Financial advice from the professionals

Experts offer 10 tips to help protect your assets

BY AARON DALTON

In today's litigious environment, physicians need to be more careful than ever when it comes to protecting their assets – both practical and personal. The wrong asset protection plan can leave you exposed, vulnerable or – in the case of a frivolous lawsuit – a victim of fraud. In contrast, the right plan can offer financial security and peace of mind.

PSN spoke with several top financial advisors and attorneys, including Larry Keller, founder of Physician Financial Services; David Mandell, author, attorney and principal of the financial planning firm Jarvis & Mandell (Keller and Mandell conducted an asset protection seminar during Plastic Surgery 2004 in Philadelphia and will return for Plastic Surgery 2005 in Chicago); and Mike Dorvillier and Shari Miller, consultants and registered principals of LPL Financial, one of the country's top independent brokerage firms. The knowledge of these financial experts was used to compile the following list of 10 asset protection strategies that every plastic surgeon should know.

1. There's no place like home

A plastic surgeon's home is more than just his or her castle. It can be an unassailable component of an asset protection strategy. Keller points out that certain states offer protection for personal residences – the so-called "homestead exemption" – that prevents plaintiffs from seizing or forcing the sale of a physician's home.

It's important to note, however, that the amount protected by the homestead exemption varies widely by state. In New York, for example, the homestead exemption only protects $10,000 of a home's value, says Mandell, author of *The Doctor's Wealth Protection Guide* and *Wealth Protection MD: The Ultimate Financial Guide for 21st Century Physicians*. The homestead exemption in New Jersey "doesn't protect a dime," he notes.

2. Home sweet (refinanced) home.

If your state does not have an ironclad homestead exemption, it might be best to keep as little capital in your home as possible by aggressively refinancing, according to Mandell.

"For many of my clients who have a lot of equity in their homes, I recommend that they refinance, take out that equity and put the cash somewhere else," he says. "The tax benefits associated with interest on home loans, the low cost of fixed mortgages and the availability of guaranteed investments combine to give plastic surgeons the opportunity to make more money by drawing down their home equity and investing in fixed products within an asset-protected environment."

For example, if a homeowner can get a 10-year interest-locked loan of 5.25 percent, tax deductions may reduce the true cost of the loan to 3 percent, he says. The homeowner could make more than 3 percent by investing in government securities or AAA-rated insurance companies' guaranteed products, a strategy that could pay for the cost of all the homeowner's asset protection vehicles. What's more, a financed home is not an attractive target in the event of a lawsuit.

"If I have a $450,000 loan on a $500,000 home and someone sues me and obtains a judgment against me, that person will find out that my home is only worth $50,000 if seized, since the bank will be paid off first when the home is sold," says Mandell. "What's more, if the home is sold quickly to pay the creditor, it might be sold for only $450,000, and then it is worth nothing to the creditor (since all proceeds would go to the bank).

"The practical effect of home financing is to keep creditors from coming after the home in the first place, since it is just not worth anything to them," he adds. "It does not just protect the home, it discourages creditors from the get-go."

3. Practice safe investing

In each state, certain assets are known as "exempt assets" that cannot be seized in the event of a lawsuit, according to Keller. Exempt assets may include life insurance policies and annuities, as well as homes (as previously noted).

"If you can accomplish your financial goals while achieving asset protection, these investment vehicles should be considered," says Keller. One plan that is protected in all 50 states is an Employee Retirement Income Security Act qualified retirement plan. Such retirement plans have been declared exempt assets by the federal government.

Mandell echoes Keller's advice, urging any physicians participating in a non-ERISA-compliant retirement plan to work with their attorneys or pension specialists to convert to an ERISA-compliant plan.

4. Don't count on spousal protection

"Putting property in your spouse's name does not protect anything," warns Mandell. Though many physicians have the misconception that property is protected through non-physician spouse ownership, Mandell says that any assets owned by a spouse would be considered joint assets or community assets, should the courts came calling.

"If you are putting money into your spouse's bank account, it is obvious to anybody that it is a joint asset," he says. "Joint ownership does not protect more than 50 percent if a creditor sues you."

5. Doctor, protect thyself

While focusing on guarding their assets against legal attack, some plastic surgeons may forget that not every financial risk is related to a lawsuit. A bad fall or an auto accident could curtail a physician's ability to practice medicine. That's why Keller recommends that plastic surgeons purchase the maximum non-cancelable, guaranteed renewable, "own-occupation" disability insurance for which they qualify.

