Asset Protection

DEFINITION of Asset Protection

Asset protection is the concept of and strategies for guarding one's wealth. Asset protection is a type of financial planning intended to protect one's assets from creditor claims. Individuals and business entities use asset protection techniques to limit creditors' access to certain valuable assets while operating within the bounds of debtor-creditor law.

Asset protection helps insulate assets in a legal manner without engaging in the illegal practices of concealment (hiding of the assets), contempt, fraudulent transfer (as defined in the 1984 Uniform Fraudulent Transfer Act), tax evasion or bankruptcy fraud. Experts advise that effective asset protection begins before a claim or liability occurs, since it is usually too late to initiate any worthwhile protection after the fact. Some common methods for asset protection include asset protection trusts, accounts-receivable financing and family limited partnerships.

BREAKING DOWN Asset Protection

If a debtor has few assets, bankruptcy may be considered the more favorable route than establishing a plan for asset protection. If significant assets are involved, proactive asset protection is typically advised. Certain assets, such as retirement plans, are exempt from creditors under United States federal bankruptcy and ERISA (Employee Retirement Income Security Act of 1974) laws.

In addition, many states allow exemptions for a specified amount a home equity in a primary residence (homestead) and other personal property such as clothing. Each state in the

United States has laws to protect owners of corporations, limited partnerships (LPs) and limited liability corporations (LLCs) from the entity’s liabilities.

Ways Asset Protection Comes Into Play With Real Estate

Jointly-held property under the coverage of tenants by entirety can work as a form of asset protection. Married couples who hold mutual interest in property under tenants by entirety share claim to a whole piece of property and not subdivisions of it. The combined ownership of the property means that creditors who have liens and other claims against one spouse cannot attach the property for their debt reclamation efforts. If a creditor has claims against both spouses, the tenants by entirety stipulations would not protect the asset from being pursued by that creditor.

Some attempts at asset protection include putting the property or financial resource in the name of a familiar member or other trusted associate. For example, an heir might be gifted ownership of real estate or other property while the actual owner continues to reside on the property or make use of it. This could complicate efforts to seize property as actual ownership must be determined. Financial accounts might be domiciled in offshore banks in order to legally avoid paying taxes against those funds.

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