MARTIAL LAW SURVIVAL GUIDE

Table of contents

Table of contents 2

What does Martial Law mean? 3

First things first 3

How can you best protect your assets? 7

Put your name on it 12

Equity-strip strategy 17

Don't put everything in one basket 20

The Time Division shield 21

Be the one who makes the first step 22

Control your assets 24

Liability insurance tips 26

Structured financial products 29

Beware of mistakes 30

What does Martial Law mean?

Martial Law is the system of rules that become reality when the military takes over the regular administration of justice in a land. That is to say, the "suspension" of the Constitution. Curfews, rationing of basic goods, enforced relocations, summary arrest/execution by soldiers and paramilitary police and confiscation of **EVERYTHING YOU OWN** and maybe worked for your entire life.

Hopefully, you're reading this before Martial Law is imposed, so as to appreciate the opportunities you currently have to protect your wealth from everything and everyone.

Listen to me: Money doesn’t take care of itself. What’s the point of building wealth, if you don’t own the strategies to protect it? This book will help you do just that.

First things first

Your starting point is to assess where you are now. What do you own? What are your financial concerns? What imminent dangers threaten your wealth? What have you done so far to protect your

assets? How committed are you to a more secure future? Most importantly, how can you stop procrastinating and nonsensically pretending that the bad things that happen to so many others can't happen to you?

No, don't become paranoid. But do begin your financial self-defense planning with that one thought foremost in mind.

You, too, could be victimized by a financial disaster. You may feel safe and secure today; however, your hard-earned wealth may end up in someone else's pocket tomorrow. It happens; and it's usually when and in a way you'd least expect. Endorse the old adage "Hope for the best, prepare for the worst." Common sense.
Sure! It's vital to your economic survival in our lawsuit crazy, financially-perilous world.

Estimate each asset's value. How is each asset titled (individually, tenants by the entirety, joint tenants, tenants in common, in trust, and so forth)? What percentage ownership do you co-own in each asset? What liens or encumbrances exist against each asset? What is the equity you must protect?

Review significant asset transfers that you made over the past five years so your advisor can decide whether these transfers can be recovered by your creditors.

Also anticipate inheritances and future windfalls that could come your way. They too need protection. Expand your inventory beyond your personal assets. Protect your business or professional practice, and never assume that a particular asset is already shielded and needs no further protection. Tell your advisor about every asset and let your advisor determine what needs more protection.

The threats to your wealth come from many directions. Lawsuits drive most people to seek asset protection. While the causes of liability and litigation or other financial attacks are many and varied, however it happens, the danger of legal liability and potential financial disasters are always strong, regardless of your lifestyle, occupation or prudence.

You can minimize danger, but you can never fully avoid it. There are too many ways to get into trouble in our litigation-plagued, conflict-ridden society.
You'd likely agree that our legal system is out of control. The U.S. tort system is the most expensive in the industrial world.

Our current civil litigation system is a monumental drag on our economy and burdens every American. It drastically increases the costs of services, goods, and health care, and forces thousands of Americans out of jobs each year when the companies they work for are forced into bankruptcy or massively downsized due to adverse litigation.

Most dramatic is the estimate that 50 million lawsuits will be filed next year. Odds are about one in five that you'll be a target.
How can you be certain that you won't be hit with a breach of contract claim, bills you can't pay, a lawsuit from an auto accident or malpractice, creditor claims from a failed business, a whopping tax bill, divorce, foreclosure or governmental seizure of your property?

You figure that you can shield yourself by buying a big liability policy. You can't. Liability insurance is important. But liability insurance is only a starting point in your financial self-defense plan. It is not be your end point.

Most lawsuits and other financial claims aren't insured, or you may have too little insurance to fully cover your claim, or your insurance company may deny you coverage on your claim because of some

exclusion. Who knows, your insurance company may even go bankrupt. Some do.

The sad truth is that insurance covers few financial catastrophes. For solid protection you must do more than buy a liability insurance policy. You need a financial self-defense plan that protects you against any size or type claim…everytime!

How can you best protect your assets?

There are countless ways. You undoubtedly know something about the more common options: exemption laws, LLCs, corporations, limited partnerships, offshore entities, trusts and so forth.

These strategies are only the tip of the iceberg, but there are also advanced methodologies. These sophisticated, "cutting-edge," legal and financial strategies and more complex arrangements can give you tremendous financial as well as protective benefits.

Some strategies are more financial than legal. For example, I employ structured financial products (SFPs), and complex arbitrage arrangements to effectively shift wealth between spouses with different liability exposures. Or I introduce a variety of

domestic or foreign insurance products to better shield a client's wealth. Financial planning, as well as the available financial products, has become very sophisticated, and with it, the opportunities to design more effective asset protection plans.

To counter-balance complex plans are the quite simple, even obvious, plans. For example, exposed cash can prepay expenses or repay a favored creditor. Use common sense. It can give you your solution. Asset protection plans can be dissimilar because any plan is based upon many variables. How should you protect yourself? What is your best strategy?

