

# What You Need to Know

## EQUITY STRIP

Real estate is a difficult asset to protect from creditor claims. It is immovable, ownership of the real estate is always public information and a local judge always has jurisdiction.

A creditor cannot directly take your real estate from you. They can initiate a judicial foreclosure which will result in the forced sale of your real property, with the creditor receiving their appropriate share of equity.

The equity that the creditor will receive will equal the sale price of the property, less the costs of the sale, less existing mortgages. If it is your personal residence being sold, then you will keep the amount of equity equal to the homestead exemption amount that you are eligible for.

Given that a creditor can only take the equity in your real estate, we often seek to remove the equity, leaving the creditor with nothing to pursue. There are two ways to remove the equity: sell the real estate or encumber the real estate.

When encumbering the real estate, there are two ways to proceed: an actual loan from a third-party lender or a line of credit. An actual loan is a formidable way of removing equity from real estate – there is no way for a creditor to challenge the validity of such a transaction. You will receive cash from a lender, perhaps as high as 70-80% of value, and the lender will record a deed of trust against your real property, leaving a creditor a lot less equity to pursue.

With a line of credit, you will receive no cash. A third-party lender will extend a line of credit to you and will secure the line of credit with a deed of trust against your property. The third-party lender can often be a legal entity that we will create specifically for that purpose.

If we are creating the third-party lender, it will often be a Delaware limited liability company owned by you or a person you trust. The Delaware LLC may or may not be funded with seed capital. We will draft a line of credit agreement, a promissory note and a deed of trust and will then record the deed of trust against your real property.

Until the line of credit is exercised and money exchanges hands, there is no substantive protection with this transaction. However, from an appearance standpoint, your real property will be fully, or almost fully encumbered. In practice that may be sufficient to deflate a creditor's expectations and negotiate a better settlement.

Once the need for asset protection has passed, we will prepare and record a certificate of full reconveyance, to remove the lien from your property.

# Schedule Your Free Consultation

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CREATIVE AND AGGRESSIVE ASSET PROTECTION PLANNING