



PRESERVING FAMILY WEALTH

Protecting your wealth: Asset protection

Asset protection follows the continuum of life's events, reflecting the changes that individuals, families, careers, businesses and wealth undergo. It may cover everything from how assets are owned and titled, to how they're insured and protected, to how they can be held for efficient asset management. Below are four tactics that may be right for you and your family as you think about protecting your family wealth.

1. Asset ownership

Proper titling of assets is a basic element of asset protection and one of the simplest ways to minimize risk. If you practice in a profession characterized by frequent litigation—a physician or a contractor, for example—you can consider putting the bulk of your assets in your spouse's name or holding them as “tenants by the entirety,” which can provide protection from a creditor of one spouse. You should also ask your advisor about your state's homestead laws, which can protect your personal residence.

Further, it's important to remember that assets in retirement plans covered by the Employee Retirement Income Security Act (ERISA), such as those in an individual's 401(k), are never subject to a creditor's claim or a lawsuit's judgment. However, an individual retirement account (IRA) isn't covered by ERISA, so, while bankruptcy laws protect an individual's IRAs, they may be vulnerable to creditors' claims depending on your state's laws.

2. Insurance

Various types of insurance also serve as basic asset protection measures. Some examples of insurance policies that can protect family wealth are:

- **Life insurance** – generally exempt from both taxes and the claims of creditors
- **Liability umbrella insurance** – can help protect from many types of risk including risks from lawsuits
- **Employment practices liability insurance** – can help protect from risks related to household employees
- **D & O insurance** – can help protect from risks related to serving on a board of a private company or nonprofit group

3. Trusts

Trusts are an excellent way to keep money in the family, especially as children grow up and embark on lives—and enter relationships—of their own. Trusts offer a lot of flexibility and can be created with the overriding goal of asset protection in mind. For example, you can give trustees the power to move the situs, or location, of the trust in response to new state laws that achieve better creditor protection. Two types of trusts that can offer asset protection include:

- **Irrevocable trusts** – An irrevocable trust created for the benefit of others can be a good choice for assets vulnerable to being lost to a creditor, including a divorcing spouse
- **Self-settled asset protection trusts** – Delaware's laws (and those of some other states) provide that a grantor using this type of trust may protect the assets in the trust from the claims of his or her own creditors

4. Family entities

Family limited partnerships (FLPs) and limited liability companies (LLCs) are entities created by a group of individuals, generally for efficient management of the underlying assets. These entities can also provide asset protection, particularly if you are not the sole member, partner or manager of the entity. A chief attraction of FLPs and LLCs is that creditors generally cannot satisfy a claim with assets in the entity or force a liquidation. The creditor must obtain a “charging order” that attaches distributions made from the entity and generally only has a right to the debtor’s distributions up to the amount of the debt. The manager or general partner of the entity controls the distributions.

These tactics are not necessarily mutually exclusive and can often be used together to strengthen your asset protection. For example, a trust might own an interest in an LLC to provide two layers of asset protection. Further, not every tactic will be right for every family, but each deserves careful consideration and a discussion with your advisors about how to use them effectively to protect your family’s wealth. **For more information on asset protection, visit our *Preserving Family Wealth* resource page.**