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E-Commerce Businesses Stand to Lose More Without Asset Protection

By Hillel Presser

What differentiates e-commerce businesses from traditional businesses when it comes to asset protection? Potentially more assets in need of protecting.

Both types of business owners have assets such as homes, cars and bank accounts that need protection in the event of a lawsuit—whether it's a personal suit or one targeting the business. E-commerce businesses may need more financial protection to cover their wealth of intangible assets, including domain names, website content, intellectual property, trademarks and patents. Additionally, an e-commerce business may prove to be more of a lawsuit liability because it's vulnerable not only in the state where the storefront or warehouse is located but, essentially, everywhere substantial connections are made, including internationally. In that sense, the need to create, maintain and regularly update an asset protection plan becomes even more urgent.

To legally shield wealth from lawsuits and other potential threats, including divorce, business owners of all types should have an asset protection plan. This multi-layered strategy involves a range of techniques to title assets such as homes, savings and property (tangible and intangible) in the event that a claim is brought against the business or owner. It's not a guarantee that the protected person will avoid lawsuits or other financial calamities, but it can guarantee they'll lose fewer assets if the worst does happen.

I advise clients to work with an attorney to create a plan that's the best fit for their specific financial situation. Clients should take the following steps.

Educate yourself. Clients should understand what's going on when their attorney is creating their plan, how it relates to their life and what changes will trigger the need for an update. They should learn what they can and can't transfer as well as who they should and shouldn't transfer assets to, even temporarily. For instance, if they "gift" a home to their children shortly after or in proximity to a civil claim filed against them, in the event of a judgment, that gift may be looked upon as a fraudulent transfer. It could be reversed, making the home susceptible to the creditor judgment. Education is key to maintaining long-term asset protection.

Inventory your wealth. Clients should include both tangible and intangible financial recourses. Tangible assets include but are not limited to their home, real estate, bank accounts, vehicles, boats and so forth. Intangible assets include but are not limited to patents, copyrights, franchises, goodwill, trademarks, domain names, trade names and the like.

Assess your liabilities, present and future. Some present liabilities could include current creditors (whether or not they have claims against the client), personal guarantees on home or business loans and the client's marital status as well

as longevity of your marriage. Future liabilities include unexpected potential financial risks. A failing business in an economic downturn is a good example. Surely many businesses didn't contemplate their demise in the financial and economic crash of 2008. Those owners without an asset protection plan in place prior to 2008 were out of luck when their life savings, homes, real estate and other wealth were jeopardized by creditor lawsuits. The best advice for e-commerce business owners is to be proactive—the threat of a suit can bring a business to its knees and the best way to protect themselves is to practice financial self-defense and lawsuit-proof their assets.

Decide whether or not to retitle their assets, what entity formations to use and whether equity stripping is appropriate for assets still inadequately protected. Only non-exempt assets need to be retitled. Exempt assets are those that can't be seized in the event of a judgment. All non-exempt assets should be retitled as exempt assets and/or transferred to more protected entities such as a Limited Liability Company (LLC), Limited Liability Partnership (LLP) or Family Limited Partnership (FLP), to name a few. Each entity has its own advantages and disadvantages and each person may have specific needs that make one of these entities more advantageous than the others.

Alternatively, these assets can be titled to either domestic or international trusts. International trusts, such as the NEVIS trust, are especially protective because the laws of most preferred international trust locations favor the owner of the trust over creditors. Any unprotected assets can be stripped of their equity. For example, taking out a loan on a home that the client owns free and clear would make them more undesirable to a creditor than if they had full equity in the home.

Implement the plan and maintain the protection over the years. Asset protection plans should be reviewed at least once per year and whenever there's a potential for litigation. Also, integrating an estate plan into an asset protection plan is essential, because an unexpected death could tie up an estate in litigation for years.

Asset protection is important for all business owners in today's litigious society. E-commerce businesses are even more vulnerable to lawsuits and potentially have more assets to protect. Business owners should enlist the assistance of an asset protection attorney to create, implement and help maintain a lawsuit-proof plan, and they should have an estate plan as well.

Hillel L. Presser's firm, The Presser Law Firm, P.A., represents individuals and businesses in establishing comprehensive asset protection plans. The firm offers complimentary books on asset protection and an asset protection worksheet to help you create an inventory at www.AssetProtectionAttorneys.com.