

# BUSINESS LAW REPORT

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## ASSET PROTECTION PLANNING

By: Jay D Fullman, Esq.

Building a business takes tremendous time, energy, and effort. No business owner wants to see an unanticipated event destroy what they have worked so hard to establish. Therefore, prudent business owners (and individuals interested in protecting acquired wealth) need to take steps to protect their business and personal assets.

## PROTECTING PERSONAL ASSETS

Frequently, when a business is started (or when it becomes financially viable) a separate entity is selected to limit the owner's personal liability for the debts of the business. Sole proprietorships and general partnerships provide no protection for the business owner's assets. Corporations, limited liability companies (LLC's) and limited partnerships are therefore formed to help protect the personal wealth of the business owners. Factors other than just asset protection must be considered to determine which business entity should be selected for your company.

Once the form of business entity has been selected, additional things should be done for personal asset protection. To avoid or minimize the possibility of personal liability for obligations of the business, you should:

- Sign all contracts and agreements in your official capacity on behalf of the business entity, not in your name, as an individual.
- Do not sign personal guarantees
- Comply with corporate formalities (e.g. board of directors minutes)
- Do not pay personal debts from business accounts
- If money must be loaned to the business, have the company provide you with a promissory note
- Set up a family limited partnership, LLC, corporation, or certain types of revocable and irrevocable trusts to hold your stake in the company
- Maintain appropriate levels of insurance to cover insurable losses
- Become aware of and comply with applicable industry laws and regulations
- Train employees well and assure they are aware of legal pitfalls and how to avoid them
- Seek the advice of experienced legal counsel in significant business transactions and for events that may expose you or your business to liability
- Have the company lease instead of own business assets
- Establish a family limited partnership, corporation, LLC, or a trust to own real property and other equipment which you then lease to the company
- Use employee leasing services
- Use independent contractor agreements when possible
- Establish pension funds and retirement plans
- Establish out of state financial accounts
- Set up a Buy-Sell Agreement between the business owners
- Develop a business ownership succession plan
- Form a sister company out of state to handle services outside of California (to avoid California taxes)
- Bankruptcy: liquidate assets in a Chapter 7 or structure payment of unanticipated liabilities through a Chapter 11 reorganization

If you have substantial assets you want to assure are protected, offshore asset protection trusts are an option. Although not an option for most people, the ultimate asset protection device is to expatriate to a foreign country and place your assets in secure locations outside the USA.

## PROTECTING BUSINESS ASSETS

Much can be done to help protect your business assets from becoming the target of claims (or collection efforts) of third parties. Some of your options are as follows:

Which protection options will work best for you and your business depends on your company and your goals and objectives. If you have any questions, feel free to contact me at 562-694-6005, or at [jdfullman@mminternet.com](mailto:jdfullman@mminternet.com).