

What is the Best Asset Protection Plan for Physicians?

By Robert J. Mintz

In our initial discussions with a client these questions always comes up “What’s the best asset protection plan?” “Are there any plans which are completely bulletproof?”

Like any well trained professional I usually duck those kinds of direct and unconditional questions. After all, this is the legal system we’re talking about and when we compound the mixture of judges, jurors and lawyers, the results can be unexpected, to say the least. Law is probably a lot like medicine in that respect. So while we can’t honestly guarantee that the particular plan we design will produce the exact outcome we want, we do know what has happened before in similar situations. If existing case law and legislation is clear and well developed then an asset protection plan that falls within the pre-set boundaries will have favorable and predictable results.

The O.J. Simpson civil case demonstrates this principle in the most dramatic fashion. Despite the fact that the families of the victims have vigorously pursued collection of their \$33 million civil judgment for more than 10 years, they have been largely unsuccessful. The reason for this is that a large portion of Simpson’s assets are held in retirement plans which are exempt from judgments. The law specifically protects from collection the total amount in such plans as well as any proceeds which are distributed. Published reports are that Simpson had approximately \$4.1 million in his retirement plans and draws a benefit of \$25,000 per month, completely shielded from the judgment.

Although we’ve seen many similar results in less notorious cases the asset protection in the Simpson case was well supported by law and withstood persistent and sophisticated attacks from the victim’s families. Regardless of the appalling result in this particular case, what is well illustrated here is that legal techniques such as a protected retirement plan can shelter substantial assets from liabilities and judgments even in the most egregious circumstances. If one of your goals is to protect your savings from the risks of your business and medical practice then it is worth considering the pros and cons of the retirement plan strategies.

In order to take advantage of the asset protection features of a protected retirement plan, the plan itself must be developed and designed so that it qualifies under the law as an exempt asset - free from potential judgment claims. Since the law often varies from state to state and Federal law may apply in some circumstances, I’ll provide some general rules and guidelines and you can discuss the specific details of your case with your local attorney.

Qualified Plans The first group of plans that are exempt are those well known ERISA qualified plans, such as defined benefit, profit sharing and 401(k) plans. Both Federal and state law clearly protect the amounts in these plans and any distributions which are made. There may be exceptions for some court ordered family support

obligations and possibly federal or state taxes, but as a general rule the protection of these plans from lawsuits and judgments is very strong.

The drawbacks of these plans are that if you have several employees, in your practice you may have to make contributions for them also - you can't just cover yourself in a qualified plan. As a result, the expenses of covering all employees, preparing the necessary filings and paying for annual administration may exceed the tax and asset protection benefits. A careful evaluation of all aspects of these plans is required to measure the costs and potential advantages.

Self-Employed Plans If you are self-employed and your plan covers only yourself (IRA's and solo 401(k)'s) the amount exempt from a judgment varies significantly based on the law of your particular state. Some states protect the entire amount in these plans while others shield only the amount necessary for reasonable retirement needs, a vague and subjective standard which you probably wouldn't want to rely on. If a big part of your savings is or will be in an IRA, determine with your attorney whether it is exempt from judgments in your state. Also, consider whether the amount of your contribution limits to your IRA is sufficient to shelter a significant portion of your savings.

Private Retirement Plans In some states (such as California) the law allows for the creation of a Private Retirement Plan which is entirely exempt from judgments. These plans must be carefully drafted and maintained but they are highly flexible in design, need not cover other employees and annual contributions can substantially exceed those available under the qualified plans or IRA's. (See <http://www.rjmintz.com/pdf/Article-PrivateRetirementPlan.doc>) Although no tax deduction is available for these contributions, the complete exemption for amounts in these plans may be highly valuable in a wide variety of circumstances and should be considered as a stand alone asset protection plan or in conjunction with a tax deferred account.

Make sure to talk with your attorney and tax advisor to see which of these retirement plans provides the best asset protection in your state and that you understand the legal and tax consequences of the strategy which will apply in your particular case.

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