

Asset Protection – Debunking the Myths

(The below Post by Dr. Douglas Segan, is provided to you unedited. Although it is directed towards physicians, the information applies to all High-net-worth persons).

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[Editor's Note: This is a guest post from Douglas Segan, MD, JD, an emergency room physician and attorney who enjoys educating physicians about asset protection through his writing and lectures.]

The subject of asset protection triggers a range of emotions and thoughts for the average physician including curiosity, fear of unscrupulous sharks trying to separate them from their money, elaborate offshore schemes for the ultra-rich and wishful thinking that they can postpone protecting their assets for another day. The purpose of this article is to debunk some of the commonly held myths about asset protection and to motivate the reader to take some basic, inexpensive steps to learn how to protect their nest egg.

MYTH: Asset protection is only for the very wealthy

REALITY: If you practice medicine and you have any savings, then you should learn about asset protection. Even a modest nest egg is worth protecting. The experience of being a defendant in a serious medical malpractice case is very stressful for the average physician. While the odds are low that a doctor will face a judgment in excess of the insurance policy limits, the fear of this outcome is a major contributor to litigation stress. The fear of losing one's life savings is behind some cloudy thinking in the lawsuit settlement negotiation process. If you work on protecting your assets now, you will have one less thing to worry about in the future if you become a defendant.

MYTH: I have good insurance, so I am protected.

REALITY: Having solid professional liability, health, auto, homeowners and umbrella insurance is the critical first step in protecting your assets. While insurance provides the foundation of your asset protection plan, there are monetary limits to your coverage. If you become a defendant, you will sleep better at night if you are not worried about losing your shirt in the event that a judgment against you exceeds your policy limits. In addition, some companies are eager to end your policy if you are late paying your insurance bill. You do not want your life savings lost due to an accident in your home, because you went on a long trip or you misplaced the bill for your homeowners insurance and your company cancelled your policy.

MYTH: I found this great lawyer on-line who will be putting my money in this brand new, cutting edge trust in a lovely Caribbean island, so I am judgment-proof and worry-free!

REALITY: The internet is filled with folks who want you to turn over your life savings to an overseas trustee with

the assurance that you will then be judgment-proof. One of the primary goals of asset protection planning is to help you sleep at night if you should become a defendant. Having your money in the hands of an offshore trustee that is not subject to US financial rules sounds like a recipe for insomnia. This area is filled with sharks, so take great care in finding ethical local counsel in this field. The goal of your asset protection plan should be a plan that is simple, traditional, and low cost. Congress and your state legislature can change the rules of the asset protection game at any time. Therefore, avoid the latest fads in this area because those are the ones that will most likely to be the subject of new laws that can make your cutting edge “bulletproof” plan worthless.

MYTH: I can work on my asset protection plan in the future (when I have more money, when I am older, when I get sued, when I am not so busy).

REALITY: The time to set up the basics for protecting your assets is now. It must be done before you find out you have been named as a defendant in a medical malpractice or other civil suit. No matter how small or large your net worth is currently, it deserves protection from the broad range of folks who would like to take your life savings away from you.

MYTH: Asset Protection planning is very complicated and will cost me a fortune in legal fees

REALITY: If you have accumulated great wealth then it is true that you will need expert legal help to develop a sophisticated plan. However, for the vast majority of physicians, a basic asset protection plan can be set up for little or no cost. If you are willing to spend a couple of hours on the internet, you can learn the basics of this topic on your own. The first step is to learn what assets are insulated from creditors in your state. Every state has unique rules, so you must find out what specific assets are protected and the limits of protection for these assets that are insulated from creditors in your state. If you do not want to do this on your own, an ethical lawyer should be able to advise you on what you need to know about the rules in your state in a couple of hours. If you are motivated to learn about this area on your own, Nolo is a great online resource. If you enter the name of your state and the words “bankruptcy exemptions” and “nolo” into your favorite search engine, you will see which assets are given special protection from creditors in your state. Hopefully, the types of assets that are given protection from creditors in your state will be the same asset classes that are already part of your overall investment plans. For most physicians in most states, a good plan will focus on maximally funding IRAs and other retirement plans. You will also want to look at the pros and cons of certain life insurance policies, annuities and building equity in your home.

MYTH: I am putting all my assets in my spouse’s name (and my spouse is not a doctor) so we do not have to worry about this.

REALITY: Hope springs eternal, but the odds of getting divorced are much higher than the odds of losing a malpractice suit that exceeds your policy limits. In addition, a key rule of asset protection is to not put all of your eggs in one basket (or one member of the family). While the non-medical spouse may not have to worry about a malpractice suit, another civil suit (such as one arising from a car accident) could occur.

CONCLUSION

Every physician would benefit from knowing the basics of asset protection. Learn how the laws in your state give special protection from creditors to certain types of assets. Ideally, these protected assets will fit well with your overall financial plan. Having an asset protection plan in place will reduce the stress of litigation if you become a defendant in a lawsuit. Seek ethical counsel and develop a plan that is simple, traditional and understandable.

With Regards,

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