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Protecting Your Assets: Essential Strategies for Business Owners

As a business owner, you work hard to build and maintain your financial security. However, unexpected legal claims, economic downturns, and other risks can threaten your personal and business assets. Proper asset protection planning can help safeguard your wealth and provide peace of mind.

This handout outlines several fundamental strategies to help minimize risk and secure your assets. While these measures can be effective, every situation is unique, and laws frequently change. The information provided here is for general guidance only and should not replace personalized legal advice. Before implementing any asset protection strategy, consult a qualified attorney to ensure compliance with current laws and to tailor a plan that fits your specific needs.

This is a general outline for illustration only, and is not intended as a complete list of options or as specific legal advice.

Important caveat! Any transfers you make must not render you insolvent. If you have any known potential claims, it may be too late to take the following steps to protect your assets. Transfers of assets outside the ordinary course of business (particularly those to insiders, *e.g.* family members), and gifts or other transfers for less than market value, are suspect and may constitute "transfers in fraud of creditors." Such transfers will probably involve the transferees in litigation and will endanger the right to a bankruptcy discharge. You should consult counsel before making any of these types of transfers, especially when there is any possibility of potential claims.

1. Adequate liability insurance, coupled with prudent business practices, should always be your first line of defense.

2. Conduct your business through an entity, such as a limited liability company or corporation, that will shield the owner(s) from business liabilities in most circumstances.

3. Create and fund retirement plans each year to the maximum deductible level under the income tax laws. For IRAs, though, federal bankruptcy law generally limits the exempt amount to approximately $1.51 million*, excluding amounts from qualified rollovers.

4. Consider purchasing or increasing your life insurance. Both the cash value and proceeds the at death of life insurance are exempt from creditor claims against the insured under Texas law, with few exceptions. Annuities are also exempt, but may have varying advantages and disadvantages in terms of costs and taxes that must be carefully considered.

5. Pay off your home mortgage, if you have owned the home at least 40 months. You will lose the interest deduction, but the equity should be protected from creditors in most cases. The exemption from creditor claims for a homestead is very generous under Texas law. The exemption is generally limited to $189,050* (per debtor) under bankruptcy law if you have been in your home less than about 40 months before the bankruptcy petition is filed.

6. Make gifts to or for the benefit of your children or other relatives, using trusts or § 529 education plans as appropriate. You can give up to $18,000* per donor per donee per year with no gift tax consequences, so long as you follow certain rules. A married couple can give $36,000* per donee.

7. If you are married, consider partitioning community property into separate property. The separate property of your spouse would ordinarily be shielded from negligence claims against you. Tax and marital property considerations should be carefully weighed before taking this step.

8. Place property that is potentially not exempt from creditors, such as office buildings or the ranch, into a protective entity such as a limited partnership or LLC. This step will not place the assets completely out of reach, but will make it more difficult for an "outside" creditor to reach the assets within the entity.

<u>Note:</u>* These amounts are current as of 2024, but are indexed and subject to change each year.