HURLEY RE, P.C.
ATTORNEYS AT LAW

BASIC ASSET PROTECTION OPTIONS

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Many people are concerned that their assets could be taken from them by a creditor. The loss of assets can result from an accident, the actions of a dishonest person, from financial difficulties, or from family problems, such as divorce. The extent to which your assets are subject to these risks will often depend on the specific assets that you own and how you own them. There are many levels of asset protection depending on your circumstances and budget. This article addresses two basic asset protection planning options: liability insurance and maximizing exempt assets.

Arguably, the first and best protection against liability is insurance. Liability insurance protects you from injury or damage to a person or property. Adequate levels of insurance will help prevent the liquidation of other assets to satisfy an adverse judgment against you. Umbrella insurance policies supplement your liability coverage under homeowners, auto, and boat insurance policies.

For example, assume you are involved in an auto accident resulting in a $500,000 judgment against you. Your auto insurance policy has coverage in the amount of $300,000 and a deductible of $1,000. You pay the deductible and the insurance company pays $299,000 of the $500,000 judgment leaving a $200,000 balance which creditors will satisfy using your personal assets. Assume instead that you have an umbrella policy of $1,000,000 with a $300,000 deductible. In this scenario, the umbrella policy deductible has been met by the $300,000 payment from the auto policy. As a result, the umbrella policy pays the remaining $200,000 and you pay nothing. Not all umbrella policies are the same and most do not cover business related activities. You should contact an agent to discuss the scope of coverage prior to purchase.

Certain assets have been given special protections against creditor claims under federal and state law. These assets are commonly called exempt assets and include: owning property either as tenancy by the entirety or as joint tenants with the right of survivorship; Oregon law also provides an exemption from certain creditor judgments on a person's homestead in the amount of $30,000. If there are two or more members of the household both of whose interests are subject to a creditor's judgment, the exemption amount is $39,600; life insurance cash value and death benefits are exempt from the insured's creditors if the insured's estate is not the beneficiary; retirement plans such as pension plans, profit sharing plans, IRA's, and 401(k) plans are generally considered to be valid spendthrift trusts and are not subject to creditor claims; payments due or prospectively due to an annuitant under any annuity policy are exempt from creditor claims up to a defined amount; and, funds invested in 529 plan accounts are not subject to creditors, unless you distribute the funds to yourself. Maximizing your contributions to these types of assets can be a shield against creditors.

It is important to note that state law prohibits transferring or structuring the ownership of assets to avoid known creditors and fraudulent transfers can be set aside. Therefore, it is important to consider all of your circumstances before taking action. For a more complete discussion of asset protection options contact Hurley Re, P.C. at 541-317-5505.

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