Because asset protection is a new specialty, practitioners argue different theories and opinions as to the best approach in any given case. No two practitioners are likely to recommend the identical plan in a given case. Different approaches don't necessarily suggest that either plan is right (or wrong).

Each planner – for whatever reason – simply believes her specific prescription is the best medicine. Ultimately, the test of any strategy is when debtor and creditor stand before a judge who decides which assets the creditor takes, and which assets the debtor keeps!

Strategy is more than choosing the right way to title your various assets. There's also the timing strategy. When do you build a stronger plan?

There's also the jurisdictional strategy. Where should you keep your assets for the strongest protection?
No less important is the integrational strategy. How do you incorporate asset protection into your existing or desired personal financial plan, or within your business's framework?

Strategy fundamentally involves doing "something" different with your assets. This involves dislocating your assets from its unprotected status quo. As you see, there are many variables to consider, so I can consider an incredibly broad range of strategic option. Though frequently, the options quickly become narrowed because the one best option is clear, or the circumstances (a pending lawsuit or imminent bankruptcy) reduce the possibilities.

Your asset protection planner must give you the widest range of protective options, because any one firewall is only one possible tool in the planner's toolbox. No one firewall is everybody's lawsuit-proofing answer.

Your planner must also expertly use each protective tool. Unfortunately, these more versatile planners are difficult to find. Few planners offer both offshore and domestic (U.S. - based) protective strategies. But high net-worth individuals frequently need both a domestic and offshore plan component.

Your planner must skillfully provide both. Or your planner may protect only specific assets because that's how the planner makes money. Insurance professionals sell insurance/accounts receivable factoring programs to physicians and business owners, suggesting that through these financing plans they can protect their receivables against lawsuits.

Such financed insurance programs may make sense for you. But even when it's good to shelter your accounts receivables, how will it protect your many other assets?

The planner who doesn't give you the complete arsenal of protective firewalls reduces your options and your protection.
Your planner can only customize your best plan by considering every factor unique to you, including:

- What are your state laws?

- What assets must you protect?
- What liabilities do you need protection against?
- Do you need preventative or crisis planning?
- What are your financial (estate planning, investment and tax) goals and present plans?
- What strategies would you most comfortably adopt?
- What are the costs, both immediate and ongoing?
- What is your personal situation (age, marital status, etc.)?

Your plan must also do more than protect your assets from claimants. It must also limit your personal liability. Your goal is to limit claimants to the fewest defendants and fewest assets possible.

Avoid personal exposure. Title your assets to separate protective entities, so the creditors of any one entity can only target the assets owned by that one entity.

As a business owner or professional, you should not shelter only your personal assets – you must also protect your business. Limit creditors of any one business to the assets of that one business. Insulate each entity; then insulate each valuable asset within that entity. Planning must consider each party, entity and asset that needs protection.

Put your name on it

One of the most important measures to take in order to protect your wealth is to title only exempt assets to your personal name.

The simplest way is to personally own only assets with federal or state statutory protection against lawsuits and creditors. These are exempt assets. Own no assets in your own name that are not exempt and self-protected. Unprotected assets owned individually are assets your creditors can easily claim.

This book will highlight those assets that are most commonly creditor-sheltered. You usually don't need to do nothing more to protect them. Many people rely strictly on their homestead laws, wage and pension exemptions, bankruptcy exemptions and other protective federal and state laws to keep their individually owned assets safe from creditors.

Four types of assets are typically exempt:

- Personal residences (a.k.a "homesteads"),
- Personal effects (such as furniture and clothing),
- Pensions and retirement funds (IRAs, 401(k)s, annuities, etc.)

- Life insurance.

To maximize your protection, you'd convert non-exempt (unprotected assets) into exempt self-protected assets. If you live in a more debtor-friendly state, you have several options. If you live in a less protective state, you might "jurisdiction shop" and relocate to a state that's more protective, or you might swap with a liability-free spouse your interest in unprotected assets for your spouse's interest in protected marital assets of equal value. But be careful.

Transforming non-exempt assets into exempt assets has its limitations. In some states, "last minute" conversions are a fraudulent transfer if you already have a creditor.

How protective are these exemption laws against lawsuits?
The answer varies by state. State exemptions can be extremely valuable or relatively meaningless. Exemption law efficacy depends not only upon what liability you need protection against, but also upon your state laws, your assets, and the equity in the asset to be protected.

Protecting yourself with the federal and state exemption laws can seem like a simple exercise, but it's quite tricky. You'll definitely

need professional advice here, so you are confident that your state laws will fully protect your assets under your specific circumstances. You may have misconceptions about your exemption laws and assume certain assets are self-protected, but this may not be the case.

A greater difficulty with the exemption laws involves the interplay between the state exemptions and the federal exemptions (those which apply in bankruptcy). Pro-creditor changes in the new bankruptcy code have disadvantaged affluent debtors who will now find their state law exemptions less helpful if they go into bankruptcy. The homestead exemptions are one example.

Conversely, the new bankruptcy law better protects certain other assets, most notably retirement accounts.
The threshold question in exemption planning then is whether you expect to resolve your legal problems with or without bankruptcy.

