



## *Strategies for Asset Protection*

Having worked hard to accumulate your assets, why would you not want to take steps to protect them to potential creditors? If you lose your assets, you will harm your lifestyle and financial security. The following are possible strategies to protect assets from future liability exposure.

- **Own an umbrella liability policy.** Although insurance does not eliminate liability, it does provide a source of funds to satisfy claim and pay for legal defense. Therefore, it is crucial to review insurance coverage to be certain that it is adequate. Personal liability umbrellas are relatively inexpensive and are a must.
- **Own your homestead in your own name.** Florida law provides that a homestead is protected from claims of creditors, other than taxing authorities, mortgage holders and mechanics liens. This protection is afforded to homes owned by individuals, not legal entities. As a result, homesteads should not be owned by a corporation, partnership or other similar entity.
- **Split assets with your spouse.** A commonly misused technique when attempting to protect assets is to retitle all assets into the name of the spouse who is a reduced creditor risk. This approach may protect the assets from one spouse's liabilities, but not the other spouse's. Moreover, this oftentimes conflicts with tax planning strategies contemplated in your estate plan.
- **Fund your retirement plan.** Many are aware that retirement plans, such as a 401(k) plan or IRA, permit tax-deferred growth of investment assets. They are also protected from claims of creditors, suggesting that maximizing savings through these plans is reasonable.
- **Own permanent life insurance policies.** Term life insurance is frequently acquired to protect a family from a loss of income in the event of death. These policies are certainly worthwhile, but only provide for a death benefit. Benefits during lifetime can be derived by owning permanent life insurance. Cash value of life insurance policies is generally protected from creditors and can be accessed by the policyholder with relative ease.
- **Own investment real estate in a legal entity.** Judgments create automatic liens against real estate. Therefore, owning investment real estate in one's own name can be problematic. If a legal entity, such as a limited partnership or a limited liability company (but not a corporation) is used to own this property, Florida law provides that creditors of a partner cannot attach or levy upon the property, unless the legal entity also is liable for such obligation.



- **Avoid loaning your automobile.** Florida law has determined that an automobile is a “dangerous instrumentality.” The owner of the car can be held vicariously liable for the negligence of the driver (even though the owner was not negligent). Consequently, anyone who loans his or her car to a relative or friend may be held liable for the negligence of the driver.
- **Consider making gifts and bequests in trust.** It is quite simple and straightforward to make outright gifts during lifetime and at death. Unfortunately, outright gifts and bequests can be attached by judgment creditors of one’s beneficiaries and may be subjected to a marital division in the event of divorce if the gift is commingled with marital assets. Gifts in trust, though, are generally not exposed to those types of claims if the trusts include a so-called “spendthrift clause”.
- **Add children sparingly to bank accounts.** One may wish to name one’s children as co-owners on a bank account so that they can write checks and receive the account at death without probate. What happens if that child is sued? The bank account is exposed to that judgment, even though the account is not really his/her asset. A better approach may be to title the account in the name of a Revocable Trust and name one’s children as co-trustees of the Trust.
- **Do not transfer assets in contemplation of a lawsuit.** If one is aware or should be aware of a pending lawsuit, or are suffering from legal or financial disabilities, any asset transfers will be closely scrutinized. Florida enacted the Uniform Fraudulent Transfer Act so that transfers can be set aside if determined to be fraudulent, which include transfers to thwart pending creditors.



Joshua T. Keleske, P.L. serves families in the Tampa Bay area with their estate planning, estate and trust administration, and business planning needs. If you have questions regarding how we can be of assistance to you and your family, please contact us at anytime at 813-254-0044. We are happy to answer your questions and arrange for an appointment to speak with you.

Please also visit [www.trustedcounselors.com](http://www.trustedcounselors.com) to learn more about Joshua T. Keleske, P.L.



*Serving Families in the Bay Area*  
Joshua T. Keleske, P.L. • Attorney & Counselor at Law  
3333 W. Kennedy Blvd. • Suite 204 • Tampa, Florida 33609

**Questions or comments?**

*Please email us at:* [jkeleske@trustedcounselors.com](mailto:jkeleske@trustedcounselors.com)  
*or call* (813) 254-0044 • *Visit us at:* [www.trustedcounselors.com](http://www.trustedcounselors.com)