



Is there anyplace to hide when the Malpractice Insurance is exceeded?

The tug-of-war between the trial lawyers against the rest of the world may seem lopsided until you realize that they're winning! Trial lawyers have been asking juries for and receiving bigger and bigger malpractice settlements. There's only so much actual damage that can be assessed, however, the pain and suffering awards are on a ballistic course in states where no caps have been placed on them. The number of lawsuits filed each day now exceeds 50,000 with an estimated 10,000 of them aimed at the medical industry! As a result of this trend, the average malpractice coverage of one million may not provide enough protection in the even of a jury verdict. What the judgment can collect of your personal assets, if the malpractice limit has been exceeded, is the over-one-million dollar question.

<p>Jury awards keep going up</p> <p>The median jury award -- up 100% since 1995.</p>	1995: \$500,000	Childbirth	\$2,050,000	<p>Going to trial</p> <p>Compensatory award medians for the most common judgments between 1994 and 2000.</p>
	1996: \$474,536	Cancer diagnosis	\$1,000,000	
	1997: \$503,000	Delayed treatment	\$1,000,000	
	1998: \$733,900	Diagnosis	\$750,000	
	1999: \$700,000	Medication	\$668,000	
	2000: \$1,000,000	Lack of informed consent	\$500,000	
	2001: not yet available	Nonsurgical treatment	\$400,000	

Source: Jury Verdict Research report "Medical Malpractice: Verdicts, Settlements and Statistical Analysis"

Collection of judgments is a state matter with the Employment Retirement Security Act of 1974 (ERISA) as the only federal preemption. Although laws are constantly in flux, you can find a complete listing of the state laws by visiting www.mrsc.org/mc/_toc/rcw.htm, the Revised Code of Washington (RCW) website. You're looking for Title 6 – Enforcement of Judgments. Below is an overview of four asset categories that probably contain the vast majority of your wealth: 1) qualified retirement plans (employee and sponsor-only), 2) insurance proceeds, 3) personal residences and 4) other personal property.

1) Qualified plans fall into two basic categories, those covered by ERISA and those not covered under the ERISA laws. ERISA plans offer the most solid barrier protecting your retirement assets from judgments. Those not covered by ERISA fall back under state jurisdiction. Generally, tax qualified retirement plans will be protected from the claims of the participants' creditors when it is a defined benefit or a defined contribution plan. Defined contribution plans include profit sharing plan, employee stock ownership plans, money purchase pension plans, target benefit plans and 401(k) plans. ERISA protects retirement assets from creditors, legal judgments and even bankruptcy claims, a protection upheld by the U.S. Supreme Court. The reason this will probably withstand future tests is that retirees whose assets have been stripped by creditors would become burdens to the government. Some pension plans that may benefit only the business owner, such as a Keogh's (including the owner's spouse) IRAs, whether traditional, Roth, SEP or SIMPLE are not protected under federal law. Their jurisdiction then falls through to the state. RCW 6.15.025 does include IRAs, Roth's & Keogh's into its definition of assets protected from collection.

2) RCW 6.15.035 protects “people” insurance proceeds. The lawful beneficiary, assignee, or payee of a disability income, life insurance (individual and group life) or annuity income payments are all included in this statute under the same concept as the protection afforded qualified plans. Insurance payments represent a stream of income that if stopped, may make the beneficiary a dependent. However, annuity payments over \$250 per month are not excluded.

3) Your home and property are known collectively as your “homestead” and are covered in RCW 6.13.010 – 6.13.240. Pay particular attention to Section 6.13.030 “. . .but the homestead exemption amount shall not exceed the **lesser of** (1) the total net value of the lands, mobile home, improvements, and other personal property, as described in RCW [6.13.010](#), or (2) the sum of \$40,000 in the case of lands, mobile home, and improvements”. I excerpted from the body of the code but the amount seems unequivocal and therefore potentially represents the greatest threat to your asset base.

4) Here are excerpts from most of the exempted personal property covered in RCW [6.15.050](#).

(1) Clothing “. . . but not to exceed one thousand dollars in value in furs, jewelry, and personal ornaments for any individual”. (2) Libraries, pictures and keepsakes “. . . but not to exceed \$1,500 in value”. (3) (a) The individual's or community's household goods, appliances, furniture, and home and yard equipment, not to exceed \$2,700 in value for the individual or \$5,400 for the community”. (b) Other personal property, except personal earnings as provided under RCW [6.15.050](#)(1), not to exceed \$2,000 in value, of which not more than two hundred dollars in value may consist of cash, and of which **not more than two hundred dollars in value may consist of bank accounts, savings and loan accounts, stocks, bonds, or other securities;** (c) A vehicle “. . . not to exceed two thousand five hundred dollars or for a community two motor vehicles used for personal transportation, not to exceed five thousand dollars in aggregate value; (d) Past, present and future child support; (e) Health aids; (f) Collectable debts or judgments “. . . not to exceed \$16,150 on account of personal bodily injury, not including pain and suffering”. (b) **To a physician, surgeon, attorney, clergyman, or other professional person, the individual's library, office furniture, office equipment and supplies, not to exceed \$5,000 in value.**

ERISA plans that include employees are the most secure asset class. Other retirement plans that cover only sponsors are less secure federally but are presently protected under state laws. Personal residences in excess of \$40,000 and most other private assets are exposed to collection and may need to be protected through some change in ownership or trust arrangement. There are many “asset protection” attorneys proposing off-shore limited liability corporations (LLC) as a solution to this exposure. Get legal council to determine whether your risk is worth the estimated cost of \$20,000 to \$30,000 to set up. This has been a layman’s –eye-view and should not be construed as a legal opinion.

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