Only when you have this answer can you determine which exemptions would apply. Nor can you always avoid bankruptcy. Because the new bankruptcy law is generally more favorable to creditors, I might expect more creditors to petition debtors into

involuntary bankruptcy, causing these debtors to lose their more liberal state exemption protection.

A further complication is that not every state lets you apply the federal exemptions in bankruptcy, though most states allow a bankrupt individual to choose between the federal and state exemptions. (When you file bankruptcy you must choose exemptions. You cannot combine federal and state exemptions.)

Though you must choose between the federal or state exemptions where you have the option, the exemption laws of certain states allow you to also apply supplemental federal exemptions, which may expand your protection.

You can choose which specific property to exempt within the terms of the exemption system that you elect. If you apply the federal exemptions in bankruptcy, you and your spouse may each claim the full exemption, but you cannot always double your exemptions under state law.

In either case, your strategy is to own as many exempt assets as possible. The states generally exempt the same assets that the federal system exempts, though their exemption limits vary.

You must then answer a number of questions before you design your one best exemption strategy. You may need both an asset protection attorney and a bankruptcy attorney familiar with your state laws. To conveniently find the federal and state exemptions, visit www.bankruptcyaction.com/bankruptcyexemptions.html.

Your next goal is to title your non-exempt assets to one or more entities that prevent your creditors from seizing those assets.

You have options. Co-ownerships, corporations, limited partnerships, limited liability companies, domestic trusts and offshore entities are a few possibilities. There are others. When you title your assets to one or more protective entities you separate your legal ownership from your beneficial ownership. You own only the beneficial rights – the rights to use and enjoy the asset.

The legal ownership is with the entity which is not subject to your personal creditors' claims. Which protective entity will best shield a particular asset? That answer, too, depends upon several factors: the specific asset, your state laws, taxation, your estate plan, financing, the number of co-owners (if any), are a few. You'll need professional advice to choose your ideal entity.

But I'll give you general recommendations for titling specific assets. Remember, other entities or strategies may be preferable in your case.

I often combine protective entities, whether to achieve more protection or to accomplish other planning objectives. For instance, you can multiply your protection if your limited liability company is owned by a limited partnership. As another example, your limited partnership may be owned by your living trust. This will give you asset protection (the limited partnership), and then living trust will let your estate avoid probate.

I discuss various entities throughout this book. There are other possible variations. Variations of limited partnerships are limited liability partnerships (LLPs) and limited liability limited partnerships (LLLPs). The potential entities to choose from and the various entities available from other countries can make your choice bewildering.

Equity-strip strategy

I must often do more than shelter non-exempt assets by titling them to one or more protective entities. I then have additional firewalls.

One method is to "strip the equity" from real estate and personal property. Unencumbered, vulnerable wealth converted to debt-ridden wealth becomes worthless to a plaintiff.

I use many different mortgages and lien arrangements to equity-strip real estate or personal property. As the property owner, you or your protective entity retain title or legal ownership to the property, but you effectively transfer the asset's economic value to the mortgage holder; in this instance, to reduce the equity for seizure by creditors or litigants.

Nothing discourages prospective litigants more than the reality that you are mortgaged to your eyebrows. You can own millions in assets, but if the mortgages against your assets equal their value, you are indeed a poor lawsuit candidate. Prospective litigants want equity to seize. When you pledge your assets to other creditors, your poverty becomes negotiating power.

Equity stripping for asset protection is its own specialized niche. I have developed many creative ways to structure "friendly" liens against assets. But you want bonafide liens. Sham mortgages can be set aside by the courts when you have a more aggressive creditor. You must also protect the loan proceeds. The devil is in the details.

Again, that's why you need a good asset protection lawyer.
You'll notice that all of the above strategies fall into the category of either transfer-based asset protection (transferring an asset out of a creditor's reach) or transformational asset protection (transforming the asset into something a creditor couldn't get or wouldn't want).

For example, part of your salary can be placed into an ERISA-governed plan (401(k), etc.) that is exempt from creditors. Although this involves exemption planning, it also involves transferring cash into an ERISA-governed plan, and is, therefore, transfer-based asset protection as well.

Another method involves using exposed cash to prepay certain expenses or repay favored creditors (as long as those creditors aren't "insiders" under applicable fraudulent transfer or fraudulent conveyance law).

For example, one could take exposed cash and use it to pay in advance for a five-year commercial lease. Such a technique results in the right to use an asset (the leased property), a right most creditors wouldn't want. This is transformational asset protection.

Nearly every asset protection strategy relies upon one or more of these three core strategies, while simultaneously utilizing either transformational or transfer-based methods. These are the "firewalls" from which you build your strongest financial fortress.

Don't put everything in one basket

It's also smart to deploy your assets into separate protective baskets or protective entities. Why put your eggs in one basket? It can be a costly mistake. You want to force your creditor to pursue assets deployed in multiple directions, protected by different entities, and entrenched in several jurisdictions.

Scattering assets severely handicaps your creditor. If your creditor recovers assets from "one basket," the wealth sheltered in other "baskets" remains safe. Diversification is essential to protect significant wealth.

