

## Asset Protection and Financial Privacy



Robert J. Mintz, JD, is an attorney and the author of the book *Asset Protection for Physicians and High-Risk Business Owners*. To receive a complimentary copy of the book, call 800-223-4291 or visit [www.rjmintz.com](http://www.rjmintz.com).



Advances in computer and Internet technology make it easier than ever for someone to uncover the sensitive details of your personal and financial life. Much of the information that you would not want to share with others is now available and accessible through the Web. While specific information about asset ownership, property, and bank accounts may lead to inconvenient sales calls and interrupted dinners, more serious issues may be at stake. In light of the litigation problem facing many physicians and others perceived as “deep-pocket” defendants, the easy availability of detailed financial information may act as a magnet for lawsuits, frivolous claims, and unreasonable demands from a variety of sources.

This article will examine some key issues associated with the increasingly relevant topic of financial privacy, the safeguarding of which is an important component of a good asset protection plan. By now, we have all surely heard and read news reports detailing, in this age of hackers, crackers, spyware, and other high-tech perils, how truly vulnerable to snooping are even the most private

financial details of our lives. What many people are often surprised to discover is that it doesn't take an army of malicious hackers to pry loose significant details about the assets or property we own. Many records have been converted into electronic form and stored in computer databases; these computers and databases are connected through the Internet, making it much easier to search through them. If somebody who knows where to look wants to find information about you, he or she can quickly hunt through millions of documents stored on thousands of interconnected databases to produce a frighteningly thorough profile of your life. Who wants to know these details about what you own? What dangers are posed by the availability of this information? What can you do to protect yourself?

### What Information is Available?

The book *Asset Protection for Physicians and High Risk Business Owners* profiles the techniques used by investigators to locate information about specific assets owned by the target of their investigation. These investigation services will gather this information, which can include all your bank and brokerage accounts with balances and transactions, records of real estate ownership, your credit history, and often even phone

records, into data packages and sell them to their clients, usually at prices below \$1,000.

### Who Wants to Know?

Other than to commercial interests—companies and other entities that want to sell you something or lend you money—your private financial data is most valuable to a potential legal adversary. If someone is thinking about suing you, obtaining a prelitigation asset report is often the first step in their legal strategy. To illustrate, let's say that you have an ex-spouse from whom you were divorced several years ago. He or she may have a good reason to keep tabs on you to see how well you've done financially in the interim. If you are making more now or have accumulated additional assets since the divorce, maybe the support decree or the property division agreed upon during the divorce settlement can be modified in their favor. Sometimes one party to a divorce doesn't even let that much time elapse before securing the services of an investigation firm; in some cases, divorce attorneys now advise unhappy spouses to run an asset check before the divorce papers are served. They try to quietly find out all the bank account numbers and balances before the filing, because afterward, money tends to go flying all over the place.

Although ex-spouses may be a concern, plaintiff's lawyers looking for a deep-pocket defendant create the gravest privacy intrusions and pose the most serious risk of financial injury. Bluntly, lawyers want financial information about potential defendants because they want to know whether the individual is worth suing. They and their clients want certainty that they'll be able to collect a judgment if they win; the lawyer wants to know this even before he or she decides to take the case. Actual responsibility for an injury is rarely the determinative issue. Successful lawyers can usually develop some theory of liability to tie a particular defendant into a case.

In the typical case, after he or she meets with a potential client and hears the facts, the lawyer prepares a list of every party associated with the situation that can conceivably be named a defendant and has an investigator run a financial check on each one. If they find someone with enough real estate equity or savings to make the case worthwhile, then one criterion for filing the case is satisfied. With easy access to detailed financial information, much of the uncertainty of litigation has been ended. A lawyer knows what is owned by a potential defendant and where the assets are located before ever filing a case.

Here is an example, in a slightly modified form, of a real case with one of our clients that illustrates the concerns about the dangers of accessible financial information. A few years ago, a wealthy physician client who we'll call "James," invested \$10,000 in a promising startup biotech company owned by a friend. He didn't have the time to devote much energy or attention to the business—it was a small investment and minor gamble that might pay off someday. In exchange for his investment, he received a 2% interest in the business; he didn't hear much news about the company except for the occasional e-mail from his friend reporting progress. Several years later, he was astounded when he was named as a defendant in a lawsuit filed against this

### Plaintiff's lawyers looking for a deep-pocket defendant create the gravest privacy intrusions and pose the most serious risk of financial injury.

company. Allegedly, his friend's firm had breached a contract to monitor a clinical trial for a customer. The financial consequences were disastrous for the customer—millions were lost—and they were now suing for \$25 million.

Although James played no active role in the company—and clearly had no liability for any of its obligations—he was still named as a defendant. Prior to initiating legal action, the plaintiff's lawyers had run an asset search on the company and its shareholders and had found James and his accounts. Although the company itself had few assets, the \$3 million in accounts owned by James gave them sufficient incentive to pursue the case. Even without legal liability, the outcome of any case is uncertain. Anyone who has been through the process knows that decisions by judges and juries can be unpredictable. Creating the risk of a large loss is the leverage that plaintiffs' lawyers use to their advantage to force a substantial settlement. In James' case, although he did nothing wrong, he ultimately settled for \$500,000 rather than incur substantial legal fees and the possibility of a large damage award.

This case provides a frightening example of the deep pocket litigation threat. Easy access to financial information allows plaintiffs and lawyers to cherry-pick defendants who are vulnerable—simply because they have much to lose—and then force those defendants into an unfavorable settlement to avoid a potentially ruinous result in court.

### Protecting Privacy

Physicians who have a high degree of exposure to potential claims, because of the nature of their practice or their other business activities, can achieve varying degrees of financial privacy through the use of a carefully constructed asset protection plan. Achieving a substantial level of privacy is always subject to proper income tax reporting and required legal disclosures in litigation. However, techniques discussed in previous installments of this series, including the Family Limited Partnership, Limited Liability Company, and particularly the Family Savings Trust, can maximize legal privacy when structured with that goal in mind. A popular trust known as a Privacy Trust, intended to block access to personal data, is now offered by several large financial institutions. Depending upon your perception of litigation risks and the degree of financial privacy that is appropriate for your professional and personal needs, you may consider adding some privacy measures to complete your overall asset protection planning. Privacy Trust plans essentially act as intermediaries that remove connections between you and your accounts and other assets; with them, neither your name, nor your Social Security number, nor any other personal identifying information appears in any records related to your assets. Several variations of Privacy Trust plans are outlined in greater detail at [www.rjmintz.com/Chapter8.pdf](http://www.rjmintz.com/Chapter8.pdf), including descriptions of the theories behind the design of the plans, how and why they work, and who should consider adopting them as part of their overall asset protection strategies. While it is certainly true that if somebody wants information badly enough they can penetrate any source, the judicious and prudent application of proven financial privacy safeguards can go a long way toward helping protect you and everything you've worked so hard for from the prying eyes of those trolling for deep pocket defendants. **MDNG**