

Isolate assets to reduce litigation exposure, lawyers say

Measures to make targets smaller can prevent, soften potential blows of lawsuits

By Mike McLean
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People and businesses with exposed assets can be targets of lawsuits, so it's as important as ever to take preventive countermeasures ahead of time to help protect assets from judgments or even discourage would-be plaintiffs from filing suit, corporate lawyers here say.

Alan Rubens, a principal at the Spokane law firm Stamper Rubens PS, says he often advises clients on ways to reduce exposure to risk from lawsuits when working on their business plans, starting with examining assets.

"It's important to look at the entire balance sheet and help analyze risk and whether there's anything they can do to reduce risks," Rubens says.

A corporation or limited liability company can be designed to hold business assets, specifically to isolate them from the principals' personal assets, he says.

"If you own rental or investment properties, it's not a bad idea to put them into an entity to isolate liabilities, so the most you could lose is the assets inside that entity," Rubens says.

Personal assets generally are protected in the event of a civil judgment against a business, with the exception of certain fraud cases, such as failure to meet payroll or tax evasion.

On the other hand, business assets aren't necessarily protected from personal claims, Rubens says.

"If a creditor has a claim against you, the creditor has a right to claim any assets, including ownership entities," he says.

Corporations, however, can be crafted

with certain protections to make them unattractive to creditors, says Eric Sachtjen, a partner at Spokane law firm Workland & Witherspoon PLLC.

If a corporation loses a suit, plaintiffs, who would then be creditors, could seek to foreclose on the company.

"If that happens, the court could convert ownership interest to an assignee, but the creditor wouldn't be entitled to vote or force the liquidation of the company merely by being an assignee," Sachtjen says.

The potential for such a scenario can prevent lawsuits or encourage settlements on more favorable terms, he says.

Seanna Bodholt, of the Spokane law firm Randall|Danskin PS, says she advises business owners to create LLCs or S corporations at the formation of their businesses.

"If they've formed an LLC, a lawsuit can only go after assets of the business, and hopefully they have enough insurance to cover a potential claim," Bodholt says.

She says it's fairly routine for attorneys to help set up protective entities.

"It's not hard to form an LLC and incorporate," Bodholt says. "It's not that expensive to get things organized so the structure is in place for limited liability."

After forming a protective entity, business owners should be vigilant about not comingling their business and personal assets, she says.

Some types of business entities such as sole proprietorships and general partnerships have fallen out of favor because they don't provide liability protection, she says. General partnerships, for instance, can expose one partner to another's personal liabilities, she says.

"There's no reason to go that route, when it's just as easy to set up an LLC," Bodholt says.



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Eric Sachtjen, a partner at Spokane-based Workland & Witherspoon PLLC, says he advises clients to review insurance policies to make sure they're covered against liability.

An asset-protection plan should include liability insurance.

Sachtjen says it's common to advise clients to review their insurance coverage.

"For individuals we represent, we typically advise them to get umbrella coverage," he says.

An umbrella policy gives additional coverage beyond the limits of other insurance policies.

Some professions, such as in medical or financial fields, are targeted in lawsuits more often than others. In such cases, business owners also should review and update malpractice or errors-and-omissions policies, Sachtjen says.

He also encourages clients to talk to their insurance brokers to help identify

and reduce risks, such as for slips and falls, at their business sites.

Risk management also should include precautionary actions to reduce potential liabilities around homes and businesses, such as keeping walkways, floors, and carpets in good repair.

Some assets are exempt from civil claims. Pensions, retirement accounts, and other qualified retirement plans are protected from creditors, Sachtjen says.

Life insurance proceeds can be isolated to protect the beneficiaries from the policyholder's creditors, as long as life-insurance products aren't purchased solely for avoiding creditors, he says.

Up to \$125,000 equity in a home also is protected, he says.