For example, if you have millions at risk, I would deploy your funds into several protective baskets, which would also be quite dissimilar. Your "baskets" would be different protective entities (or entity combinations), and in different jurisdictions – whether states

or countries. Combining layering (or defense-in-depth) with diversification (defense-inbreadth) produces a stronger shield.

The Time Division shield

Here's another strategy: A curious thing happens when you divide your assets into present, future or fractional interests. The asset's value dramatically drops. In many instances, they become near-worthless to a creditor. So, rather than own assets outright, you may lease property with a long-term reverter (reversion of title) clause.

Or you may own only a life estate to property. You have many ways to divide ownerships into time spans which can frustrate creditors who have nothing of substance to seize today.

Similarly, you can divide ownership (via a protective entity) between different family members or trusts. Co-ownerships (particularly tenancy-by-the-entirety in certain states) can also insulate the assets from claims against one co-owner spouse.

Time-segmented, fractional ownership arrangements can also play a significant role in asset protection planning. These same techniques are also useful for estate planning, too. Combine these strategies

with protective entities and equity-stripping to interpose another protective layer into your plan.

Be the one who makes the first step

There are a surprising number of ways to impose liability on a creditor who is after your assets. For instance, you can saddle a creditor with a charging order against your limited partnership or LLC with a huge tax liability. Or a creditor who starts litigation against your foreign trust or LLC may be forced to post a huge bond to cover your legal fees.

I use these liability-imposing features as a porcupine uses quills. You become less attractive to predators. Counter-offensive possibilities seldom dictate using a particular defensive strategy, but it may influence it.

You want your creditor to have a “downside” from pursuing you. A creditor uncertain about what he might gain from the asset chase must realize what he can lose. This sobering note helps level the playing field.

The best counter-offense strategy? Become so formidably protected that a creditor would incur huge legal fees to collect.
The creditor's fees must be far beyond what the creditor can possibly recover from you.

Asset protection helps you win that war of attrition. Whether a plaintiff or defendant wins or loses is often decided by who must write out the bigger checks to their attorneys. That too is counter-offensive strategy.

Don't go on the offensive only after your creditor wins a judgment. Go on the offensive when you're first threatened with a claim. That's your attorney's job. A good lawyer will know which tactics will make it painful (expensive, time-consuming, embarrassing, etc.) to chase you. If you don't have that kind of attorney, find one.

You can't afford a milquetoast attorney – the type who knows only how to watch you get beat up while he sends you big bills. Your trial lawyer is your first line of defense. Your asset protection lawyer plays back-up. He or she is your safety net. If you are in serious litigation or your wealth is otherwise in jeopardy – and your defense attorney doesn't suggest an asset protection safety net, it's time to worry about how "street smart" your lawyer really is.

Defense-in-depth, diversification, and counter-offensive planning add more complexity and cost to a plan. Therefore, some of these strategies may not be appropriate for you if you have a lower net-worth or if your assets are not at immediate or serious risk.

Control your assets

Another common perception about asset protection planning is that one must always surrender control over their assets. That's sometimes true. However, it's frequently untrue. Much depends on the specific firewalls.

For instance, the limited partnership and limited liability company are two entities that let you retain complete control, and the assets titled to these entities will remain protected.

Similarly, one would retain control over exempt assets and assets titled between husband and wife as tenants-by-the-entirety.
Other methods allow you to control your assets while having little or no apparent control to recover assets from the structure.

An example would be to title your cash to an offshore LLC that purchases an offshore variable annuity. You retain control how the

cash is invested inside the annuity. However, the annuity policy governs when, how much, and to whom annuity payments are made. You can take it a step further, so you have no unilateral ability to withdraw annuity payments (after they've been made) from the offshore LLC (although you may exercise that right with the consent of an offshore manager or co-manager).

These measures are important if it's necessary to prove your inability to repatriate assets to the U.S. per a judge's order, for example.

On the other extreme, it's fatal to a plan if you retain actual or de facto control over a trust created to protect your assets. Even then, there are various control-retention techniques that should allay most of your fears about delegating control to a third party.

A good plan strikes an optimum balance between safety and control; an objective not always easy for a planner to achieve because many clients stubbornly want to retain full control over their assets, even when it endangers their plan.

While it's possible to achieve strong protection without sacrificing control, you'll find that there are preferable ways to safeguard your

assets even when you must entrust them to others. You gain considerably more planning options once you understand these control mechanisms, and a plan can be customized for you that will give you greater control, or even complete control, while still adequately protecting your assets.

How much control you can safely retain in any given instance must, of course, be determined by your advisor, and it's always wisest to err on the side of caution. Oftentimes a debtor has little choice but to relinquish control.

Liability insurance tips

Liability insurance is a sound planning strategy. But too little insurance coverage still exposes you to judgments above your coverage. Considering that plaintiffs' lawyers manipulate juries into bizarre awards, you can't predict what a litigant can recover. Your million or multi-million dollar liability policy may not be enough.

