Retirement Daily

Your Money

Protecting Your Assets in Retirement

By Retirement Daily Guest Contributor | Mar 5, 2019 9:44 AM EST

By Steven Podnos

You've reached the golden years and are about to -- hopefully -- enjoy many years of travel and other fruits of your labor. But now you or your spouse causes a car accident and are being sued for several million dollars, with insurance that covers only a fraction of that amount. Talk about sleepless nights!

The reality is that you are probably as wealthy as you will ever be as you enter retirement. This also means you have the most to lose, but in more than one way. Not only do you have perhaps the maximum amount of money at risk, but you also can't recover from such a loss, because you are done with earning an income.

The risk of losing money from a lawsuit occurs in many ways, but for most of us it is due to one of three activities. The first would be your occupation (for example, being a physician), which by definition is a risk that would end with retirement. Second is a motor vehicle accident. Third would be owning rental real estate or other business real estate. Any of these might trigger a lawsuit from someone who wants your savings. There are other potential sources of liability (a contract dispute, a slander charge, etc.), but these are relatively uncommon.

Asset protection can be thought of as adding fences of protection around your assets. The more complex and legal the fences, the better. Some fences are related to existing law and some to the title with which you own the asset.

So, what can you do? First, understand that certain assets are generally protected from creditors depending on what state you live in. For example, most states offer strong asset protection for IRA accounts (but not necessarily inherited IRA accounts). Money left in a qualified retirement plan (such as an old 401k) is usually protected from creditors at both the state and federal level. Most states allow protection of funds in annuities and cash value in whole life insurance policies. It is indeed important to understand the asset protection laws in your state.

For assets not in one of these categories, the title under which you own the asset may be important. For example, some states allow "as tenants by the entireties" ownership. In some of these states, assets so titled are considered to be owned entirely by each spouse. So, if only one spouse is sued, the asset is protected as it is also owned completely by the other innocent spouse. If this is the case, it is important to own cars in only the name of the primary driver so that both spouses cannot usually be included in a lawsuit. In fact, any item that can carry liability in its use (auto, boat, jet ski, rental property) should be owned in only one name if "as tenants by the entireties" ownership is used for asset protection.

Avoiding either sole or joint ownership of rental properties is usually wise as well. Doing so gives a creditor an opening to sue one or both spouses. Rental real estate (commercial or residential) should usually be owned in a separate structure such as an LLC (limited liability company) so that the LLC liability is separated from the couple's individual or joint liability.

Other avoidance of liability makes great sense. Not owning vehicles with unrelated persons, and not owning real estate with others (unless in a protective structure like an LLC) is good liability avoidance. Not having a trampoline in your yard or an unprotected swimming pool are other examples of liability avoidance.

Along with using the right kind of ownership and avoiding liability exposure, another facet of asset protection is to share the risk/liability with an insurance company. We use liability insurance to help cover the risk of lawsuits. For most families, an umbrella liability policy is vital in this regard. These policies pick up where your auto insurance or homeowner's coverage ends and are bought in million-dollar increments. They must be integrated with the liability limits of your auto and homeowners coverage.

If you have considered these asset protection action items, you probably can deal with the auto accident discussed at the beginning of the article with much more equanimity. Take an inventory of your liability exposure and methods to combat it carefully to avoid a potentially very unhappy retirement.

About the author: Steven D. Podnos MD, MBA, CFP, is the principal of Wealth Care, LLC, a fee-only registered investment adviser that now advises 130 families nationwide. He was named as an official CFP Board ambassador in 2014. Steven wrote and published the book "Building and Preserving Your Wealth".