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Basic Business Asset Protection

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I encounter many business owners that have totally failed to plan to protect the assets of their business from loss to a potential creditor of the business. Many of them think that since their business is in a corporation or a limited liability company (LLC) that they have protected it. It is true that putting your business in an entity will provide the owners with protection from a creditor of the business, but all of the assets of the business are still fair game for such a creditor. What I am talking about here is structuring the business assets in such a way as to limit a creditor of the business from forcing a liquidation of those assets.

For example, let's look at a common situation: The business is operated by an entity such as a corporation or, preferably, an LLC, and this entity owns the land and buildings in which the business operates and conducts its business. What are the problems with that? One major problem is that if a creditor of the business gets a judgment against the business, that creditor can force a sale of the land and buildings to pay the creditor, putting a severe hardship on the continued viability of the business. Additionally, there are income tax problems getting the land and building or its sales proceeds out of the company without additional tax. Many people don't realize that a "C" corporation (i.e. not a corporation that has made an "S" election from the start) does NOT get capital gains tax rates.

Another common example is the manufacturing business that needs its expensive equipment to manufacture the widgets it sells and without which it would be out of business. If the business owns all that equipment and suffers a loss in court to a creditor of the business, the equipment can be sold to pay the creditor and now the company is out of business, or the owners are forced to get new financing to buy equipment to continue the business.

The planning here is to look at the assets of the business, determine if they, in and of themselves, could create a liability, and if so, isolate that from the assets that don't create a liability. So, in the two examples above, the land and building, if maintained, don't create a liability to a customer of the business, unless the roof falls in while the customer is in the office. So, in all likelihood, the customer of the business who has a liability claim against the

business is going to sue because the product wasn't as represented, or it caused a major liability to its business, which is totally unrelated to the land and building or the equipment. Its complaint is something the business itself caused. So, if the company that made the widget that caused a liability doesn't own the land and building or the equipment, but merely leases it for fair value, those valuable assets necessary for the business to operate will not be vulnerable to such a claim.

Another overlooked asset is the name of the business or product and goodwill associated with it. Again, a name is not going to hurt someone. So, planning to carve out the name and goodwill associated with it will protect it from a future creditor of the business, but more likely will also allow for licensing of the name(s) and save additional income tax if the business or its assets are sold to a bona fide buyer of the business.

This kind of planning can not only can protect these assets, but also can help reduce income and potential estate taxes, with more planning.

I have only touched the tip of the iceberg in this article. There are many more asset classes that can be protected, such as accounts receivable, employees, inventory and the like.

One more caution, never put an intrinsically dangerous asset in the business. Vehicles are a prime example of this. If your employees have a company owned vehicle, but you allow them to use these vehicles after work and on weekends, you are opening up your company for much more potential liability from a non work-related vehicular accident that causes major damage to the injured parties. These are potential creditors of your company that likely never even heard of your company.

WealthKeepers® is an asset protection and wealth transfer planning firm. We offer a 1-hour initial conference at no charge to discuss your asset protection issues. Call us at 713-461-9699 to schedule an appointment today.

James C. Mulder, a Houston based attorney with over thirty years of experience in Wealth Transfer, Tax and Asset Protection Planning is Board Certified by the Texas Board of Legal Specialization. He is one of only nine attorneys in the Houston area that are Board certified in both Estate Planning and Probate Law and in Tax Law. Mr. Mulder concentrates his practice primarily in the areas of Wealth Transfer, Tax and Asset Protection Planning, which includes the development and preparation of very comprehensive Wills and Trusts, Business Organizations and Family Partnerships. Mr. Mulder has prepared over 1,000 asset protection plans.