Excess liability claims or lawsuits for more than the insurance coverage are escalating.
Most cases settle within the liability policy limit. But until your case settles, you'll suffer the anguish that possibly – just possibly – you

may be hit by a judgment above your coverage. You'll then lose your assets, despite your insurance.
Less than a million dollar liability policy is inadequate. But insurance is expensive. You must buy it right to get maximum protection at minimum cost. Some tips:

Segregate the costs for each liability policy. One coverage may have tripled in cost while other coverages have decreased. Which coverage remains a good buy and which should you reduce or eliminate?

- Increase your deductibles. Absorb whatever losses you can to reduce your premiums substantially.
- Utilize free programs. For instance, insurers reduce auto insurance premiums when drivers enroll in drivers' education classes.
- Check if your trade or professional association can deliver substantial savings with their sponsored liability insurance.
- Investigate package policies if you own multiple businesses. It can reduce your premiums by 25%.
- Shop. Insurance rates are regulated in only several states. Get five bids and re-bids annually. Who's this year's lowest cost insurer?

With your premium savings, buy an umbrella insurance policy. Umbrella insurance is essential for every family, individual or business.

An umbrella policy protects you against claims not covered by standard insurance policies, as well as claims beyond standard policy coverage, such as homeowners and motor vehicle insurance. A $2 million umbrella insurance policy costs relatively little. Check with your insurance agent.

I don't always recommend insurance. Liability insurance is one reason for many costly, frivolous lawsuits. Insurance means "deep pockets," and deep pockets attract lawsuits. Litigants know insurance companies have money and that insurers often settle frivolous lawsuits because defending a case can be far more costly.

Insurance not only attracts lawsuits, but it's also prohibitively costly for doctors and others in high-risk industries who can less afford its escalating costs.

That's why so many professionals and business owners "go bare" without liability insurance. One obvious problem with dropping your liability insurance is that you must then pay your defense costs

if you're sued. It can easily cost you $100,000 or more to defend against even a routine liability or malpractice suit, so going without insurance can also be expensive. If you "go bare" (or uninsured), then obviously you greatly increase your need for solid asset protection.

So buy legal defense fund insurance to cover your defense costs. Combining legal defense coverage with a good asset protection plan can be a sound alternative to huge insurance premiums which only magnetize lawsuits.

Structured financial products

Not every financial self-defense strategy is taught in law school. Some of the better strategies are taught in business school.
For example, structured financial products (SFPs) (which range from more speculative investments to complex arbitrage arrangements) can, in a variety of ways, depress (on paper, at least) the value of your investments.

This reduced value essentially transfers into a protective entity. Creditors can, only with great difficulty, unravel these transactions. The wide array of possibilities (and their complexity) makes them

difficult to fully explain, but zero-coupon bonds, staggered calls, collars, puts and other arbitrage, replication or devaluation procedures are common techniques.

These strategies aren't important if you have modest wealth. Yet they're essential to the planning for high net-worth individuals with large portfolios and sufficient financial sophistication to understand their plan.

I work closely with financial planners to create smart financial solutions to meet my clients' wealth sheltering needs. Insurance professionals and insurance-based products are also valuable tools in my arsenal. More and more asset protection lawyers now use financial products in their planning. These financial products can also advance the clients' investment or estate planning goals.

Beware of mistakes

You have seen the more common strategies. Now let's discuss the mistakes and costly errors that only weaken or destroy your protection, create problems, and can cause you to lose your assets. Here's such a mistake: "I don't need asset protection. My assets are titled to my spouse. As a housewife, she won't get sued." Chauvinism

is politically incorrect. Nor is it always true that the stay-at-home wife (or husband) is invulnerable. More wives are breadwinners. My point, however, is that it's bad strategy to title marital assets to the less-liability-prone spouse.

This common strategy has obvious hazards. Can you be certain your spouse will stay creditor-free? Divorce is also common today. Although divorce courts normally equitably divide marital assets, regardless of which spouse holds title, the spouse holding title may sell, mortgage or conceal the assets.

And when the marital assets are titled to one spouse, you lose a huge estate tax reduction opportunity (your estate tax exclusion). Moreover, creditors can argue that the assets were purchased or maintained with the debtor-spouse's funds, so the non-debtor spouse holds these assets in constructive trust for the benefit of the debtor spouse and derivatively the claims of his or her creditors.

The law works in curious ways. Titling assets to your spouse is seldom your best option.

You don't title your assets to your spouse. Instead, you figure that your easiest, safest option is to title your assets to a trusted friend or a relative until the legal threat against you passes.

Why do people foolishly believe that a "straw" is their "best" strategy? The "straw" holding your property may be a friend or relative, but whoever it is; they hold title to your assets. The real deal, of course, is that you still own the asset. But for lawsuit protection, you don't want the asset in your name.

The pitfalls to this are apparent. First, it's a fraudulent conveyance to gift assets to a friend or relative without consideration, on the tacit understanding that they'll return your property once your creditor goes away. Think about it. Nominees or straws have their own marital problems, tax troubles, creditors and lawsuits.

Will a straw's creditors or ex-spouse claim your assets? You can as easily lose your assets to your straw nominee's creditors as to your own.

