

LAST WORD

## Legal Strategies to Protect Your Properties

Most plaintiffs and creditors simply give up the chase when confronted with an asset protection structure. **By Jacob Stein, Esq.**

**C**ommercial real estate owners are frequent targets of lawsuits. Typically, these are lawsuits arising from their real estate operations, such as lender actions for default. Owners may also be exposed to risks unrelated to their real estate, like an auto accident.

Our law firm recently represented a 62-year-old real estate investor, George, who owned a single-family residence and a 30-unit apartment building. George helped his son, Mike, get into the real estate business by guaranteeing a \$3 million debt to acquire an investment property.

The investment property subsequently turned upside down and the lender was looking to George to perform on the guarantee. At 62, George was highly distressed at the prospect of getting almost completely wiped out financially.

Ultimately, we transferred the ownership of the apartment building into a limited liability company (LLC), and the ownership of the residence into a residence trust. Consequently, George no longer owned the apartment building or his house. Instead, he owned an LLC and was a trust beneficiary. Neither was an asset the bank found attractive.

### Challenging the plaintiff

In a different scenario, a few months ago our law firm received a call from Jim and Wilma. Among other assets, they owned a 30,000 sq. ft. strip mall. Some high school kids got involved in a fight at the strip mall, and the parents of one of the kids filed a lawsuit against Jim and Wilma. The lawsuit exceeded the insurance coverage on the strip mall by \$2 million.

Had the plaintiffs prevailed in the lawsuit, they would have been able to reach \$2 million of Jim and Wilma's assets. Our firm transferred the ownership of the strip mall to a LLC, transferred the ownership of their personal residence to a trust, and implemented an offshore

structure to hold liquid assets and investments. The plaintiff limited its lawsuit to the insurance coverage.

### Have a game plan

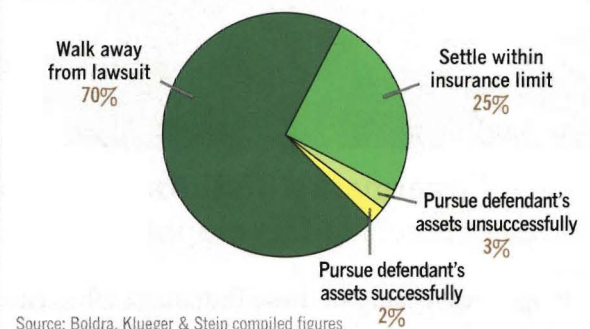
If the lawsuit is directed against the individual owner, either because of an outstanding personal guarantee (similar to George's case) or because the lawsuit is a tort action against the individual, the following strategies should be considered to protect assets:

► *Protect your home with a personal residence trust:* A commonly used structure to protect a personal residence is to transfer the ownership of the residence to a trust commonly referred to as a personal residence trust. Once George transferred the ownership of the residence to the trust, he no longer held legal title to the residence, and it was no longer an asset that the bank could reach. By properly structuring the trust, George retained complete control over his home, including the ability to sell and refinance, without any tax consequences.

► *Transfer your real estate to an LLC:* Assets owned by an individual through a LLC or a limited partnership (LP) are not deemed owned by the individual because these legal entities have their own separate legal existence. This means that a plaintiff suing the debtor will no longer be able to reach the assets of the LLC directly. Instead, he would have to pursue the debtor's interest in the LLC or the LP.

Interests in LLCs and LPs are not subject to attachment by a plaintiff. This is known as the charging order protection. This is the protection that the bank ran up against in George's case. Transferring real estate and other assets to an LLC or a LP

### WHAT HAPPENS WHEN PLAINTIFFS ARE CONFRONTED WITH AN ASSET PROTECTION STRUCTURE?



is simple, inexpensive and usually without any tax consequences.

► *Look overseas for maximum protection:* Liquid assets may be protected using LLCs and LPs and may also be protected with a special asset protection trust based in a foreign jurisdiction. Some foreign jurisdictions go out of their way to protect trusts and their assets. It is estimated that over \$7 trillion is held in protective offshore structures worldwide.

The assets transferred to a foreign trust are usually liquid, such as bank accounts or brokerage accounts, but can include intellectual property and interests in legal entities. The assets owned by the trust can be located anywhere in the world.

Real estate owners will always be targets of lawsuits. Approximately 70% of plaintiffs and creditors simply give up the chase when confronted with an asset protection structure. The rest are forced to settle on terms favorable to the defendant. The only way to accomplish that is by making it too expensive for the plaintiff or creditor to pursue the owner's assets. ■



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