# ASSET PROTECTION FOR THE SUCCESSFUL ENTREPRENEUR

*By: Jack Garson, Esq.*
*As seen in Forbes*

One instant you could be celebrating your 60th birthday and retirement from a successful career in business. After accumulating what is affectionately known as "F.U." money, you're testing out your new $2.6 million Bugatti Chiron on a curve at 190 mph with Snoop Dogg blasting on the diamond studded Accuton speakers. Things can change quickly and disaster rarely comes with advance warning. Suddenly, you're in an accident. People are hurt. Things are fuzzy. But still, you don't think you've done anything wrong. That does not stop the piranhas (you say "lawyers"–tomato/ tomahto). Before you have time to change into some dry underwear, lawsuits are being hurled at you and your spouse with the frequency of North Korean short-range missiles.

In a soon-to-be somber moment, one of your grim-faced advisors lets you both know that your life's work—the house, the investment accounts, your art and, of course, the warehouse of antique codpieces—are all in jeopardy. You've accomplished a lot, but you forgot to protect your assets.

Quite a few entrepreneurs achieve great success and financial security. But, in our society, a wealthy person is a target and it's always open season. As my father-in-law taught me, "It is easier to make money than it is to hold onto it."

The list of risks to your assets is almost endless. Sometimes the most seemingly innocent activities can create the greatest threats. In one famous case, rocker Tommy Lee hosted a pool party for his child's birthday. In a tragic accident, a young guest drowned. The rock and amateur film star was sued for $10 million. Ultimately, the jury ruled in favor of Lee. But a loss would have set him back a Malibu mansion or two. Even for an ex-headbanging multi-mutlimillionaire, that would've stung.

Still, you don't have to be a rock star to be a target and jeopardize your life's work. You could fall asleep smoking a cigarette and burn down a hotel. Or your lovable dog could go all Cujo. You could be a brilliant brain surgeon and have a bad day at the operating table. Again, life being what it is, you get no advance warning and there's almost no limit to the threats. So, cover your assets.

### The Time To Prepare Is In Advance

When you are protecting your assets, you have to prepare. Without getting into the legal technicalities, most asset protection measures don't work once you're already in trouble. This means that the best asset protection—and sometimes the only effective protection—must be put in place well before you need it.

### Protecting Your Assets

Fortunately, you can get a lot of protection with three key asset protection strategies:

**Barriers:** These are "hard" walls between you and liability. For example, you can get great protection from establishing a corporation for your business, provided you follow certain rules setting it up and maintaining it. A corporation—and certain other entities—can be a barrier that prevents a claim against your company from piercing through and hitting your personal assets.

Marriage can help create a potent barrier that protects your assets. In 17 states and the District of Columbia, married couples can hold their property as "tenants by the entireties" (TBE). A creditor might be able to grab the assets of just one spouse. But when spouses hold their property in the TBE form—like using special TBE language on a deed or bank account—creditors generally can't touch your stuff.

Plenty of other measures can provide a barrier against attacks on your assets. Stashing money in a trust for the benefit of others can put that money beyond the reach of your creditors. There is at least one big drawback. That money also has to be beyond your reach.

**Buffers:** These are "soft" walls between you and liability. The classic buffer is a good insurance policy that provides a pool of money if you get sued for a particular reason. For example, you might use the proceeds of a directors and officers (D&O) liability insurance policy to negotiate a settlement with shareholders that are suing you. In a lawsuit involving a car accident, an umbrella liability policy may provide millions of dollars to fund a settlement with a victim. The buffer is just that—a cushion. It does not offer any immunity. Rather, it gives you funds to negotiate your way out of trouble. Here's the power of this tool: Someone may have a bona fide lawsuit against you for $10 million. But, they'll go away for a lump sum check for $5 million to avoid both the stress of a trial and your lawyer's endearing personality.

Question: What about the mystical offshore trusts that block creditors? Answer: Powerful, but problematic. These offshore trusts are typically set up on island nations, like the Cook Islands, the Caymans and the Isle of Man. These islands don't recognize a lawsuit or judgment from U.S. courts. If someone sues you in the U.S. and wins, the judgment should be worthless if someone tried to get money out of your offshore trust. Even if some determined plaintiff sues you on the very island where you have the trust, your trustee may transfer the trust assets to a new trust on another debt-dodging island. Island number two also doesn't care about the judgment issued on the first island. What a buffer. Wear down the plaintiff until he or she will take a 20% off coupon from Bed Bath and Beyond just to be put out of their misery. But, there's a price to magically blocking creditors. It is hard to find trustworthy trustees. Remember, they'll have both the lock and key to your moolah. The trust fees are also expensive, both upfront and ongoing. And you need to hire a lawyer to check your local lawyer's work. Most people can find a U.S.-based solution before entrusting substantial assets to what are typically complete strangers with really bad Yelp reviews.

**Exemptions**: These are the legal version of golden Willy Wonka tickets or Monopoly's Get-Out-of-Jail cards. For example, when you dot the i's and cross the t's on certain retirement accounts, you get enormous protection from creditor claims.

With the right guide, you can find other great exemptions. The homestead exemption is allowed in certain states and D.C. It protects the equity in your home from creditors. In the past, this exemption was so abused that the law was tightened. Now you must own your home for approximately three years and three months, before an unlimited exemption kicks in. After that, you have strong protection for all of the equity in your house.

In some jurisdictions, you can stash money in a life insurance policy. Often, you must set up the insurance policy for the benefit of your spouse and/or children. If you follow the rules (loopholes?), you can shield both the current cash value of the policy and the ultimate insurance proceeds. This can protect a lot of money from your creditors, even your parents who want their loans back (yeah, including the money you "borrowed" for your Euro-gap year).

Certainly, you need to be careful. Once there is a claim against you, it is hard to employ effective asset protection. Plus, the paperwork and processes are all very important. When you are relying on what some might call "technicalities" to avoid liability, you need to be technically correct. No one has much sympathy for the guy or gal who won't fill out the proper paperwork to avoid paying their creditors.

Likewise, understand that sometimes judges get pissed off and ignore the rules. Or, they just make up entirely new rules when they feel that an asset protection measure is unjust. So, diversify your protections. Also, some measures seem helpful, but provide little protection. Safe deposit boxes in banks don't really protect your assets. Entrust them with your costume jewelry, not the Hope Diamond.

Finally, don't confuse asset protection and taxes. While some asset protection measures may have some tax benefits, it's usually just a coincidence. You still need to disclose your assets and income—wherever located—to the IRS and pay what's due.

As you grow your wealth, protect it.

## ABOUT JACK GARSON

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Jack Garson's practice focuses on Real Estate, Construction and Business law. He serves as a legal advisor for numerous local, regional and national companies. In his role as legal counsel, Jack also serves as a strategic advisor and lead negotiator. Further, Jack provides guidance on the structure of complex transactions, the resolution of business disputes, the growth and sale of companies, and the management of issues such as liability and risk reduction, employment practices, and enhancing profitability.

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In the past two years, we've grown by 50% through expansions in New York City and, most recently, Charlotte, North Carolina. This growth has provided immense value to our clients and attorneys.

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