The tax problems are also significant when you title your assets to individuals other than your spouse. It triggers gift and capital gain taxes. Your nominee straw can also incur a gift tax when he or she

re-transfers the property back to you. And bankrupt individuals who title assets to straws have bigger troubles.
Bankruptcy fraud is a serious crime.

Finally, can you really trust your straw? Who can you really trust? Parents steal entrusted assets from their children, and siblings double-cross siblings. Your best friend might forget that your asset isn't really his. Avoid straw deals! I can show you far safer and legal ways to protect your assets.

Never confuse secrecy or concealing assets with asset protection. Financial privacy can be helpful, but once you're sued you can no longer rely upon secrecy because a judgment creditor can compel you to disclose your assets. If you truthfully disclose your assets, you lose secrecy. If you conceal your assets, you commit perjury. That's not legitimate protection.

You want a plan that lets you fully disclose your assets, confident that they'll remain safe from your creditor. A judgment creditor can force financial information disclosure through deposition, interrogatories, requests to produce documents or subpoena your records and information from third parties.

Judgment creditors can and do find debtors' assets. Loan and credit applications, bank records, tax returns, court cases (such as prior divorce that discloses assets) and insurance policies all provide clues. The paper trail is revealing.

Computers expose our financial lives. Judgment creditors and prospective litigants often use professional asset search firms to find concealed assets. These firms can financially profile you with stunning accuracy. Forensic accounting firms trace deviously and secretively deployed wealth.

So avoid "hide the assets" games. Your creditor will probably find your assets. The sounder policy? Tell your claimant early in the game exactly what assets you own and how they are titled. Most importantly, explain precisely why they are beyond creditor reach. Make asset protection your selling tool. Convince a claimant that you're simply not worth suing.

The cold hard reality of litigation, from an attorney's perspective at least, is that it's almost always all about money.
Attorneys work for a living. They have bills to pay like everyone else. Although they often represent clients on a contingency fee basis, they'll normally do so only if they believe they'll get paid.

If a potential defendant has no exposed assets, the attorney won't get paid. Most plaintiffs' attorneys first do an asset search on a potential defendant before taking on a contingent fee case. If their search reveals few unprotected assets, the attorney is then uncertain whether he will get paid for his efforts.

Even if the asset protection plan is pierced, the process may be lengthy, expensive, and uphill. The attorney will then insist on an up-front retainer before accepting the case. This shifts the risk of suing a defendant and losing (or being unable to collect) to the plaintiff, who now realizes their lawsuit can be an expensive, risky undertaking!

Other than lawsuits with the potential for large judgments against wealthy (albeit asset protected) individuals, attorneys and would-be plaintiffs usually opt for easier prey. This is basic human (and even animal) nature. A pack of predators stalking a herd go for the easiest kill.

With that said, people who think they are well-protected may not be. The predator/litigant determines that an apparent defense is only smoke and mirrors. The defendant is surprised to lose his or her

assets. They learned too late that you can't have illusory protection. You need solid, effective asset protection!

As an asset protection planner, I see many well-protected clients threatened with litigation, only to have the threat fizzle.
The effectiveness of protection is most striking when several codefendants are sued. The protected clients are dropped from the suit which proceeds full-steam against the unprotected, deep-pocket defendants.

Books have been written about fraudulent transfers. Mention asset protection and you'll have questions about this important topic.
It's not necessary to become an expert on fraudulent transfers, but you should know the basics.

Your asset protection plan can't become that sound financial fortress unless it can withstand a fraudulent transfer claim – an especially important point if you have already been sued or have a present liability.

Asset protection planning is a vaccine, not a cure. The only sure way to avoid fraudulent transfer claims is to protect yourself before you're in trouble. Once you have a lawsuit or liability, many

otherwise protective strategies are no longer effective – just as a vaccine loses effectiveness once you are afflicted with a disease. The best protection is preventative planning.

The fraudulent transfer laws give claimants the right to unwind or revoke certain transfers made by debtors so that the transferred property can be seized by the judgment creditor. In other words, under certain circumstances, the courts invalidate sales or gifts by debtors.

Whatever the debtor sold or gave away is transferred back to him or her, so the creditor can seize the property. These laws prevent debtors from transferring property to defraud their creditors. A fraudulent transfer can partially or totally destroy your protection.

For sound protection, you must title your wealth free of these potential claims. Fraudulent transfers are obstacles to that goal because creditors can recover assets no longer in your name. Fraudulent transfer laws distinguish effective protection from the ineffective disposition of assets.

Judgment creditors use fraudulent transfer laws to reach assets transferred to a spouse, family member, friend, corporation,

partnership, trust or any other third party. Creditors succeed when they convince the court that the transfer was a last-ditch effort to defraud them. So a fraudulent transfer challenge is often the true test of an asset protection plan. To recover, the creditor must prove:

1) there was a gift or transfer of property
2) for less than fair value
3) which left the debtor insolvent

This, of course, greatly simplifies what is in actuality a complex law. There are often differences of opinion between lawyers and courts as to what, constitutes a fraudulent transfer.
The fact that a creditor might, recover a fraudulently transferred asset doesn't necessarily mean that every creditor tries.

