# <u>When It Comes To Asset Protection- *DO* Fence Me In</u>

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*Old saying: "He who has the gold, wins."*
*Current saying: "He who has the gold, pays."*

In some recent articles, we talked about WHY someone might want to plan to protect their assets. That phrase sounds stupid, doesn't it? "Why someone MIGHT want to plan to protect their assets?"

I mean, "Why WOULDN'T you want to protect your assets?" Yet the reality is that most folks, and I mean a large majority, don't begin to do what they could to protect themselves, their spouses, their heirs or their businesses from even common threats like divorce, lawsuits, bad luck, poor decision making and the like. A combination of hubris, laziness, being unwilling to spend money on something you don't understand, ego, denial and "being a trusting soul" probably accounts for most of the unplanned financial disasters that befall people. (I set aside the issue of poor money management for the moment.)

Let's begin our discussion by destroying one myth (excuse?). Like Estate Planning, Asset Protection Planning is not fundamentally about HOW MUCH you have. **It's about making sure that whatever you have (whether a lot or a little) is protected from those that you don't think deserve it.** Making sure someone you don't think deserves to get their hands on your money or property doesn't get it **is** asset protection. It's that simple.

Probably the first concept in Asset Protection Planning is the **FENCE** (or, you may prefer, WALL). In the physical world, we use fences to keep things out, and keep things in. In the planning world, we use "fences" to keep out, or keep in, RISK. For example, you put a wall around your living space to keep out the effects of bad weather. So too you might want to put your assets inside a "wall" designed to prevent risk from coming in. Or, on the other hand, if you're engaged in a dangerous business, you put walls around that business activity and the materials you use in it, to prevent damage to the rest of your world. These fences or walls are created through the use of "Limited Liability Entities". These include Corporations, Limited Liability Companies, Limited Partnerships, and Limited Liability Partnerships.

This list does <u>not</u> include Partnerships, "dba's", "business names" or sole proprietorships. These are the most common types of business (dis)organization. They provide NO protection whatsoever. So a catastrophic business problem immediately becomes a catastrophic personal financial problem. It seems to me there are very few circumstances where doing meaningful business without a limited liability entity is appropriate, even if you are the only person involved. And if you are doing business together with someone else, then you have a partnership, even if it's sealed with just a handshake. Your personal and business assets are at risk if your partner makes a business mistake. Protecting your assets is not a demonstration of distrust in the son you're farming with, it's just conservative common sense.

Asset Protection Planning begins with an assessment of Risk. Does the risk come from inside or outside your business? For example, if you are a physician, one of your biggest risks is a lawsuit alleging willful or reckless malpractice. The risk comes from inside your professional/business activity. So operating your business inside a limited liability entity makes some sense. And if you practice in a group setting with professional colleagues, limiting the risk of their willful or reckless malpractice to the business assets, and not exposing your personal assets, also seems appropriate. Thus most medical practices exist inside a limited liability entity.

But in the worst case scenario, the liability of an individual, including a physician, can sometimes break through the entity wall, in an attempt to reach personal assets. Thus the careful planner probably creates an entity, a wall, protecting these as well. Entities such as Family Limited Partnerships and Family Limited Liability Companies are often used, as are asset protection trusts, and Offshore Protection Trusts. These kinds of fences can provide a safe refuge for family wealth in times of challenge. And, as you might expect, these different tools represent a spectrum of protections. Just as a brick wall might be more secure than one made of reeds, so too some entities provide better and different protections than others. But it's worth noting that a poorly constructed brick wall might be worse than having no wall at all Design, materials and workmanship are important in planning your asset protection wall. In future columns we'll show you the different kinds of walls, and how to assure yours won't fall on you.

Before closing, I want to add one other key ingredient. Asset Protection involves the interaction of several advisors. An experienced planning attorney may be best to help you assess your risks and needs. But he or she can't do the work alone. Your accountant needs to be involved because tax issues are <u>always</u> raised in such planning. And the contribution of an experienced liability insurance professional is critical. The cost/benefit analysis of planning touches directly on the availability and costs of liability insurance.

We can show you how these professional activities fit together. Let us know if we can help.

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