

FINANCIAL PLANNING NOTES

CLIENT NEWSLETTER

“The avoidance of taxes is the only intellectual pursuit that still carries any reward.”

—John Maynard Keynes

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FRAUD REPORT 2018

To the surprise of nobody, fraud did not let up in 2018. The Federal Trade Commission (FTC) received about 1.4 million fraud reports over the year. About 350,000 of those cases resulted in losses, for a total of \$1.47 billion. That's a 38% increase over 2017.

While senior fraud continues to be a problem, criminals respected no age limits. People under 30 reported nearly 100,000 fraud losses, compared with about 125,000 for people over age 70. But as you might expect, when seniors did lose money, it was more than the average loss suffered by a younger person (\$751 vs. \$400).

Imposter scams, debt collection, and good old identity theft topped the list of most common fraud schemes. Scammers' preferred method of payment remained the wire transfer, but gift cards and reload cards spiked in popularity over the year.

On the good-news front, tax-related identity theft (filing fake returns using a stolen Social Security number) fell 38% last year. But credit card fraud on new accounts rose 24%. Opening a new credit card with someone else's information was the most popular form of identity theft in 2018.

Not surprisingly, Florida was a fertile ground for all types of fraud. The Sunshine State ranked #1 for fraud reports per capita, and it trailed only Georgia, Nevada, and California for identity theft.

Regardless of your age, caution and diligence remain critical when conducting business over the phone or electronically. If you are the victim of fraud or suspect that someone is committing fraud, report it to <http://www.ftc.gov/complaint>.

—Steve Tepper

Source:

The Top Frauds of 2018 by Paul Witt, Supervisory Data Analyst, Federal Trade Commission, February 28, 2019.

SO SUE ME

“Money can't buy happiness, but it can make you awfully comfortable while you're being miserable,” said author and ambassador Clare Boothe Luce. There are, sadly, a few other downsides to wealth, aside from not being able to order happiness with your Amazon Prime account.

The more wealth you amass, the more likely you are to be taken to court as the defendant in a civil action. That lawsuit could be for real wrongs, imagined ones, or downright nuisance cases.

If you own a business, a lawsuit can be brought against your business and possibly you personally for claims including “slip and fall,” faulty products or poor work, trademark infringement, breach of contract, malpractice, workers’ comp, employment discrimination or harassment, and accidents involving company vehicles.

Additionally, you could have personal liability for an injury on your property, a car accident, medical issues, even social host liability (for example, a guest at your party has an accident on the way home and claims it was because you served him alcohol).

Under our system of civil law, anyone can sue anyone, no matter the validity of the claim, but the reality is that poverty is a pretty effective prevention method. Claimants in lawsuits are looking for deep pockets, not empty ones.

But if divesting all of your worldly possessions is not the best strategy to insulate yourself from lawsuits, what you need is a good Plan B. Here we discuss steps you can take to protect your wealth without living the Life Monastic.

Advanced Planning

Keep in mind that steps to protect yourself must be taken *before* someone files a lawsuit against you—and not necessarily *the day before*. Not only will courts be interested in assets you own at the time of an alleged loss suffered by a claimant (thus reversing any attempts you make to divest assets afterward), but the courts may also look back several years before the alleged loss date and reverse steps you made to insulate assets.

The Asset Protection Plan

Along with behaving responsibly (i.e., not giving anyone any cause to sue you), it is important to put into place a comprehensive asset protection plan—and do it now! That plan should include legal and financial strategies to shield assets from civil proceedings. The more of your assets that are protected, and the better the protection surrounding them, the less attractive you will be to potential litigants.

To properly formulate your asset protection plan, you’ll likely need the services of a financial advisor, business attorney, and risk mitigation specialist (pretty much a fancy way of saying an insurance agent).

The following is a not-to-be-taken-as-comprehensive list of some of the best strategies to protect your assets:

- **Incorporation:** If your business is set up as a sole proprietorship, your personal assets could be at risk along with all of your business assets if your business is sued. Even worse, if you are a partnership, you could be sued and lose everything because of something your partner did. Changing your business structure to a corporation, limited liability company, or limited partnership will shield your personal savings and investment accounts, your home, and your other non-business assets. A business attorney can help you do this, usually at a fairly low cost. But keep in mind that this does not protect any of the money you have invested in your business, or the value of your business. Furthermore, it protects your personal wealth against actions against your business only. If someone sues you directly for something not related to your business, your personal assets are at risk.
- **Insurance:** If you don’t look at your bills every month and think, “Dang, I spend a lot of money on insurance,” you probably don’t have enough insurance. And no, I’m not saying this to try to sell you insurance. (Fee-only advisor, don’t sell products, etc.) There are different types of insurance products that can help protect you from having to pony up a lot of money when a lawsuit comes, and you can’t just pick one off the menu. Depending on your situation, **you may need them all**. Homeowner’s insurance, auto insurance, and an umbrella policy can help protect your personal assets. A personal injury and liability policy, workers’ compensation insurance, errors and omissions insurance, employee theft and an umbrella policy help protect your business assets. Yeah, that’s a lot, and in the end, having all of those policies won’t prevent a lawsuit. In fact, they might make a lawsuit a more attractive option to a potential claimant. But having these policies can shift the burden of defense from you to your insurer and, of course, leave them with the settlement bill if there is any.
- **Investment titling:** Titling can make a difference in determining if assets can end up as part of a settlement or award to a plaintiff. For example, if you are married and your home is titled as *tenants by the entirety*, you can protect half of your

investment if one spouse is named in a lawsuit. Furthermore, if you lose half your interest, creditors can't force the other spouse to sell their interest in the house. That can have the bottom-line effect of protecting the entire investment you have in your home because most plaintiffs won't want to come after an asset they have no legal recourse to collect.