Few fraudulent transfers are recovered by creditors. One reason is that few judgment creditors discover fraudulent transfers, or the amount owed the creditor, or value of the transferred assets, may be too small to justify the creditor's time and expense to attempt recovery.

Moreover, there may be many competing creditors, and recovery by one creditor isn't worthwhile to that creditor when the creditor

must share the recovery with other creditors. Finally, the procedural obstacles to recovery may be too great. For example, offshore asset protection imposes procedural barriers that make it extremely costly and time-consuming to attempt recovery.

A creditor then may have legal recourse under the fraudulent transfer laws as a theoretical remedy, but they might not find it their practical remedy when they must overcome too many firewalls.

The creditor's legal right to reclaim fraudulently transferred assets becomes academic when the creditor won't assert those rights in practice, but this shouldn't encourage fraudulent transfers.

Also, it's faulty to base your plan upon the mere hope that a fraudulent transfer won't be discovered or acted upon by a judgment creditor. The best plan is one where your creditors can't recover assets as a matter of law, and won't attempt recovery as a matter of practicality.

This doesn't suggest that it's too late to attempt to protect yourself once you have been sued. It does mean that you'll have fewer good options, and that your resultant plan may be somewhat less effective than one completed before you incur liability. The greatest danger

to your financial safety may be the lawyer who tells you that "nothing can be done" because you have already been sued. True, fewer things can be done. But until your assets are already seized by your creditor, you do have options.

Also remember, a fraudulent transfer is not a crime. It is simply a creditor remedy to recover assets.

Planning delves more into the "why, when and under what circumstances assets were re-titled to their now safer refuge." Courts don't want their judgments ignored, and they're less cooperative with debtors whose last minute shenanigans put their assets out of harm's way.

Then there's that tactical question about how and why your plan came to be. I must convince a judge that your plan had an innocent purpose. It must essentially pass a "sniff test" that doesn't offend judicial sensibilities. Here's where the asset protection planner meets the greatest challenge.

A transfer is fraudulent if made "…with actual intent to hinder, delay, or defraud any creditor of the debtor." There's no brightline rule here. A judge looks for indicia or "badges" of fraudulent intent.

A judge has broad discretion in determining whether the presence of one or more badges indicates a transfer was fraudulent. Furthermore, the standard of proof that must be met to indicate fraudulent intent is not the "beyond a shadow of a reasonable doubt" standard of criminal trials. But rather it is the less rigorous "preponderance of evidence" standard of civil litigation.

The potential badges you should avoid include:

1. The transfer or obligation to an insider:
This may, or may not, be a factor in determining whether there was a fraudulent transfer. For example, it's common business practice for someone to transfer personal property to a business they control (such as an LLC, LP, or a closely held corporation) in order to capitalize it.

Such a transfer, if done while creditor seas are calm, will almost certainly not be considered fraudulent, especially if the transferor receives an interest in the company equivalent to their capital contribution. On the other hand, transferring real estate to one's uncle the week before a lawsuit commences will likely be considered fraudulent.

2. The debtor retained possession or control of the property transferred after the transfer:

This may or may not be a factor in a fraudulent transfer case. For example, although a lien is a transfer of equity, mortgaged real estate typically remains in the owner's possession as a matter of standard business practice. In contrast, placing one's home in an offshore trust and then continuing to live in it rent-free is more likely to be seen as a fraudulent transfer.

3. The transfer or obligation was concealed:
See the comment for badge of fraud (7) below.

4. Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit:
Some transfers (such as a gift to an insider) are very vulnerable to a fraudulent transfer ruling if they occur after a creditor threat arises.

At the same time, no judge would expect you to stop your normal business activities once you've been sued, especially considering that a lawsuit may drag out for years. Of course, some business activities may involve transfers of assets. Consequently, if you are

facing a lawsuit, it's important to transfer property so there is a plausible reason for the transfer, besides trying to protect assets.

For example, by taking money and investing it in an LLC, you can protect the money while honestly claiming that you were only engaging in a business venture, instead of trying to defeat a creditor. At the same time, your claim of having a valid business purpose may be insufficient if other badges point to the fact that you transferred the asset to hinder, delay, or defraud your creditors.

5. The transfer was substantially all of the debtor's assets:
The most important consideration here is the need to avoid insolvency through a single transfer. Assuming one remains solvent, it's a good idea to stagger the implementation of an asset protection plan over time. For example, don't equity-strip all your rental units on the same day. Instead, interpose a few months between transfers.

6. The debtor absconded:
This is a very strong badge of fraud, which by itself would probably cause a transfer to be deemed fraudulent.

7. The debtor removed or concealed assets:

Oftentimes, there's a good reason for financial privacy, besides trying to defeat a creditor. Depending on your reasons, it may not be safe to conceal assets while the creditor seas are calm. However, this is usually not a good idea once one is threatened by creditors.

