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## **Uncle Gene's Three Practical Rules For Business Owners To Avoid Being Hauled Into Court**

### **RULE THREE: BE INVISIBLE**

What on earth do I mean by “Be Invisible”? Do I want you to run out and get Dumbledore’s Cloak of Invisibility? Hardly. What I want you to do is keep your name out of public records and fly under the radar in your personal life. Here’s why. When The Angry One (you remember him from Rule Two, right?) goes to his unscrupulous lawyer, the first thing that lawyer will do is start look in public records to see what you own. And why does he do that? Because he wants to see if you have any assets for him to sell to pay off a judgment against you.<sup>1</sup>

There are two places where every lawyer will look. First is real estate records and real estate tax records to see what real property you own. All states have some form of homestead protection, so finding the house you live in may not help him much, but if you own commercial properties, or a second house, he can certainly get those with a writ of execution. The rule here is: don’t own real property in your own name.<sup>2</sup>

The second place he will look is the records of the Secretary of State of the state you live in. Why? Because records of every entity operating in your state – whether limited liability company (LLC), limited partnership (LP), limited liability partnership (LLP) or corporation – are lodged with the Secretary of State. In those records, the lawyer can

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<sup>1</sup> Those of you who have heard my talk “Case Closed: Why You Shouldn’t Bring A Lawsuit Unless You Are Ready To Lose,” know that getting a verdict is not like drilling an oil well. Money doesn’t just spout out of the earth like a gusher when you get a verdict. What you get when you get a verdict is another piece of paper: a Writ of Execution (in Texas; called other things in other states), a piece of paper that allows a public officer, usually a deputy sheriff or a deputy constable, to hunt for the losing defendant’s assets, and if he finds any, to sell them. More a hunting license than a cashier’s check. The problems with this process will be dealt with in a later newsletter.

<sup>2</sup> Unless less it is your homestead, and you live in Texas or Florida where your home is 100% protected from judgments.

probably find your name if you are one of the owners or officers of the entity which holds some of your assets. Many of my clients are amazed at how much information about them I can pull from state records in just a few minutes. It may even be worthwhile for the lawyer to look into your county's assumed name (d/b/a) records to find the name of the business you are running in your own name (and thus totally unprotected from a writ of execution). You have read my article "How to Protect your Assets from a Judgment Against You," (it was the first thing I sent you) where I briefly discussed entities in which you can hold your assets. All of those entities except a trust (and you will remember the downside of trusts) will be in the records of the Secretary of State. And if that lawyer sees that you own something, whatever it may be, he will have an incentive to bring suit. .

Remember that lawsuits have a blackmail value: people will pay to get rid of them rather than follow the vastly more expensive and riskier route of taking the case to trial and hoping to win. So a lawyer brings a lawsuit knowing that he may not be able to get your assets with a writ of execution, but also knows that you will have to reach into those assets to pay defense costs. He files his suit to get indirectly the assets that he cannot get directly. The choice of the defendant is either to pay his lawyer on the chance that he will win at trial or to pay the same amount, or perhaps a little less, on the absolute assurance that the lawsuit will end. In business cases, where only money is at issue, the responsible attorney will try to steer his client towards a settlement. Lawyers don't like to call it blackmail value; they call it settlement value. But it's blackmail.

You think, however, what if the plaintiff's attorney only wants his fees paid and is indifferent to whether the judgment he gets will be collectible. His plan is just to bring the lawsuit and, after he gets a verdict, walk away from it. Remember, he has The Angry One for a client, someone who is spitting fire at the very mention of your name. He's a very easy mark for a greedy attorney; spare no expense is his motto – I want revenge. At the end, his lawyer will say to him: "I did what you paid me to do. I got you a verdict. Collecting it is none of my business."<sup>3</sup> That's a risky business model. If his paying client's judgment comes up uncollectible, he will be furious to find out that after shelling out mightily for a verdict that the defendant has no assets to pay – and perhaps even angrier if he finds that the lawyer never bothered to investigate the defendant's asset situation. There's a real risk that this Angry One, angry enough to pay for a lawsuit against you, now doubly enraged, will be angry enough to turn on his lawyer and sue him for malpractice. Since the lawyer probably has malpractice insurance, *that* judgment is not going to be uncollectible.

I have digressed, but I think you are beginning to see the value is keeping your ownership of assets private. Through the use of trusts (which are not public instruments) in

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<sup>3</sup>It reminds one of the lyrics to Tom Lehrer's ode to Wernher von Braun, the Nazi missile expert (father of the V-2 rocket that pounded Britain) who came to work on the American space program: "I make them up go up, but where they come down, is none of my business, says Wernher von Braun."

conjunction with formal entities, an attorney can put a client into, for example, a limited liability company (“LLC”) where the only name of a human being in the Secretary of State’s records is the attorney’s and the only physical address is the attorney’s. And if the attorney is asked what person owns the company, he cannot reveal that information because it is protected by the attorney-client privilege. Entities can be owned by trusts and can be the beneficiaries of trusts. There is almost no limit to the ways that these various devices can be combined to shield your ownership from public view. By the same token, you do not want to flaunt your assets. If you drive a Rolls Royce or a Ferrari, you are putting a target on your back for lawyers to aim at. Live modestly

The same carries over when you are running a business where your ownership is not public knowledge. Don’t tell your customers that you own the business. Tell them that you are the manager and are responsible to the owners. If your customers know it’s your shop, you will be subjected to heart-rending sob stories, and you will not find it easy to tell them that their stories are utterly bogus, obviously ginned up for the purpose of getting a mercy discount. It’s a lot easier to say: “I just work here. The owner won’t let me do that.” That way if they turn into Angry Ones, they won’t be angry at you.

***Lesson From Rule 3:*** No shark will attack a bloodless being.