

Because many physicians have witnessed the impact of the litigation explosion, there is a widespread perception that professionals with accumulated savings are easy targets for frivolous lawsuit claims. The outcome of every case appears random, with unpredictable jury verdicts and astronomical damage awards. Many investors are turning to asset protection to minimize lawsuit risks and shield personal wealth. *Insurance vs asset protection: Is asset protection a reasonable alternative to insurance?*

Protect Your Assets

As the malpractice insurance crisis continues unabated in much of the country, more investors are implementing asset protection plans. In fact, asset protection planning is becoming as common today as wills and estate planning. While estate planning involves preserving assets and passing on property after death, asset protection deals with the immediate need to protect assets during one's lifetime. The growing popularity of asset protection was recently the subject of a *Wall Street Journal* article.

The *Journal* article cited a survey of individuals who had more than \$1 million in assets. In 2003, 35% of those surveyed had some form of asset protection plan, compared with just 17% in 2000. Of those who did not have an asset protection plan in place, 61% said they were now interested in creating one. While a properly designed asset protection plan should effectively protect your personal savings, investments, and medical practice assets (eg, accounts receivable), there are limitations that you need to be aware of.

Know the Facts

An asset protection plan will not accomplish your goals if it's established to

defeat someone who has a claim against you. Regardless of whether a lawsuit has been filed, if the claim exists at the time you transfer property, you will be committing a fraudulent transfer. Every state prohibits transfers that are made with the intent to defraud a creditor or which leave you unable to meet your obligations. A plan that is established too late can be set aside by a court, leaving you with no protection in place.

Understand Options

Physicians who choose not to insure generally hold their savings in a trust for the purpose of paying litigation expenses if the need arises. The belief is that asset protection will discourage any lawsuit before it begins. This is generally true, but not always the case. While a successful plaintiff may be unable to collect against your accumulated assets, they may attempt to garnish or seize future income or collections. That threat may make the case valuable to the plaintiff and force you to incur large defense costs.

The most conservative approach is to combine whatever insurance coverage you have with appropriate asset protection planning. Asset protection closes the holes in your insurance coverage. Once established, it will be there in the future, regardless of the gyrations in the insurance market. If you're unable to obtain insurance coverage right now and want to continue operating your medical practice, an asset protection plan is a realistic alternative. *Note:* Make sure you're saving a sufficient amount in a protected trust to meet future legal expenses if litigation is unavoidable.



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