Remember: everything can and will usually be revealed in court, and privacy is more for lawsuit prevention than anything else.
Above all, remember that no plan should rely exclusively on secrecy and that improper (but not all) financial privacy measures are usually considered a badge of fraud.

8. The value of the consideration received by the debtor was not reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred:

This is why trusts are sometimes (but not always) a poor choice for protecting assets, since property is typically gifted to the trust. However, it's possible to transfer assets into a trust in a manner that involves an exchange of equivalent value. This badge demonstrates that gifting in general is usually a bad idea from an asset protection standpoint.

In contrast, when someone transfers an asset to an LLC, they receive an LLC membership interest in return. Done correctly, this membership interest constitutes an equivalent value of consideration received for the transfer.

9. The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation incurred:
Implementing an asset protection plan and then failing to pay one's debts as they become due, whether through inability to do so or otherwise, is a big error. Continue to pay at least most of your debts.

It's important to realize that these badges are not black and white indicators. A judge is given wide latitude to interpret the types and number of badges present when considering whether there was a fraudulent transfer.

Only rarely will a single badge denote a fraudulent transfer, whereas in other situations multiple badges of fraud won't be enough to prove fraudulent intent. Regardless, any asset protection program should avoid these badges whenever possible.

Above all, remember a judge must determine whether a particular transfer was undertaken to cheat a creditor. If there's not a plausible

economic reason for a transfer, and if the transfer is not a part of "business as usual", then it might not stand up if challenged in court. Such transfers will almost always carry at least one badge of fraud.

Because fraudulent transfer rulings are so detrimental to asset protection, it's a planner's highest priority to structure their plan so, to the extent possible, they can avoid the likelihood of such a ruling.

Here are six strategies that can effectively help you achieve this.

1. First and foremost, get your assets out of your name while the creditor seas are calm, even if the transfer is to a very simple structure. As long as the entity itself is not a debtor, a subsequent transfer by that entity will not be considered fraudulent.

Accordingly, when a creditor threat arises, you can then reinforce the entity or transfer the asset to a new entity with reduced fraudulent transfer concerns.

The reason for this is that the law considers only transfers the debtor makes as potentially fraudulent. Furthermore, restructuring an entity so that a creditor of the entity's owner cannot reach the entity's assets for its owner's debts usually doesn't involve a

transfer, and is, therefore, not considered a fraudulent transfer in most states. Even if it did, as long as the entity is not a debtor, a transfer from the non-debtor entity to another entity is usually not considered fraudulent.

2. Build up assets in a structure. Since these assets were never yours to begin with, there is no fraudulent transfer issue, period! This approach works best with an income-producing business or investments.

For example, if you own a business, instead of transferring all profits to yourself, have another entity own the business. You can then take enough money from this entity to pay your cost of living, and the rest can remain in the entity where it can be invested. Because this money remains inside the entity, the assets never come into your possession. Consequently, if you're sued there's no fraudulent transfer issue, period!

3. If you implement asset protection after a creditor threat arises, make sure that you receive an asset of equivalent value in exchange for your transfer. The trick here is to receive an asset that is exempt from creditor attachment in exchange for your transfer. Or you could purchase an asset a creditor couldn't otherwise touch (such as

an offshore annuity held in a properly structured offshore entity). Remember, under the law you have to not receive an equivalent value for your exchange in addition to being insolvent for a fraudulent transfer to have occurred (unless, of course, a creditor can prove the transfer was done with intent to delay, hinder, or defraud the creditor.

4. In addition to avoiding the badge of fraud in (3), avoid other badges of fraud whenever possible. Not all transfers carry badges of fraud, even if the transfer incidentally protects the asset from creditors.

For example, if you were to trade in your old car for a new, expensive leased vehicle, this transfer of cash for the lease (which will have little value to a creditor) will almost certainly not be considered a fraudulent transfer, even if badges of fraud (4) (making the transfer after creditor threats materialized) and (9) (making a transfer while insolvent) are present.

As long as the transfer is a bona fide business transaction for equivalent value with a truly independent party, badges (4) and (9), are much less relevant (nonetheless, we should still avoid these badges of fraud if at all possible).

5. Do you have other creditors who are not insiders? If so, and you come under creditor attack; then pay your non-hostile creditors. This is an excellent tactic that works even after creditor threat has arisen. The U.S. Supreme Court has noted that "In many (states), if not all, a debtor may prefer one creditor to another, in discharging his debts, whose assets are wholly insufficient to pay all the debts."

6. If creditor threat has already arisen, then use a proper offshore plan to purchase a foreign annuity. This transaction will likely be protected. Although strategies (3) and (4) (above) minimize the likelihood a fraudulent transfer ruling, they don't completely eliminate it.

Furthermore, strategies (5) and (6) may not protect all of your assets, or may not be feasible. Therefore, if the strategies we've discussed up to this point are inadequate, and creditor threats already loom, consider offshore planning.

This is, in many instances, the ultimate wealth protection plan. Protecting your money offshore in foreign trusts and/or LLCs insulates it from the U.S. court orders. Buying a foreign annuity through these entities is a fair value exchange which would put the transaction beyond the scope of a fraudulent transfer.