

WILLS, TRUSTS AND ESTATES NEWSLETTER

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5 Ways for Business Owners to Protect Their Assets

By Jonathan Kinney



Asset Protection is often a concern for business owners; particularly if they are engaged in a business with high incidents of litigation (such as doctors, home builders or other construction contractors for example).

Structuring your business as a corporation, limited partnership or limited liability company is a great first step to protect personal assets from business liabilities. However, in our experience, many business owners do not follow the formalities necessary to maintain a limited partnership, corporation or limited liability company as a separate entity. As a result, they may be doing so at their own detriment and losing the asset protection these entities provide. Courts will be more likely to uphold the distinction between business liabilities and personal liabilities if a few simple requirements are followed by the business owner.

Here are five simple tips to follow in order to appropriately maintain your corporation, limited partnership or limited liability company:

1. **Maintain a written record of director and shareholder meetings**, including issuing stock or membership units.
2. **Record transfers of ownership interests.** In general, it is good practice to record all significant business decisions.
3. **Follow the state's annual filing requirements.** Not doing so could result in the termination of a corporation, limited partnership or limited liability company. While these entities generally can be reinstated within a statutory time frame, this is a problem you want to avoid.
4. **Maintain separate business and personal bank accounts and credit cards.**
5. **File separate income tax returns**, with the exception of single-purpose entities where the business income can be filed as part of your individual tax return.

Following these simple steps will help protect your assets. One tactic often used when a lawyer brings suit against a business is to attempt to "pierce the corporate veil" – a term meaning that the litigation is seeking personal assets to satisfy business liabilities. However, if you follow the strict rules of maintaining a corporation, limited partnership or limited liability company, your personal assets should be adequately protected.

Failure to follow even one of the above steps can be disastrous. Although court decisions that actually pierce the corporate veil are somewhat rare, the consequences can be devastating.

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Individuals continue to neglect these minimum requirements to maintain their business as a separate legal entity because of the rush of time and the other demands. Taking the extra time and effort is well worth it, however, to ensure that your personal assets are protected from being used to satisfy business liabilities.

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VA Benefits - Know What's Out There

By Lauren Keenan Rote



For many family members helping to care for an elderly or disabled loved one, entitlement programs can be challenging to understand; particularly when there may be many demands on your time and resources may be stretched thin. However, they can also serve as a much-needed supplement to income and provide other valuable benefits.

If you have a loved one who served in the military, there may be VA benefits available to them (or their surviving spouse or other dependents) that you should know about.

For the purposes of Veteran Affairs benefits eligibility, a Veteran is defined as “a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.”

The U.S. Department of Veterans Affairs manages benefits programs for Veterans and their families. You may be surprised to find that there are a wide variety of options out there; from Disability compensation to education and training benefits to health care (including home care) and burial and memorial benefits for survivors and their dependents. The list is long and understanding what's out there may seem daunting at first, but finding out what options you have may also help your loved one get the support they need.

The Veterans Affairs website has a breadth of information on the benefits that your loved one may be eligible for and the requirements for filing for each. However, this article seeks to highlight some of the most beneficial programs that anyone with a family member who served (or a surviving spouse of a Servicemember) should be familiar with.

- I. **Death Gratuity Payment and burial benefits:** In the event of death of a Servicemember who dies while on active duty, his or her next of kin may be due a lump sum payment. This benefit can be of use by the family members for their support in the wake of their loss and for funeral and burial arrangements, among other things. Additionally, the VA offers burial benefits for service-connected and non-service-connected deaths.
- II. **Disability Compensation:** The Disability Compensation benefit is a tax-free benefit paid to Veterans with disabilities that are the result of a disease or injury incurred or aggravated during active duty. It may also apply to other disabilities believed to be related to or worsened by service, even when such disabilities occur post-service. Such benefits may be payable to the Veteran during life or to the Veteran's surviving spouse, his or her minor or dependent children or the Veteran's parents. In some cases, accrued benefits may also be payable to the Veteran's surviving family members. Accrued benefits are those due and unpaid to the Veteran prior to the Veteran's death.

- III. **Dependency and Indemnity Compensation or “DIC”:** is a tax-free benefit generally payable to a surviving spouse, child or parent of a Servicemember who died of a disease or injury incurred or aggravated in the line of duty or while on active duty for training. It can also apply for an injury, heart attack, cardiac arrest or stroke incurred or aggravated in the line of duty while on inactive duty for training, or from a service-connected disability or condition directly related to a service-connected disability. This benefit may also apply if the Veteran dies of a non-service-connected injury or disease, if the Vet was totally disabled from a service-connected disability for a qualifying period of time. Note, however, when a surviving spouse is also eligible for the military’s Survivor Benefit Plan (SBP), only the amount of SBP greater than DIC is payable. If DIC is greater than SBP, only DIC is payable.
- IV. **Survivor Pension:** The Survivor Pension is a payment made to the surviving spouse and unmarried dependent children of a deceased Veteran with wartime service. The Pension provides a monthly supplemental payment to bring an eligible person’s income to a level established by law. The payment may be reduced by the annual income from other sources, like social security, but can be increased by unreimbursed medical expenses which may be deductible from countable income. To be eligible, spouses generally must not have remarried (with some exceptions), and children must be under age 18, or under age 23 if attending a VA-approved school, or have a permanent disability before age 18, which renders them incapable of self-support. Any beneficiary must meet the qualifying income and assets “means test”. While there is no definitive threshold as to allowable assets, a general rule of thumb is generally as follows: any assets over \$80,000 for a married couple or over \$40,000 for a single person are likely to disqualify an otherwise eligible claimant. That said, this is not always the case, so if you think you or a family member may qualify, seek guidance on their status.
- V. **Aid and Attendance Benefits (also referred to as Special Monthly Compensation or “SMC”):** This is an additional tax-free benefit that can be paid to Veterans, their spouses or their parents (in addition to other benefits where the need exists). This benefit is a monthly payment at a higher rate, paid in special circumstances where the need for aid and attendance can be proven. This is a need-based benefit. Therefore, eligibility thresholds are important to note. Sufficient details to establish the survivor’s physical or mental impairment affecting their day to day living are required. The beneficiary must be homebound or confined to his/her immediate premises and must be suffering from a physical or mental impairment which affects his/her ability to dress and undress, feed oneself, attend to sanitary needs or keep oneself ordinarily clean and presentable. This benefit may also be available for claimants who are blind or extremely visually impaired. Surviving spouses who are eligible for DIC or survivors pension (SBP) may also be eligible for Aid and Attendance benefits.
- VI. **Other benefits may also be available** - talk with Veterans Affairs, visit their website or ask an attorney familiar with which programs might apply to your loved one.

In filing for benefits or assisting someone with filing, you may find that you need more time to gather the necessary supporting documents, but want to get the process started and secure an effective date as soon as practical. Consider Intent to File. Filing an Intent to File lets the VA know that you plan to file a claim, but that you need time to gather the details of the claim. By filing the Intent to File you get more time to gather information (up to one year), but also secure an earlier effective date for any awards or benefits due.

While the process of initially learning the nuances of these many programs may seem intimidating, the VA programs can prove beneficial to Servicemembers and their families alike. They are an important entitlement that should be explored when circumstances suggest that a benefit may accrue. It may help offer the support your loved one needs to get through an otherwise challenging time.

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