**Is Your Home Protected?**

American Society for Asset Protection

Homestead laws have been created by states to protect personal homes against creditors. These laws vary widely between the states with some providing unlimited protection and others providing little or no protection. There are six states (Florida, Iowa, Kansas, Oklahoma, South Dakota, and Texas) that have a no dollar cap on the homestead exemption, which means that your primary home in these six states, regardless of value, cannot be taken by a judgment creditor and is thus protected from lawsuits by state law.

In the other forty-four states with limited homestead protection, you may want to put your home into a separate legal entity to protect it against a lawsuit. For example, if you have $200,000 equity in your home and your state’s homestead laws only protects $5,000, a creditor could take $195,000 of the equity in your home to satisfy a judgment. Homestead laws are only for your primary residence, so vacation or second homes are not protected by homestead laws. Also, homestead laws do not protect you against federal tax liens.

**What Can Happen if Your Home is Not Protected?**

If someone were to obtain a judgment against you, they can seek to satisfy the judgment by taking your home. The collection process begins by the creditor filing a summary of the judgment (Abstract of Judgment) with the county recorder in the county where you own the property*.* Just as you cannot sell your property without satisfying liens from a mortgage or deed of trust, you cannot sell or refinance your home until the judgment is paid or expires.

The creditor can also file a Writ of Execution with the county recorder for the right to sell your home to the highest bidder at a public sale. The money collected from the sale of the property is used to pay the judgment and any interest and collection expenses. If the property sells for more than the amount of the judgment, interest, and collection cost, the excess is given to you.

**How to Protect Your Home**

Let’s say you have $500,000 equity in our home and your state homestead laws only protect $100,000. To insure your home cannot be taken to satisfy a judgment, you can own your home in a property drafted and worded limited liability company (LLC). A LLC has what is called charging order protection which prevents a creditor from seizing the property. To ensure that you can still take advantage of the capital gains exclusion when you sell the home, you can place your home into a single-member LLC. A single-member LLC is a disregarding legal entity for tax purposes so no yearly tax return is required. In the eyes of the IRS, it is as if you still own the home personally. This allows you to have the charging order protection of an LLC while still qualifying to take the capital gain exclusion on the sale of the home and the mortgage interest deduction. While most states provide charging order protection for multi-member LLCs, only two states currently provide charging order protection for single-member LLCs. Those state are Wyoming and Nevada. Your primary residency does not have to be in Wyoming or Nevada to be owned by a Wyoming or Nevada LLC.

Most people own their home in their individual name(s) which provides no protection from lawsuits. Placing your home in a single member LLC in Wyoming or Nevada is very simple. The use and function of the home will be the exact same and no tax return is required. The only difference will be that on the title the LLC is listed as the owner instead of an individual name(s). Implementing this asset protection strategies can ensure your home is protected from loss as the result of a lawsuit. LLCs can also be used to protect other real estate you may own from lawsuits.