- **Insurance redux:** When your assets are invested in certain types of insurance products, they can enjoy a level of protection they don't have in other investment account types. For example, in Florida, you have unlimited protection for assets invested in annuities and cash value life insurance policies. Normally, I'm not a fan of annuities. They are an expensive investment option and are sold to many investors who don't need them. But this is one circumstance when they might be an appropriate choice. Your (fee-only) financial advisor can help you find one that solves your liability problem without hurting the long-term growth potential of your portfolio.

Settlement Isn't Guilt

A classic mistake many defendants make is to refuse to settle over the "principle of the thing," and they end up losing far more in the process. Say you've spent decades building your business. You've always strived to do things right, by the book. Any time someone has sued, or threatened to, you've fought, held your ground. You didn't want to become known as an easy target for frivolous lawsuits, right?

Now it's time to cash out and retire. You reasonably think your business could be worth \$10 million. But before you can ink a deal, someone files a baseless lawsuit against you. Your lawyer tells you the claimant has very little chance of prevailing, but the lawsuit could be held up in court for a couple of years. In the meantime, you must disclose the pending legal action to any prospective buyer. That could have a big impact on your business valuation.

Would you settle the frivolous claim for a few thousand dollars or risk losing millions in your business sale? Or would you change your retirement plans to wait out the

lawsuit? This is where you may have to settle a case you *really don't want to* as by far the best business choice.

Sometimes you settle because you are guilty and will probably be found so at trial. Other times, you settle out of business necessity. It is an important option that shouldn't be dismissed offhand.

Hire the Right Lawyer

Whether you have been named as a defendant in a civil claim or want to get a jump start on protecting yourself if you ever are named, you need professional help. Look for a good attorney who demonstrates that they know the proper steps to take, is a skilled negotiator, and is an experienced litigator. All of those skills are important, as you are looking to a professional to decide whether to fight or settle, make the best settlement, and be prepared to go to court if the other side is not being reasonable.

That may seem like a large skill set for one person, but don't worry. You don't need the attorney you hire to be an expert in all areas. But do find out how they draw on the skills of others, either within their firm or from the outside, to cover the bases you need covered.

Someone local can have the advantage to help you as well. Oftentimes, it's who you know. Lawyers in your community could have valuable contacts within the legal system and law enforcement, and may have chits they can call in to help you.

Conclusion

There are many steps you can take to protect your assets from lawsuits, frivolous and non-frivolous, but the most important step is to get started now! Waiting until after a lawsuit will not be effective. Waiting until after an incident occurs that you think might result in a lawsuit will also not work. Your financial advisor can help review your assets and liabilities and recommend strategies to protect you.

—Steve Tepper

Sources:

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WHO WE ARE

ALLEN P. GIESE, ChFC®, CLU®

President, Investment Advisor Representative

STEVE TEPPER, CFP®, MBA

Vice President, Chief Operations Officer,
Investment Advisor Representative

GARY S. GLANZ

Director of Business Development, Investment
Advisor Representative

GARY C. GONZALEZ

Investment Advisor Representative

STACY SAAVEDRA

Client Service Specialist

RICHARD LOTTIER III

Client Service Specialist

NORTHSTAR
FINANCIAL PLANNERS INC.

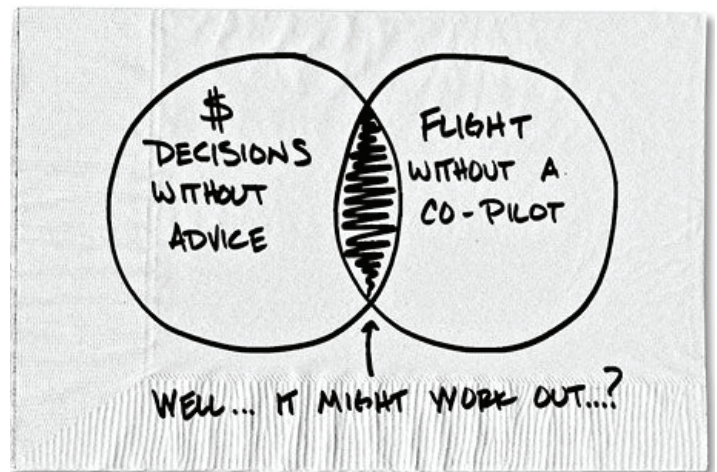
(954) 693-0030

1250 S. Pine Island Road, Suite 275
Plantation, FL 33324

northstarplanners.com

info@northstarplanners.com

FROM CARL RICHARDS' NAPKIN BLOG



FINAL THOUGHT



"Explain to me again why enjoying life when I retire
is more important than enjoying life now."

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