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Common Myths About Asset Protection Planning

The field of Asset Protection Planning has expanded exponentially over the past decade in response to record-level growth in personal wealth among Americans, along with a simultaneous rise in lawsuits that threaten wealth retention.

The vast amount of information now available on the subject, through publications, websites, and seminars can be overwhelming, and misleading, to someone who is looking for a basic introduction. The laws regulating the field of asset protection are still evolving, and many of the earlier held beliefs concerning certain practices are just plain wrong today. In order to guide you in the right direction as you search for information, we'll dispel some common myths about asset protection at the outset.

1. FICTION: If you have a will, you have all the asset protection you need.

FACT: Having a will is a great start to protecting your assets; however, how you plan to dispose of your assets when you pass away does nothing to protect them while you are living. Better to have present protections in place to ensure that you do have something to pass on to your heirs.

2. FICTION: Asset protection is unnecessary for anyone who isn't wealthy.

FACT: Actually, anyone who has anything of value can benefit from exploring various protection options. Assets as commonplace as a house, a car, a 401K retirement plan, and life insurance are all worth protecting.

3. FICTION: You really don't need asset protection if you have insurance.

FACT: Nonsense. You just can't buy insurance to protect against every possible calamity that might strike. Worse yet, you can bet that if you are sued, everything you own (or might someday own) is at risk of being taken. If you think of asset protection as a type of insurance against creditors' attacks, however, you can use it to better protect yourself against the unexpected.

4. FICTION: Asset protection is really asset hiding in disguise.

FACT: It is very hard to hide assets from searching creditors, and it may very well be illegal to do so. A truly protective plan does not involve secrecy to be effective; rather, it incorporates a variety of legally available means to achieve its purpose.

5. FICTION: You can avoid paying any income taxes if you move your assets to an offshore trust.

FACT: If you are a U.S. citizen, resident alien, or non-resident alien with U.S.-source income, you are taxed on worldwide income, which is annually reportable to the Internal Revenue Service. Strict penalties (including criminal) apply to those who fail to report income, as well as to the attorneys who provided bad advice. Although the limited income tax advantages to having an offshore trust are systematically being reduced by a vigilant U.S. Congress, there may be significant asset protection advantages to having such a trust.

6. FICTION: When faced with a lawsuit, you can safely protect your assets by transferring them to your family.

FACT: No way. In fact, if you make such a transfer to your family (or to anyone, for that matter) too close in time relative to a lawsuit against you, a court may order the recipient to turn it over to your creditors, if it deems such a transaction as a fraudulent transfer. A court may also take back any assets you give away to make yourself insolvent against creditors. Any transfer, to be effectively protective, must be done well in advance of creditors' attacks.

7. FICTION: If you have incorporated your business, you are fully protected from business-related claims.

FACT: Today, it is common for creditors to go after not only the corporation, but also the directors and the officers in an effort to collect from all available pockets. Especially where the corporation has failed, the directors and officers may be at risk of personal liability for corporate debts. Even if dismissed from a lawsuit after being named as a party, you may expose your personal wealth to risk while trying to convince a court you should not be held accountable. It could take years.

8. FICTION: My Family Limited Partnership protects my assets from creditors.

FACT: Not necessarily true. Although the family limited partnership is touted as a panacea for protecting assets, it might not withstand claims against multiple family members. Rather, diversifying protection by utilizing a combination of entities can strengthen your defense against creditors.

9. FICTION: You can create your own asset protection plan just by reading books and attending seminars on the subject.

FACT: Possible, but not very likely, unless you are already highly skilled in the field. When you buy into a bargain like this, you have been scammed. Proper asset protection planning requires the expertise of a qualified professional that specializes in the field, and that expertise will present itself in the individualized attention to your specific situation. What you spend on expert guidance will generally pay off many times over in protections that withstand creditors' attacks.

10. FICTION: Creditors cannot enforce a judgment against me if my assets are held in an offshore trust.

FACT: This statement is dangerously over-generalized. Indeed, if a U.S. court determines that you have control over the assets held offshore, you will be ordered to turn over the assets to your creditors (or face civil contempt charges). For your offshore trust to provide a defense to creditors' claims, you must transfer legal control over the assets through the use of a foreign trustee, for example.

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