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## **How to Protect your Assets from a Judgment Against You**

Once your adversary has won a judgment against you, he is known as your judgment creditor. Because of the judgment, your judgment creditor has certain rights against you that your ordinary creditor does not have. The primary right he has is called a writ of execution, which permits a deputy constable or sheriff to come into your home, take your assets and sell them to pay off the judgment. Some things you own like your homestead are protected by the Texas Constitution and Statutes from that writ. But your second home, bank accounts, investments in securities that are not held by your retirement plan, and lots of other things are not.

There are some actions you can take to protect those assets, but they all must be taken **before** you have any inkling that a lawsuit is in the wind. Any transfer that is made once you know about the lawsuit or likelihood of a lawsuit is likely to be considered a fraudulent transfer – that is, a transfer expressly made to prevent your creditor from getting paid off – and will not protect the asset. Giving your summer home to your daughter after the lawsuit has begun, for example, will almost certainly be considered a fraudulent transfer. Your judgment creditor will have little trouble in taking the house from your daughter.

Here are some of the protective devices for your assets to be implemented ahead of time:

**Trusts:** A trust is an entity you create by private contract; the trust document is not a public document and costs nothing other than your attorney's fees to create. When you transfer your assets to a trust, you no longer own them; the trust owns them. The trust assets are managed by a trustee for the benefit of beneficiaries who are identified in the trust document. The trustee's powers and limitations are also set out in the trust document. The trust can go on for a long time but not forever. The term of a trust is limited by the Rule Against Perpetuities, a complex rule developed hundreds of years ago which prevents assets from being placed in trusts for an unlimited period of time. The fact that you no longer have control over those assets is the major downside for most people of using a trust to preserve assets.

*Example of a trust:* you put securities into a trust for the education of your children when they are of college age. When they reach that age, the trustee will pay out benefits to them according to the terms of the trust document.

Warning: The protection afforded your assets by a trust is entirely dependent on

the fact that you no longer own the assets. If you retain even the slightest control over the assets, i.e., you decide what is invested or how much is paid out to your children for what kind of expenses, your creditors will be able to cut through that trust like a hot knife through butter.

**Limited Liability Company:** A limited liability company (generally known by its initials, “LLC”) is a recently created, very popular entity. If there is a judgment against you, the judgment creditor cannot take the assets held by the LLC and cannot take away your ownership interest in LLC. All he can do is get a charging order against the LLC, an order that provides that if the LLC distributes profits to you, it must pay those funds to the judgment creditor instead. That order, however, does not apply to any salary that you draw as an employee of your LLC and cannot interfere with the ongoing business of the LLC.

**Limited Partnership:** This is a more complex entity than the LLC, but with the same Personal protection provided by the LLC: the only remedy against your interest in the limited partnership is a charging order. There are many other benefits that derive from keeping your assets in a limited partnership – for example, reducing your rates of taxation, especially estate taxation -- which make the limited partnership a premier vehicle for keeping large wealth within a family over the very long term. Unlike a trust, there is no limitation on the time that a limited partnership can exist.

Use of these entities can also protect you from liabilities arising out of you own assets. How can this happen? While your General Motors stock will not normally subject you to any liability, the rent house you own in your own name most certainly can. If the gas furnace in the rent house is defective and explodes, killing the occupants, you can be sued directly as the owner of the house. While you may think you are protected by one of your many insurance policies, that may not be the case. Insurance policies are busting at the seams with exceptions to coverage, and in a case where the potential liability is substantial, it is very much in your insurance company’s interest to invoke those exceptions

But if your rent house is owned by an LLC, the LLC is the owner; you are not - the LLC is liable; you are not – provided if you have followed the simple rules in operating an LLC. If, however, you have used the LLC as your piggybank, taking out money whenever you needed it, booking repairs to your own home as if they were repairs to the rent house, the courts will disregard the LLC, and you’re back on the hook.

If you are interested in learning more about asset protection, please contact my office or your attorney who can more fully inform you of the benefits and risks of these and other approaches to your particular problems or worries.