively with creditors. Being asset protected keeps creditors, and their attorneys, from thinking you're ripe for the picking and instead induces a mood of settlement, say for the amount of your insurance. It puts you in the settlement driver's seat.

# COMMON EXAMPLES OF ASSET PROTECTION PLANNING

MOST PEOPLE UNDERTAKE BASIC ASSET PROTECTION PLANNING WITHOUT REALLY KNOWING THAT IT'S BEING DONE.

The most common example is how a husband and wife hold property in the Commonwealth of Pennsylvania. Any property held jointly by a husband and wife in Pennsylvania is held as tenants by the entirety. While so held, no creditor of any individual spouse (except for the IRS) can take the jointly held property of the husband and wife.

# WHAT AREAS ARE APPROPRIATE FOR ASSET PROTECTION PLANNING?

- PROTECTION OF PERSONAL ASSETS
- PROTECTION OF BUSINESS ASSETS
- PROTECTION OF ESTATE ASSETS
- PROTECTION OF RETIREMENT ASSETS

**THE KEY, HOWEVER, IS THAT ALL  
OF THESE PROTECTIONS MUST BE  
INTEGRATED WITHOUT ADDING A  
SUBSTANTIAL BURDEN TO THE  
CLIENT.**

Today We Will Review  
7 Simple Asset Protection  
Strategies That You Can  
Implement Almost Immediately

# 1. Keep Appropriate Corporate or Business Entity Documentation.

## Action Required:

A corporation, LLC or any other form of limited liability business must properly maintain basic business records, including board of directors meetings, shareholder meetings, LLC member meetings and appropriate ratification of business decisions where required by business formation documents. This includes the proper issuance of ownership documentation and maintenance of ownership records (ie. stock certificates, LLC ownership interest certificates, Limited Partnership certificates).

## Results if action not taken:

Creditors will be able to pierce your limited liability entity and proceed directly against your individual assets or the assets of other business entities controlled by the entity that is the subject of the creditors' scrutiny.

## 2. Keep separate business risks in separate business entities.

### Action Required:

In your business try to segregate, to the extent reasonably practical, risky businesses from each other and from the other aspects of your business. Common examples are the holding of manufacturing operations in one corporation and the ownership of real estate used by the manufacturing facilities in another business entity. Sometimes the machines used by the manufacturing business are held in even a third business entity. All business entities can be controlled by the same shareholders.

### Results if action not taken:

A creditor who obtains a judgment against your business will be able to take all of the business assets while only a small part of the operations may ultimately be liable for the loss that did occur. By separating assets into separate and well maintained business units, you effectively limit the potential recovery allowed to a creditor and often allow other business operations to continue uninterrupted.

# 3. Have well thought out, expertly drafted and binding stock purchase or LLC operating agreements.

## Action Required:

All business owners should have in place ownership transfer agreements that contain appropriate restrictions on transfer to third parties, such as creditors or partners' spouses and children. You must remember that liability can come from two directions. Creditors of your business can attempt to pierce the business and go after your personal assets, or personal creditors can attempt to take your business assets.

## Results is action not taken:

If you do not have a proper stock purchase or LLC agreement in place, then your creditors or your partner's creditors can become the unintended owners of your business and, in many cases, cause the liquidation of the business you have worked so hard to build. At a minimum you will have a partner that you didn't expect and probably will not like!

## 4. Monitor and be mindful of the asset protection laws where you own assets or carryout business.

### Action Required:

Each state has its own distinct set of laws regarding debtor/creditor relationships. Some are significantly more favorable to creditors than others. As an example, if you own real estate jointly in Ohio with your spouse it will not be protected from with the same degree of vigilance as would jointly owned assets in Pennsylvania. Therefore, if you are Pennsylvania residents who decide to purchase real estate in Ohio, do so through an LLC owned jointly by you and your spouse. This will give you Pennsylvania creditor protection.

### Results if action is not taken:

You will subject your business and, perhaps, personal assets to substantially more risk than you might otherwise have initially intended. In the above example, if the property is held jointly and outright in Ohio, a creditor of either you or your spouse could sell the property and take half the proceeds. By placing the asset in an LLC owned jointly between a husband and a wife who are PA residents, then the asset could not be sold by a creditor of either you or your spouse.

# 5. Do not put personal automobiles in small businesses.

## Action Required:

Keep personal automobiles out of small businesses. You may obtain a few small tax breaks, but automobiles, and the liabilities associated with them, are by far one of small businesses greatest exposures. If you think about it almost all automobile owners keep the typical \$100,000/\$300,000 liability coverage on their automobiles. Furthermore, automobile insurance cannot cover crimes such as vehicular homicide, common with DUI accidents. Place vehicle ownership into a separate business entity as outlined earlier. One small piece of advice, for the same reasons don't keep your children's vehicles in your individual names.

## Results if action is not taken:

If a person is very seriously injured in an accident, and it is determined to be the fault of the driver of an automobile owned by your business, you are placing all of your business assets at risk. Further in a death involving a drunk driver of a vehicle owned by your business, a vehicular homicide, your business will have no insurance coverage.

## 6. Do not own business assets jointly with your spouse.

### Action required:

Move ownership of all business assets out of the joint ownership with anyone. You can move them either into your name individually, or even better, into a trust or other LLC that will provide even further downstream asset protection.

### Results if action is not taken:

If business assets are jointly owned and a creditor can successfully penetrate the business in a bid to secure payment from your personal assets, then all of the assets owned by both you and your spouse will be subject to that creditor's claims.

## 7. Draft business agreements to take advantage of as many asset protection features as possible.

### Required Action:

Review all of your business agreements to determine if you have taken all of the appropriate steps you can reasonably take to protect your business and personal assets from the creditors. This includes the law that will be applied to any contractual or business disputes and where any action will take place. Remember if you can control the rules under which the battle will take place, and where it will take place, you stand a much better chance of success. Try to put as much of the burden, in any reasonable way possible, upon your potential adversaries.

### Results if action is not taken.

The failure to properly take into account asset protection laws of the jurisdictions where your assets are located or where you are doing business can result in your attempting to defend yourself in a place far away and using laws with which you are completely unfamiliar. As an example, my contracts always provide that customers will reimburse me for any claims made against my client's business, including claims made by them and that such claims must be made before the termination of the contract. Most people simply do not read agreements carefully. Take advantage of this!

Knowing what we know now, what should the clients have done to limit liability in the example at the beginning of this presentation?

1. Separate business entities to own parts of the business.
2. Keep better corporate records.
3. Stock should only be owned by one of the spouses.
4. They should have shareholder agreements.
5. Did the business agreements with the plaintiff provide any beneficial language for our client?
6. Do they know the asset protection laws of the place they are doing business?