

Article on Asset Protection for the Reporter:

Title:

Asset Protection from Lawsuits

Disclaimer:

The information provided in this article is not to be construed as legal advice and should not be relied upon without the specific consultation with a professional.

Callout:

The Reporter will feature a bimonthly column to answer your most frequently asked questions about asset protection. We invite you to email or write Ken Vanway with your questions, ken@vanway.org or Law Office of Ken H. Vanway, P.C., 1110 RR 620 South, Suite B, Austin, Texas 78734.

Article Text:

Physician Question: Is my house and household furnishings protected against a malpractice judgment?

Attorney: Section 41.001 of the Texas Property Code (TPC) exempts your homestead from seizure from the claims of creditors with certain exceptions related to taxes, purchase money mortgage, home improvement work and the like.

A “homestead” in Texas is **10 acres** if urban (single or married) or **100 acres** if rural (**200 acres** for a married couple) regardless of value. Some States impose a maximum dollar value but Texas does not. The 10 acres for urban homesteads was increased from 1 (one) acre effective January 1, 2000. Temporary renting of a homestead does not change its homestead protection. If you sell your homestead, the proceeds of sale are not subject

to seizure for 6 months after the date of sale. Therefore, if you purchase another homestead and roll the proceeds into the new home, then the proceeds are protected. However, if you do not roll the sale proceeds into a new homestead within 6 months, then the proceeds may be lost to a judgment creditor.

In addition to the real property exemption, Section 42.001 TPC exempts certain qualified **personal property** not to exceed **\$30,000** for a single adult (**\$60,000** for a married couple). Qualified property reflects our agricultural history and includes home furnishings, food, wearing apparel, vehicles, jewelry (not to exceed 25% of the limit), 2 firearms, farming / ranching implements, tools, equipment, books used in trade or business, sporting equipment including bicycles, household pets, and 2 horses, 12 head of cattle, 60 head of other livestock and 120 fowl.

Common mistakes with physicians and the Texas Homestead Law are the following:

- **CAN YOU AFFORD TO SELL YOUR HOME?** Example: Physician owns a 10,000 sq.ft. creditor-proof home worth \$2 million; Physician's children are now grown and Physician decides it is time to sell the home and downsize. The problem is that there is a \$10 million malpractice judgment against physician. If Physician sells the home and does not rollover 100% of the sales proceeds into a new home, then the excess sales proceeds are subject to creditors.

MORAL: It is difficult to get your equity out of a home if you need it in the future. Don't put all of your eggs in this one basket.

- **BE CAREFUL ON FINANCIAL STATEMENTS.** When you are sued, one of the favorite deposition questions asks you to list all individuals or institutions to whom you have provided a financial statement in the past 6 years. All of us

routinely provide financial statements to the bank, the mortgage company, financial planner, etc.. Clients will unknowingly list their vehicles, household furnishings and jewelry at inflated values far in excess of the \$30,000 / \$60,000 personal property exemption even though the lender is not going to lend money based upon these assets. This piece of evidence can give cause allowing the plaintiff's attorney to spend days going through the house room-by-room, utensil-by-utensil until you will gladly pay them to go away.

MORAL: 1. Never list personal property on your financial statement. 2. If you have important antiques, carpets, paintings, artwork, etc., then create a separate entity to own these valuable collectibles and lease the use of them.

TMAIT will be offering physicians a number of opportunities to attend asset protection seminars in 2002. Watch for information about a seminar near you in your TMA publications and on the TMAIT web site.

Biographical sketch

Ken H. Vanway is board certified in Estate Planning and Probate Law - Texas Board of Legal Specialization. Ken has over 20 years of experience. His firm practices in many areas of estate planning and lawsuit protection including Wills, Domestic Trusts, Offshore Trusts, Incorporations, and Family Partnerships.

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