

# Asset Protection for Physicians and High-Risk Business Owners

**By Robert J. Mintz**

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## Introduction

About fifteen years ago, a client came to our office with an unusual request. He was the owner of a business which manufactured medical equipment for doctors and hospitals. He had accumulated a substantial net worth and wanted to know how he could make sure that if something went wrong in his business, he would not lose everything he had put together over the years.

Since his business was doing well at the time, we asked him about his particular concerns and he began to list an unnerving variety of potential dangers. He felt that, as a successful business owner, he was a visible and attractive target for lawsuits from employees, business associates, and government agencies. He was concerned about the effect of a downturn in business and was worried about what would happen if someone were injured while using one of his products. He wanted to know how to protect himself.

Up until that time we had never focused on the problem of protecting assets. Our clients were mostly physicians, business owners, and real estate developers whose financial concerns were limited to doing deals, making money, and saving taxes. We had never given much thought to the question of how to hold on to assets in a dangerous business world.

As my partner and I thought about it, it seemed to us that an effective asset protection strategy involved two things. First, to the greatest extent possible, we wanted our clients to avoid getting sued in the first place. This meant avoiding dangerous situations that created potential liability and operating within the proper business structure to minimize the lawsuit risk.

Second, and perhaps more important, we wanted to make sure that if a client were sued, despite these precautions, his or her personal and business assets would be protected. Our objective was to create a plan that would insulate family assets and eliminate the risk of loss from potential liability. As an added bonus, we felt that a successful asset protection plan would, itself, eliminate the threat of most lawsuits by extinguishing the claimant's economic incentive to sue. If the other side knew that it would not be able to collect anything—even if it got a judgment—only the most fool hardy and irrational individual would willingly incur the trouble and expense of litigation. That is what we believed an effective asset protection plan would accomplish.

Our research into the issue of protecting assets from a potential judgment proved to be an exceptionally difficult problem. There were no separately published materials in the law library dealing with this question. We spoke with a number of other lawyers—all experts in business law and estate planning—and none of them had any helpful suggestions about how this could be accomplished.

Finally, we began to focus on a device known as a Family Limited Partnership. Tax lawyers had been using this technique for many years as a convenient vehicle for reducing family income taxes by shifting income from high-tax bracket parents to their children. But to us, the most exciting discovery was that the Family Partnership was an especially well-suited mechanism for protecting personal assets from a potential judgment. We found that when properly structured, the arrangement allowed an individual to transfer his home, savings, and business interests into a protected form while maintaining control over the assets. Yet, if he were successfully sued, the assets in the Family Limited Partnership would be shielded from the claim.

After substantial additional research and discussion, we began to create asset protection plans for our clients; the Family Limited Partnership and specially designed trusts were the centerpieces of these plans. Several years later, in 1992, after we had developed some practical experience and had seen the results that were accomplished, we wrote a book called *Lawsuit Proof: Protecting Your Assets From Lawsuits and Claims*. The book detailed the strategies we used and provided illustrations of the techniques we developed for particular clients. *Lawsuit Proof* was widely read both in and outside of the legal community and within a few years thousands of attorneys were specializing in the field. Many new books and articles were written, and the topic has received widespread attention in the press. Most good estate and tax attorneys now include some form of asset protection in structuring a client's overall planning.

This book contains the latest developments and examples from our experiences. We explain the standard techniques, which have been widely adopted, as well as new and creative solutions from the leading specialists. Recent law changes permitting the formation of Limited Liability Companies and a variety of special trusts significantly enhance the asset protection options now available.

Since a large percentage of our clients are physicians—uniquely aware of and justifiably concerned about an increasing number of claims and ever higher damage awards—we address many of the asset protection issues from the perspective of the physician and other high risk professionals and business owners.

In chapter one, we discuss the dimensions of the lawsuit problem. We explain how the legal system encourages lawyers to file cases against anyone who has accumulated some assets—regardless of the person's degree of fault or responsibility. Chapter two shows the techniques used by investigators and lawyers to quickly locate your bank accounts and real estate to determine if you are an attractive target for a potential case. Chapter three explains what really happens in a lawsuit—what you can expect if you get sued.

The remainder of the book discusses the techniques used to protect assets against lawsuit liability—how to discourage the filing of a case against you and to shield what you own if the case goes forward. Many of our clients are curious about the opportunities available in the "offshore world" so we have included a detailed discussion about overseas bank accounts and offshore trusts—to separate the truth from the hype about what really can be accomplished.

We also focus throughout the book on strategies that can be a powerful component of your overall estate and tax planning goals. You will see that in many situations significant estate taxes and income taxes can be avoided when the proper plan is created for you.

As a word of caution, this book cannot possibly substitute for competent legal advice. Our treatment of the law is general and is not intended as a comprehensive discussion of all relevant issues. The law in each state will vary to some extent, and the applicability of the law will depend upon your individual circumstances. If you have a particular question about the information in this book, you can telephone us at (800) 223-4291 and we will try our best to help you. Our Web site is [www.rjmintz.com](http://www.rjmintz.com) and e-mail is [rjmintz@rjmintz.com](mailto:rjmintz@rjmintz.com).

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