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Asset Protection



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RobbReport.com speaks with asset protection specialist Jacob Stein, Esq. of Klueger & Stein, LLP in Los Angeles about the importance of protecting valuable assets, such as your private residence, rental real estate, investments and retirement plans.

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What is the objective of asset protection?

The objective is to set up structures through which assets will be owned that make it more difficult and expensive for a creditor to reach those assets. The objective is to make the creditor's economic pursuit so difficult and expensive that he either gives up or negotiates terms that are more favorable for the debtor.

Is it simply a matter of hiding assets?

Hiding assets is an ineffective means of shielding them from creditors because a debtor would usually have to disclose his assets in a debtor exam, under penalty of perjury. Also, hiding anything in the modern world is fairly difficult. A properly structured asset protection plan allows the debtor to reveal the nature and the structure of the plan without sacrificing its efficacy.

The focus of all asset protection planning is to remove the debtor from legal ownership of assets, while retaining the debtor's control over and beneficial enjoyment of the assets.

How has your business been affected by the economic downturn?

A lot of business owners are currently being pursued by creditors. In the past couple of years we have represented hundreds of real estate developers and investors. They borrowed money during the boom to finance projects, but now find themselves upside down on their loans, so the banks can come after them for the personal guarantees that they made or for the deficiency amounts. These people have not only lost the value of their real estate investments, many are facing the possibility of losing their homes and savings. We set up structures so they can keep those assets.

We also do a lot of work for former Bernard Madoff investors and victims of other Ponzi schemes to try to keep our clients' money out of the hands of the bankruptcy trustees.

What is the core strategy used to protect a client's assets?

There are many different structures used in asset protection. There is no one magic bullet structure. Basically, we work to get assets out of a client's name, but there is a right way and wrong way to do that. Many people simply transfer assets to their kids' names, but that approach very rarely works because it is an easy type of transfer to set aside. There are certain types of structures you can put money in, retain control over those assets, access them freely, and suffer no tax consequences, while also making it very difficult and expensive for someone to reach them. Sometimes these may be very sophisticated offshore structures, but usually it can be a very simple and straight-forward domestic set up.

A personal residence is usually our most important asset, how can you protect it?

Creditors do not pursue the residence itself, but the equity in the residence that can be converted into money through a foreclosure sale of the residence. There are three possible strategies. Sell the residence and protect the sale proceeds. (Liquid assets can be made 100% unreachable.) Strip out the equity: borrow as much as you can against your equity and protect the loan proceeds. Transfer title out of the client's name, this is the most commonly used approach.

What is the best way to transfer title?

There are multiple possibilities. You can transfer it to the other spouse, to an irrevocable trust, to a limited liability company, or to a combination of the above. There are some commonly used estate planning trusts that work really well. One should always be mindful of tax consequences. A transfer of real estate may be subject to gift taxes, income taxes and property transfer taxes.

Is it ever too late to protect your assets?

We try to encourage clients to act before they have a claimant or a plaintiff, but it does not always work out that way in practice. People hope for the best and wait until the last minute. Even if you do this planning at the last minute there may be a significant benefit to it.

I had a client recently guarantee a \$5 million loan that her son took out. The son's projects failed and mother (who is in her 70s) is holding the guarantee. It would wipe her out completely, leaving her with nothing more than a social security check. She had two simple options. Do nothing, and lose all her assets. Do something to protect assets, and possibly get to keep the assets.

In her case, the bank chose not to pursue her on the guarantee once they saw the asset protection structures that were in place. We cannot guarantee that result in every case, but you certainly cannot get it if you don't try.

Do you need to be a multi-millionaire to do asset protection?

Most of our clients are fairly wealthy. We represent a lot of officers and directors of Fortune 500 companies, large real estate developers, high-tech entrepreneurs, professionals. But sometimes we will represent someone who may not have a lot of assets, but they are facing an adversity in their life.

It does not really matter what your net worth is. Your home may have a lot of sentimental value to you even if it is worth \$200,000. Your bank account with \$300,000 may be your entire life savings, and would be just as important to protect as a multi-million dollar account to someone else.

You simply have to look at the risk you are exposed to and the costs of the planning to determine whether engaging in asset protection is for you.

Can you point us to any good resources on asset protection?

We actually have compiled an extensive knowledge base on asset protection on our website:

www.maximumassetprotection.com. All of our white papers, published articles, books, technical manuals and other materials are on that website. Along with diagrams and explanations of the many commonly used structures.

Prospective clients can also reach out to us through that website to schedule a consultation.



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