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CEOs seek protection for assets /Shareholder suits raising anxieties

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Now that chief executives are being held personally responsible for their companies' financial statements, they have to worry more than ever about their own bottom lines.

A growing number are asking attorneys about legal ways to shield their money and property from shareholder lawsuits and federal prosecution.

"We're hearing from senior executives and directors of companies who are asking us whether they should be taking steps to have their exposure reviewed and get advice about appropriate protections," says Ken Simon , a partner at Locke Liddell & Sapp in Houston.

Simon tells them there are lots of ways to protect their assets, including setting up offshore accounts, family partnerships and trusts.

"Historically, we've been approached by doctors, accountants and some lawyers to do this," he says. "Executives have really never felt the same sense of exposure as those professionals, but all the recent legislation is causing them to be concerned."

The CEO certification law that took effect Wednesday says corporate honchos can be jailed or forced to forfeit bonuses and stock earnings if they knowingly file false or misleading financial statements with the Securities and Exchange Commission.

That's a complete reversal from how securities fraud cases used to be handled. Until the accounting scandals caused investors to mistrust corporate America, many securities fraud cases could be resolved by the company paying a fine out of its coffers.

Shareholder lawsuits accusing companies of fraud could be settled using money from an insurance policy. Executives rarely had to dig into their own deep pockets.

But shareholders outraged by the executives of bankrupt corporations, such as Enron Corp., being able to keep their homes and lavish lifestyles have developed a "get the CEO" attitude.

They are suing the individuals they consider responsible for the financial messes that destroyed their portfolios and wrecked employee retirement accounts.

At the same time, insurance companies have decided now is a good time to limit their losses. They are raising policy premiums and reducing coverage.

"Energy companies and financial institutions are getting hit pretty hard with rate increases because they've had a lot of negative press lately," says Stefano Minale, a senior vice president in the Houston office of insurance broker Marsh Finpro.

A couple of years ago, a \$100 million policy would have an annual premium of less than \$2 million, he said. Today that policy would cost about \$4 million - and a company may not be able to get that much coverage because the insurer considers it too risky.

Realizing that they may have to pay if an underling makes a mistake or commits fraud, corporate executives are exploring ways to protect their wealth.

The traditional ways of shielding assets still work. Creditors can't touch home equity (at least in Texas and Florida). They also can't touch individual retirement accounts, including Roths; life insurance policies and annuities. All enjoy nearly unlimited protection from creditors.

But people with millions to shelter use additional options.

One approach is to avoid getting paid with bonuses and stock options. The new law says executives have to repay bonuses and profits realized on stock sales within 12 months of an earnings restatement.

But creditors can't get to wages, so some executives will probably seek to increase their base salaries and not participate in deferred compensation plans in this new regulatory environment, says Edward Rhyne, a Houston partner and securities law specialist at Gardere Wynne Sewell.

Giving money to spouses and offspring is another method, but such gifts usually are done through elaborate trusts.

Moving money to Caribbean and European nations also works because it is so hard for attorneys to track it down once it is placed in a numbered account.

But before setting up such arrangements, executives should consider how employees, shareholders and regulators might react if they knew about them, says Robert Barbetti, a J.P. Morgan Private Bank executive who regular consults with CEOs and chief financial officers.

"Stop and think about what does that say about the company and what does it say" about you, he says.

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