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Protecting Your Assets from Malpractice and Negligence Suits

By David Robinson, Certified Financial Planner (CFP)

Considering the runaway costs of high jury verdicts today, many medical professionals are looking for ways to protect their personal assets from both malpractice and negligence claims. If you're a medical professional and own a home, a car or a stock portfolio, it's crucial to shield your assets from lawsuits. The good news is that sound financial planning can go a long way toward guarding your personal net worth against the threat of legal action. A comprehensive wealth management plan can also help you achieve other long-term financial goals, which may include planning for a child's education, ensuring a comfortable retirement for you and your spouse and minimizing estate taxes for your heirs.

When it comes to protecting your assets, key considerations include the following:

- A well structured financial plan discourages lawsuits.
- Good asset protection doesn't have to be expensive.
- An experienced wealth manager can help you take a more integrated approach to achieving your financial goals.

Start with the Basics

There are three basic levels of asset protection. The first is investing in assets that are automatically protected from lawsuits in most states, such as your home, qualified retirement accounts, annuities and the cash value of life policies. The second level is creating private trusts and corporations that remove assets from your personal estate. The third level is creating personal ownership entities in different jurisdictions, making it harder for people to place liens on your assets through legal action.

For many doctors, a good place to start is by simply implementing the first level of asset protection—making the most of your investments in assets that are automatically protected from lawsuits in most states. Many medical professionals overlook these simple strategies:

- **Your Home.** A portion of your home equity is typically exempt from lawsuits in most states. In Arizona, for example, up to $150,000 in home equity is exempt from lawsuits. Texas and Florida offer unlimited coverage for home equity. (Note: There are a few states, such as New Jersey, which do not exempt home equity from lawsuits.) Once you have hit the ceiling of protected home equity in your state of residence, you may want to consider maintaining a mortgage for the remaining value of your home, as plaintiffs in a lawsuit won't be interested in your debt—only your assets.
- **Qualified Retirement Accounts.** Money held in ERISA-qualified retirement accounts, such as Defined Benefit or 401(k) plans, is generally exempt from lawsuits, so it often makes sense to maximize your annual contributions to these accounts. Not only do you benefit from asset protection, you'll also enjoy tax-advantaged savings over time, helping your money grow faster. Nonqualified retirement plans, such as deferred compensation plans, may also have a role to play in helping you achieve your wealth management objectives. Nonqualified plans offer some protection against lawsuits, as well as unique benefits for highly compensated business owners and employees.
- **Deferred Annuities.** A deferred annuity represents money you set aside today to create future income, typically for retirement. If you have not yet begun taking distributions from your deferred annuity, the value of your annuity contract is generally exempt from lawsuits. In addition to offering asset protection, annuities can help supplement other sources of income in retirement, such as Social Security or withdrawals from your IRA or 401(k) accounts.

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As always, it's a pleasure and privilege to work with you and your family. At Robinson, Tigue, Sponcil and Associates, we look forward to continuing to meet your financial planning needs, both in 2009 and for many years to come.

David Robinson, CFP®

President

- **Cash Value of Life Insurance Policies.** Once you have held a life insurance policy for more than two years, the cash value of the policy is typically shielded from lawsuits in most states. What's more, the cash value of the policy can often be accessed via tax-free withdrawals and loans in retirement, which may prove especially attractive if tax rates increase in the future as many expect. In addition, insurance policies can also be a useful way to transfer wealth to future generations.

Asset Protection Myths

When it comes to asset protection, there are often a lot of misunderstandings among doctors and other medical professionals about what strategies provide genuine peace of mind. Here are some common asset protection myths to be aware of.

Myths	Reality
Malpractice insurance is the only protection I need.	If damages in a legal case exceed the amount of your malpractice coverage, creditors could come after your personal assets.
Any assets held in my spouse's name are safe.	If a judge determines that you've moved assets to your spouse's name for the sole purpose of "hiding" assets from creditors, those assets may be vulnerable to lawsuits.
Assets in my revocable living trust are exempt from lawsuits.	While there may be several good reasons to create and fund a revocable living trust, only irrevocable trusts offer maximum protection against lawsuits.

Exploring Advanced Strategies

If you're just starting your career, the first level of protection (investing in assets that are automatically exempt from lawsuits) may be all you need for now. As you get further along in your career and your personal net worth continues to grow, you may want to consider exploring some advanced strategies for asset protection, including creating trusts, corporations and LLCs. In addition, you may want to consider establishing these entities in different jurisdictions, making it harder for people to place liens on your personal property. Keep in mind that "protective" trusts, corporations and LLCs can be expensive to create and maintain, so you should explore all options with your team of trusted advisors before pursuing specific asset protection solutions.

Creating an Air-Tight Plan

The most effective asset protection strategies begin with sound financial planning. If a judge or court of law determines that you are trying to "hide" assets from creditors, they may remove the exempt status of those assets. For example, if you buy a large life insurance policy shortly before declaring bankruptcy, a court of law may determine that any assets involved in "last-minute" transactions are still subject to legal actions. The best protection for your assets is to show that you have legitimate reasons for structuring your assets with many other benefits in the way that makes the most sense for you and your family over the long term. In a court of law, your intent is the key. Your intent for establishing accounts can't be to avoid situations of responsibility. Rather, your intent should be associated with responsible and ethical financial planning, such as planning for a comfortable retirement or the smooth transfer of your estate to your heirs.

The strategies mentioned here are simply "conversation starters" to have with your wealth manager, attorney and tax professional. Every doctor has unique needs and goals, so your personal wealth management and asset protection plan will need to be tailored to your specific situation. In addition, asset protection laws can vary widely by state. The key to creating an effective asset protection plan is starting now before you need one. By creating a team of trusted professionals, discussing your goals and reviewing your plan on a regular basis, you can create a wealth management plan that has you fully covered against unexpected events—a plan that helps you feel more confident about your financial future.

About the Author David Robinson, a certified financial planner, is the president of Robinson, Tigue, Sponcil & Associates LLC, an independent Registered Investment Advisor. David works with medical professionals and their families to create comprehensive wealth management plans based on their specific objectives. You can contact David by phone at (602) 224-7850 or email at drobinson@rtsadvisors.com.