

Two Minute Legal Update

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The Incredibles

In the recent movie *The Incredibles*, a family of animated super heroes is forced to retire; there were too many lawsuits filed against them for the damages and injuries they caused while doing their good deeds. Recently, perhaps a bit like the Incredibles' city, a publication found that Illinois ranks 46 out of all 50 states for economic freedom. Certainly, the litigation, regulatory, and tax situation in Illinois impacted the incredibly poor rating.

We have seen numerous clients change their residencies from Illinois, often to lessen income and, lately, estate tax burdens. An unprecedented number of landowners, doctors, accountants, business owners, and others have also recently sought advice on how to minimize their personal exposure.

Other than leaving Illinois and increasing their liability insurance coverage, what are people doing to protect themselves from liability and creditors? Many are investigating some or all of the following ideas:

1. Crafting estate plans to insulate younger generations from liability and creditors, realizing that the current environment may worsen. We have called this kind of planning The Brick House Trust™ (See the Winter 2004 issue at <http://www.napier.com/winter2004nwltr.html>).
2. Funding charitable trusts. These trusts are crafted to benefit the people that fund them and frequently offer substantial income tax advantages in addition to creditor protection.
3. Forming partnerships or limited liability companies to shelter assets from seizure by creditors.



Bob recently landed on—and later was catapulted off—the USS Abraham Lincoln in the Pacific Ocean.



Quips and Quotes

"Everything that can be invented has been invented."

—Charles H. Duell,
Commissioner, U.S.
Office of Patents, 1899

4. Funding irrevocable trusts - some created under other states' laws, like Delaware, Nevada or Alaska, or possibly even offshore - to protect assets from third parties, or even future spouses.
5. Acquiring assets which are difficult or impossible to seize, such as life insurance (and its cash value) or annuities.
6. Maximizing the funding of retirement accounts.
7. Transferring assets or business opportunities to spouses and to younger generations, usually in trust.
8. Placing title to the primary Illinois residence owned by a husband and wife in "tenancy by the entirety," which is a first cousin to joint tenancy, but with greater creditor protection.
9. Creating education accounts, like 529 plans, for loved ones. Note that blatant over-funding of these plans and any fraudulent transfer may be reversed by creditors.

As the super heroes in *The Incredibles* might tell you, the ideas discussed above should be implemented before trouble strikes. Waiting may be hazardous to your financial and emotional health.