Asset Protection for Your Home – Bad Legal Advice is the Norm

Mid pleasures and palaces though we may roam,
Be it ever so humble, there's no place like home.
John Howard Payne (1791 – 1852)

A good part of the American dream and the largest single asset many people own is their home. Whether shelter or showpiece, the sanctuary it provides and the investment we make in our homes is among the largest in the Western world yet surprisingly little thought goes into protecting that investment.

In some states the equity in your home, should you be fortunate enough to have any left at this point, is completely protected by law, typically homestead statutes. In other states that protection is so low that it is virtually non-existent and requires you to take action to protect your investment. Knowing what the homestead limits in your state are and when they apply, *(i.e. only in bankruptcy or only on a dwelling actually occupied by you)* is a good start.

The key is simple: You do not need to hold personal title to your home to use, control and enjoy it the way you want to.

We see many physicians and other business owners transfer their primary residence to a spouse, child, or other relative for safekeeping, a common amateur mistake that fails to protect the asset in any competent way. All this achieves is the substitution of your liability for that of another individual that drives a car, interacts with public in some way, and may have their own professional liability issues. Even worse, if that person has only one or few assets, the home you transferred to them may be the *only* asset they have available to satisfy any kind of liability or judgment. Example? A physician in the Northwest does some Internet "research" (yikes!) and decides to transfer his paid-for $2.9 million home to his adult college-aged son to protect it from his professional liability. Within a year the son was involved in a car accident that killed another driver, the family home was his only asset.

Another common error involves the assumption that your home, or any other asset, is protected by having it titled in your Revocable Living Trust. As the first word implies, the trust is revocable during your lifetime and you can be ordered to convey it to a judgment creditor by the courts. Having your home adequately protected by an **irrevocable** trust on the other hand is a better option and may allow you to keep mortgage interest deductions and capital gains benefits in certain scenarios. These tools must be chosen appropriately and by experienced counsel as they have serious tax, title, and use implications that will affect your rights to use and hold the property.

Many **estate planners** use tools like qualified personal residence trusts (aka QPRTs) that are not age- and use-appropriate outside their intended purpose, making a real gift of your home to your heirs. Make sure you are working with counsel that understands that you may want to upsize, downsize, or equity strip the property to make an investment of some kind and that the tools they are proposing you will allow you to do so. **Having your money in a "safe" is worthless if you can't get it open when you want it.**

Likewise, **business attorneys often make the mistake of using "business" tools for "personal" assets**, such as putting the home you live in into an LLC (or limited partnership, corporation, etc.) under the false impression that this somehow protects it. To be protective the vehicle has to meet all formalities of business entities, including separate bank accounts, records, and tax reporting. Further, it needs to have a legitimate business purpose, like property management or real estate investing and if you live in it you need to pay commercially reasonable rent to the entity that owns the home.

Given this only partial list of the details and hurdles involved you can see that, "Put your personal residence in an LLC," is both bad and incomplete advice for most people and such a transfer to a corporate entity can also cost you the capital gains benefit and mortgage interest deductions if not handled the right way.

Asset Protection only attorney Ike Devji has over eight years of practice devoted exclusively to Asset Protection and Wealth Preservation planning. He works with a national client base including 1000's of physicians and business owners often through their local attorney, CPA or financial advisor. Together, he and his associates protect billions in personal assets for these clients. Ike also regularly writes, teaches and speaks on these issues to physicians and other professionals nationally. See his work in WORTH, Advisor Today, Physician's Practice and at www.ProAssetProtection.Com

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