

ASSET PROTECTION FOR PHYSICIANS AND DENTISTS

Introduction: You have worked hard for what you own, and you want to keep it. An asset protection program simply employs legal techniques that deters others from taking, or in some cases, attempting to take your assets. The complexity of any asset protection program depends largely on what types of assets you have, and what type of work you do. Even something as ordinary as a car accident can give rise to a liability. If the liability exceeds your auto insurance policy limits, your assets will be at risk, unless you plan ahead.

1. What is the best business form for physicians to use to operate a medical practice?

Typically, physicians structure their medical practices as an S corporation or in some cases a C corporation. If the medical practice owns the building and/or expensive equipment, a separate LLC should be created to own the land and/or the equipment (see the LLC Q & A below). In addition, more asset protection may be available if the practice is structured as an LLC rather than an S corporation. This is discussed more later.

2. I have heard a lot about "living trusts". Would a living trust provide protection for my assets if I were sued?

No. While a properly structured living trust can provide privacy, and avoid the probate process, it provides practically no protection from your creditors. The trust's assets will generally be available to your creditors.

3. How can a limited liability company provide me with asset protection?

An LLC provides liability protection from two different directions. First, an LLC protects its members from any liability generated by property owned by the LLC. For example, if an LLC is formed and a rental property (such as the physician's office that is leased back to his practice) is contributed to the LLC and later someone falls down the steps of the office and sues the owner, it is the LLC that gets sued. Any liability belongs to the LLC. Only the assets owned by the LLC, in this case the building, are available to the plaintiff if the lawsuit is successful. The other assets owned by the members (probably one or more of the physicians) of the LLC are not available to the plaintiff.

Second, the assets owned by the LLC are protected from any liability of any member. For example, assume that, as in the previous example, several physicians have formed an LLC to own the building that the practice is in. Now, if one of the physicians is sued for malpractice and the suit is successful, the office building is protected. Although the creditor (in this case the patient) can sue the member (i.e. physician), the creditor cannot either take the physician's interest in the LLC, or force him to sell it. The interests in the LLC and the office building are protected.

4. Is it really true that the creditor cannot take the interest in the LLC?

A creditor of a member of an LLC cannot take either the interest in the LLC or assets from the LLC. A creditor is only entitled to get what is known as a charging order. This means that if any distributions are made by the LLC to the member, the creditor is entitled to those distributions until the judgment is paid in full. The charging order does not entitle the creditor to become a member in the LLC.

5. Does a small business (subchapter S) corporation give me the same protection as an LLC?

Yes and No. Corporations provide limited liability to the officers, directors and stockholders of the company (in the case of a medical practice, the physicians) similar to the protection provided by an LLC for its members. This means that in a properly organized, maintained and capitalized corporation, the officers, directors and stockholders have no personal liability for any debts of the corporation. If your medical

practice, organized as a corporation, loses a lawsuit, and the corporation does not have sufficient assets to satisfy a liability, a creditor cannot seek the personal assets of the physician/owners. However, if the corporation loses a lawsuit, all of the corporate assets are available to satisfy the judgment. As a general rule, you do not want the corporation to own any valuable assets (real estate, equipment or surplus cash). This just makes them available to a creditor or future creditor of the corporation. However, the stock of a corporation is not protected from a shareholder's other liabilities. Think of it like this: If you own stock in IBM and you are sued and a judgment is obtained against you, the creditor can take your stock. The same is true for Medical Practice, Inc. (of which you own some or all of the stock). This is why it is usually better to be organized as an LLC rather than a corporation. Remember, with an LLC, the creditor cannot take the member's interest in the LLC.

6. I have heard that for tax purposes it is better to be a subchapter S corporation than an LLC. Is this true?

This may be true. However, you can be organized as an LLC for asset protection purposes and then elect that the LLC to be taxed as a subchapter S corporation. This is like having your cake and eating it too.

7. If I use the right business form for my medical practice, and have malpractice insurance, should I consider having an asset protection program too?

Yes. A claim can always be made that exceeds your liability coverage. Also, most insurance plans do not cover you for punitive damages or intentional wrongdoing. Proper planning would include both liability coverage and asset protection techniques.

8. What asset protection tools are customarily used by physicians?

LLCs are the most common asset protection tools used by physicians, but each case should be considered separately.

9. What property can an LLC own?

An LLC can own real estate, an office building in the case of a medical practice, and rent it back to the medical practice, shielding the building from any liability that arises outside of the LLC such as a malpractice claim. An LLC can also own investment accounts, and shield those accounts from individual creditors. In many cases multiple LLCs provide the best asset protection against lawsuits.

10. Can a family limited liability company be an effective part of a physician's asset protection program?

A family LLC is just an LLC whose members are all in the same family. This can provide asset protection for the physician and his family and also provide some estate planning benefits.

11. How can I protect my personal residence, and any other real estate I may own, like a vacation home?

In North Carolina, real estate purchased together by a husband and wife is held as Tenancy by the Entirety. This type of ownership provides excellent asset protection. If the physician is sued and a judgment is obtained against him/her, the creditor cannot simply take the house because the creditor cannot break this type of ownership. However, if there is a judgment and the house is thereafter sold, the creditor is entitled to his share of the proceeds from the sale. If multiple properties are owned, one technique would be to create an LLC to hold all, or possibly each, of the properties.

12. Can you describe to me what a typical asset protection program would be for a physician who is in a practice with several other doctors, has about \$1 million in personal assets in

addition to that, plus a family residence valued at over \$500,000?

To properly protect the assets of the practice, the first step is to make sure the company is structured properly, whether that is a corporation or LLC. The type of structure should be discussed with an attorney. If the company owns the medical practice office building, and expensive equipment, it should be put in its own, or even separate, LLCs. The next step is to shield the personal assets of individual physicians in the practice. In most case this involves the formation of one or more LLCs to hold the assets, or the formation of an irrevocable trust (it depends on the owner's wishes). If the personal residence is owned as Tenancy by the Entirety, then typically nothing else needs to be done.

13. What should a physician be most careful about when putting together an asset protection program?

It is important to realize that not every physician will use the same asset protection structure, and designing a plan to fit your needs should take place under the guidance of an attorney who concentrates his practice in these matters. Finally, and most importantly, your asset protection plan must be created before any claim attacking these assets, or threatened litigation.

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We hope this information helps you. It is important to understand that you need the assistance of professionals who are knowledgeable in the filed of asset protection in order to make the decisions that are necessary to implement an asset protection program that is appropriate for your needs and desires. If we can be of further assistance to you, please contact us by phone or email at your convenience to schedule a conference.