This type of insurance pays the plastic surgeon full disability benefits if he or she is unable to perform plastic surgery, even if the physician is able to work and earn the same or more income in another specialty or profession.

In addition, Keller suggests that doctors in private practice add disability overhead expense coverage to cover the cost of fixed practice expenses in the event of a disability. Covered expenses include rent, employee salaries, malpractice premiums and association dues.

6. Be smart and multiply

Why have just one corporation when you can have two, three or more? Keller recommends using multiple legal structures (LLPs, LLCs, Family Limited Partnerships) to protect your assets and limit your liabilities.

"A rental property should be owned by a separate entity," says Keller. "Your medical practice and office building should be owned by separate legal entities."

Mandell seconds that recommendation, saying he has advised clients with eight different rental properties to create eight separate LLCs.

7. Look before you (irrevocably) leap

Miller recommends well-structured, properly funded irrevocable trusts, life insurance trusts and charitable remainder trusts as protection for some physicians. But she notes that your options are limited should you change your mind a year later and want to remove some assets from the trust. The decision to put the assets in the trust is irrevocable.

8. The danger of too much liability insurance

Keller warns that while having a sound insurance plan is important, overloading on insurance coverage might actually attract lawsuits.

"Personal injury lawyers are more interested in suing physicians who have high malpractice coverage limits compared to physicians who have solid asset protection plans," says Keller.

Dorvillier notes that malpractice insurance doesn't necessarily exempt one from all the effects of litigation. "It's virtually impossible to get complete asset protection," he says. "But while the cost of insurance has skyrocketed, you should be pretty well covered if you have the right insurance plan."

9. Corporate structure

One essential piece of advice often heard from financial advisors and lawyers alike is that plastic surgeons should structure their practices into corporations. However, there are several different types of corporate entities that might be appropriate for your practice, including PC (professional corporation), PA (professional association), LLC (limited liability corporation) and LLP (limited liability partnership).

Your attorney will be best qualified to explain the differences and advise which – if any – is best for you. It's important to note, says Keller, that structuring the practice as a corporation allows a plastic surgeon to protect his or her personal assets in the event of negligent acts on the part of the practice's employees. Note that corporations do not protect individual assets in the event that the doctor is sued for his or her own advice or actions.

10. May the best team win

Asset protection is complicated work, and crafting a strong plan requires a multidisciplinary approach involving both legal and financial advice and expertise.

Relying exclusively on a financial planner or using solely an attorney to formulate your asset protection strategy is akin to a patient asking you to perform a facelift without an anesthesiologist – "If you only have one without the other, you're going to be in a lot of pain," says Mandell. "Debt shields and exempt assets are financial matters, but setting up LLCs and LPs are legal concerns. Plastic surgeons need to work with a coordinated team of advisors," says Mandell. "Otherwise, they are only getting half the story." PSN

For more information on asset protection or other financial matters, contact your financial advisor or any of the sources cited in this article: Lawrence Keller, Physician Financial Services, (516) 677-6211, lkeller@physicianfinancialservices.com*; David Mandell, (212) 972-1222, e-mail* dmandell@mandellpc.com*; Michael Dorvillier, LPL, (858) 551-8701 x11,* michael.dorvillier@lpl.com*; or Shari Miller, (858) 551-8701 x18,* shari.miller@lpl.com.

Executive VP

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In February, we recognized that ASPS would need to take a more active stance. Over the last couple weeks, the Executive Committee has authorized formation of a coalition against medical procedure taxation. At this writing, the AMA, American College of Surgeons, ASAPS, American Academy of Otolaryngology, American Academy of Ophthalmology, American Academy of Dermatology, American Society for Dermatologic Surgery and the American Academy of Facial Plastic and Reconstructive Surgeons have joined this initiative, each willing to provide volunteers, manpower and money to defeat tax legislation in Illinois and other states. We believe our message, our determination and our numbers will prevail, but time will tell.

Collaboration is difficult work

We have learned much from the cosmetic tax issue. First, local members and societies are the best sources of information and action. Thus, the national society must organize to support efforts at the local level. Second, well-organized local, state and regional societies are in a stronger position to act than those that are not organized. Third, coalition building – across organized medicine, as well as with consumer groups and industry – is vital.

Coalitions will not simply spring up; relationships must be nurtured when there is no crisis, in order to gain the positive and immediate responses necessary when one emerges.

Collaboration is being viewed among businesses and associations increasingly as a core competency with specific behaviors and processes. Communication must be seamless; decision-making must be collaborative and transparent. Inevitable conflicts must be viewed as opportunities to enhance understanding and define opportunities. PSN