



Ten Tips in Ten Minutes: *Low Cost Asset Protection*

In This Article:

- Protect your assets from creditors
- Reduce the risk of a lawsuit at no cost
- Know your rights against creditors
- Know what assets are exempt from judgment

Protection of assets from creditors is a common estate planning theme. These tips could help you avoid a lawsuit, or protect your assets if you are sued.

TIP #1: Living Trusts do not provide asset protection for the person who owns the trust. If properly drafted, a living trust can provide significant asset protection for **beneficiaries** of the trust, but not for the owner of the trust. The assets of a living trust are freely available to the owner of the trust. Therefore, they are also available to the owner's creditors.

TIP #2: Money cannot be collected from a debtor without a judgment. All claims for **money** must be converted to a court judgment before the debtor can be garnished. Collection agencies frequently threaten to take property from a debtor even when a judgment has not been issued. Not only is this impossible, but it is illegal to make such an unfounded threat.

Potential liability for a judgment can arise from two sources: (1) claims for money due, or (2) injury caused to another person or property. In either case, persons with potential liability for unsecured debt or injury claims should not live in fear of garnishment or seizure of assets unless they have been sued, and a judgment has been rendered against them.

TIP #3: Secured creditors can seize an asset pledged as security without a court judgment. Real estate and automobiles are typically purchased with a **secured** loan from a lender that provides funds to purchase the asset. Secured creditors can seize the asset that secures their loan by foreclosure or repossession if the loan is not paid on time. Court proceedings are usually **not** required for a lender to seize a secured asset. However, if the seized asset is not valuable enough to satisfy the creditor's claim, they must still sue the debtor for any deficiency.

TIP #4: A judgment can only be collected from the defendants named in a lawsuit. Family members are not liable for each other's debt regardless of how closely they are related.

In addition, surviving family members are never liable for the debts of a deceased relative. Creditors can only make claims against the **probate estate or trust estate** of a deceased person—not against assets delivered to heirs outside of a will or trust.

TIP #5: Married spouses enjoy special asset protection under Michigan law. Certain types of property owned jointly by married couples are exempt from judgment, unless a judgment is entered against **both** spouses. In other words, if one

spouse has a judgment entered against him or her, and the other spouse does not, then a judgment creditor may be prevented from seizing certain property owned jointly by both spouses to satisfy the judgment.

This special protection does not extend to all joint property owned by both spouses. It applies to all jointly owned real estate¹, and to bonds, certificates of stock, mortgages, promissory notes, debentures, or other evidences of indebtedness payable to both spouses². Protection is also extended to one-half of the balance of jointly owned financial accounts³.

TIP #6: Retirement accounts are exempt from bankruptcy and creditor's claims. Up to certain statutory limits, retirement accounts are exempt from bankruptcy. Michigan law also provides special protection for IRA and 401K accounts from the claims of creditors. In particular, retirement accounts may not be seized by creditors to satisfy judgment debts⁵.

TIP #7: Limited liability companies and corporations can protect owners from business debt. A limited liability company ("LLC") or corporation provides effective protection against claims for business debt. A business owner is not liable for the debts of an LLC or corporation, and creditors will only be able to take the assets of the company to satisfy a judgment⁶. However, it is important to adhere to the formalities of corporate structure. Otherwise, a court may "pierce the corporate veil" and extend liability for company debts to the owners themselves.

Incorporated business owners who provide personal services (e.g. contractors) should always have a written contract with customers to define the scope of the work to be performed. The combination of corporate structure and contract law can shield them against liability for *negligence* in the performance of work covered by the contract⁷. However, a corporation does not shield providers of professional services from personal liability.

TIP #8: Married couples may title their motor vehicles in only one name to reduce the risk of a lawsuit. Michigan law provides that the **owner** of a motor vehicle is liable for personal injury or property damage caused by the negligent use or operation of the vehicle - even if the owner was not

driving at the time. Having a vehicle titled in only one name reduces the risk that both spouses will be liable for the same accident, and therefore, reduces their exposure to a lawsuit.

TIP #9: Vehicles driven primarily by a child should be titled solely in the child's name. Remember that Michigan law provides for **owner** liability in a motor vehicle accident. Titling the vehicle in a child's name will protect his or her parents from liability for the child's negligent conduct while operating the vehicle. Insurance coverage on the vehicle will pay for damage claims up to the policy limits, but any excess liability can be collected directly from the owner.

TIP #10: Check your insurance coverage. Liability insurance is an effective way to protect your assets if you are sued for injury caused to another person. Review your home, business, and auto liability coverage with your insurance agent.

Auto insurance is especially important because a motor vehicle accident is the most likely source of significant personal liability. Make sure your auto policy has adequate liability limits, including *underinsured* or *uninsured* motorist coverage (17% of Michigan motorists are uninsured⁸). This type of coverage provides a source of funds when someone is injured by an underinsured or uninsured motorist.

If you are still not comfortable with your risk of loss, then consider an "umbrella" policy. An umbrella policy is inexpensive, and provides insurance protection above the limits of your other policies.

The risk of being sued is relatively small. Nevertheless, with a little legal knowledge, and almost no cost, you can reduce your risk of a lawsuit, or protect your assets from judgment creditors.

Footnotes

1. MCL 600.2807
2. MCL 557.151
3. MCL 487.703; Danielson v Lazoski, 209 Mich App 623 (1995); Dept of Treasury v Comerica Bank, 201 Mich App 318 (1993)
4. MCL 257.401
5. MCL 600.6023(k)
6. MCL 450.4501(3)
7. Lipp vs Bruce, Docket No. 20274 (10/9/07)
8. IRC, Uninsured Motorists, 2008 Edition



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