



## Wealth Planning Report

# Common Asset Protection Planning Mistakes—and Avoiding Them

If you have a successful business or substantial assets, you may be a target for frivolous lawsuits. That's why it's so important to consider asset protection strategies that can create barriers to protect your family's wealth. Asset protection planning employs legally accepted concepts and strategies, as well as certain financial products, to ensure a person's wealth is not *unjustly* taken from him or her.

But successful asset protection outcomes can be tricky. Make the wrong move or the right move at the wrong time—intentionally or accidentally—and you can undermine the legal wall you're carefully trying to build around your wealth. Here are five major mistakes affluent families make when engaged in asset protection planning—and how to avoid them.

**Mistake #1: Starting asset protection planning after you are aware you may be sued.** While there are quite a few ways to protect your wealth, most are ineffectual if they're done too late. Moving assets around after an incident leading to a claim to be made against you—such as into a trust or other vehicle, for example—your attorney will teach you new vocabulary term: *fraudulent conveyance*. Blatant attempts likely will be reversed by most courts.

Two types of fraudulent conveyance include:

- **Actual fraud** involves intent and occurs when someone transfers assets to an entity or a person they can strongly influence, so that no resources are left to pay creditors. Yet, assets “informally” are controlled by you.
- **Constructive fraud** is about the economics of an asset transfer, not the intent behind it. If the asset transfer happened to be done relatively soon before or after when the person became financially distressed, it might be considered constructive fraud.

The way to avoid a legal challenge is to engage in asset protection planning early. Without question, you want to begin asset protection planning well *before* any protection is needed.

**Mistake #2: Not having enough (or the proper) liability insurance.** Part of truly effective asset protection planning simply is ensuring you have the right kinds and amounts of liability insurance. Most people, for instance, could benefit from larger umbrella liability policy limits than they have now. But often, they don't bother. Frequently we see many successful business owners with substandard general liability coverage—who would benefit from higher-quality (and more customized) directors and officers liability coverage.

The good news: Liability insurance is relatively inexpensive, and tax-deductible if a business expense. After avoiding lawsuits (unless beyond your control), insurance is the first line of defense in asset protection planning. Periodically stress-testing your liability coverage when planning (see below) is usually a smart move.

### Clarity Through Informed Coordination

**Mistake #3: Failing to approach asset protection planning in coordination with your other wealth planning.** While asset protection planning can be done in isolation, benefits can be considerably increased if your management process simultaneously includes estate or legacy planning and income tax planning. A more holistic wealth management approach can enable more cost-effective planning trade-offs—as well as accounting for risks that you might otherwise overlook.

One example: Gifting to heirs may be a good estate planning solution in many situations, but it might be considered a fraudulent conveyance when it comes to your personal asset protection if a triggering event has occurred.

By approaching wealth management comprehensively instead of as a packaged solution, not only can it work better for you and your family—but your planning may save you money.

**Mistake #4: No clarity of what you did and why you did it.** If you cannot clearly explain in simple terms the intended planning outcome that included asset protection and why you did what you did, there is a real possibility your efforts will not deliver the hoped-for protection if it goes to court.

In legal depositions, for example, a court will become suspicious and set aside asset transfers if you yourself cannot explain larger wealth planning benefits for your actions beyond asset protection. Technical expertise on strategies and financial products is not necessary for you. However, you should have a sensible story explaining the purpose and the *reasoning* behind your actions beyond protecting assets from creditors.

**Mistake #5: Failing to work with true professionals.** Some planning professionals know just enough about asset protection strategies to get themselves—and you—into trouble. In order for you to get the optimal benefits of asset protection planning, you need to work with an authority in the field—for example, someone who is recognized by other financial professionals as an expert.

## Stress-Testing Your Asset Protection

If you're not sure how well your assets are safeguarded from frivolous or unfounded lawsuits, consider professionally stress-testing your current planning arrangements.

The first step involves identifying your high-probability significant risks. What is reasonably possible, even if it seems unlikely? And if such an event could happen, how financially detrimental would it be to you? An actuarial calculation is ideal, or—as many people do—you can make a reasonable estimate.

Next, decide how much those risks really concern you. This may involve balancing many different needs and considerations.

Then, you should evaluate your current asset protection plan with a specialist. Have an analysis done, considering a range of significant risks, the level of your concerns and what you already have in place. Based on the results of this analysis, you decide how to proceed. Actions can range from making no changes to making dramatic shifts.

Ultimately, you want to feel confident that you have an effective plan in place that reflects your needs, wants and preferences—and balances your asset protection goals with other key elements of your total wealth plan. Look for a CFP® professional who can guide you in connecting with the right specialists as part of a wealth management process.

This is an executive summary of our wealth management ebook. For a complimentary copy of our complete report, please [contact us](#).



**Paul Byron Hill**, MBA, MFP, MSFS, ChFC®, RICP®, CFP® is a nationally recognized Wealth Management Certified Professional™ and Certified Financial Planner™ professional, written about in *Fortune*, *Forbes*, *Bloomberg Businessweek*, and *Money*. Paul is the co-author of *Retire Abundantly*. Reuters AdvisePoint once recognized Mr. Hill as one of 500 “Top Advisers” in the U.S. and featured him in an interview on their website.

Paul founded Professional Financial Strategies, Inc. in 1993 as one of the first fiduciary planning firms that specializes in retirement and wealth management for affluent and aspiring families. Paul is a personal chief financial officer acting in best interest of clients. He brings together a proven process and a network of specialists for making informed decisions for systematic strategies, secure income, mitigating taxes, protecting assets, and preserving wealth for family and purposeful causes.

Mr. Hill received a BA with distinction from the University of Rochester and later an MBA in finance from its Simon School of Business. He earned an MS in financial services from The American College along with his Chartered Financial Consultant and Retirement Income Certified Professional designations, and then received an MS in financial planning from the College for Financial Planning (now at the University of Phoenix). The College for Financial Planning appointed him as adjunct faculty, and he taught at St. John Fisher College. Who's Who presented Paul with the Albert Nelson Marquis Lifetime Achievement Award, and featured him with others in *The Wall Street Journal* and other publications.

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Professional Financial Strategies, Inc. | 1159 Pittsford-Victor Road, Suite 120, Pittsford, NY 14534 | (585) 218-9080