The Secrets of Asset Protection:

“Only the Wise Survive”

The Financial Fortress Version

An Introduction to the Fundamentals of Asset Protection

John D. Ewing, MBA, JD
P. Thomas Adams, ESQ, JD

3rd Edition
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PREFACE

This book was written to provide an introduction to the fundamentals of asset protection for the clients of Bridgeway Financial Corporation (BFC). This book is not for dissemination to the general public and we expect clients not to lend this book to third parties. Do not make any copies or loan this book to any third parties to read. For additional copies please contact BFC.

This book could be entitled "Asset Protection 101"or may be referred to as a 'boot camp'. It is designed as a training manual to be used to teach the principles of asset protection. You will become more familiar with the various complex entities that BFC markets such as the Nevada Corporation, the Comprehensive Protection Plan, the ERISA Compliant LLC and other strategies. After reading this book, you should be able to speak with authority and knowledge about asset protection.

The general idea is to start with the basic fundamentals of asset protection. This requires a basic understanding of creditor/debtor law and how the collection process works. It also requires an understanding of the doctrine of constructive fraud. These are topics that most of the people in the asset protection business do not understand. I want to show you enough detail that you understand the principals involved in asset protection without losing your ability to 'see the forest because of the trees'.

This book is certainly not a comprehensive text on the subject matter. Asset protection covers a wide spectrum of issues and topics too broad to cover in one volume. We anticipate companion volumes that will discuss more complex domestic asset protection entities, as well as provide more information about offshore entities such as offshore asset protection trusts, captive insurance companies, private banks and the US taxation of worldwide income. These books may be used as text books for more advanced understanding of asset protection. Please note that the examples and statistics referenced in this edition were gathered in 2007, so allow for some changes.

We currently have a newsletter called The Sentinel Review. It covers financial privacy, asset protection and related topics. It is a free newsletter that you can subscribe to from our website. There is also a commercial publication of this book for sale to the general public called The Secrets of Asset Protection: Only the Wise Survive. This book can be purchased online at http://assetprotectionrevealed.com. We also anticipate continuing education and seminars.

If you find any passages confusing, have specific material or subject matter that you would like to have added to the book, feel free to contact BFC at info@bridgewaycorp.com. We appreciate your feedback to help guide us in our quest to improve our asset protection materials.

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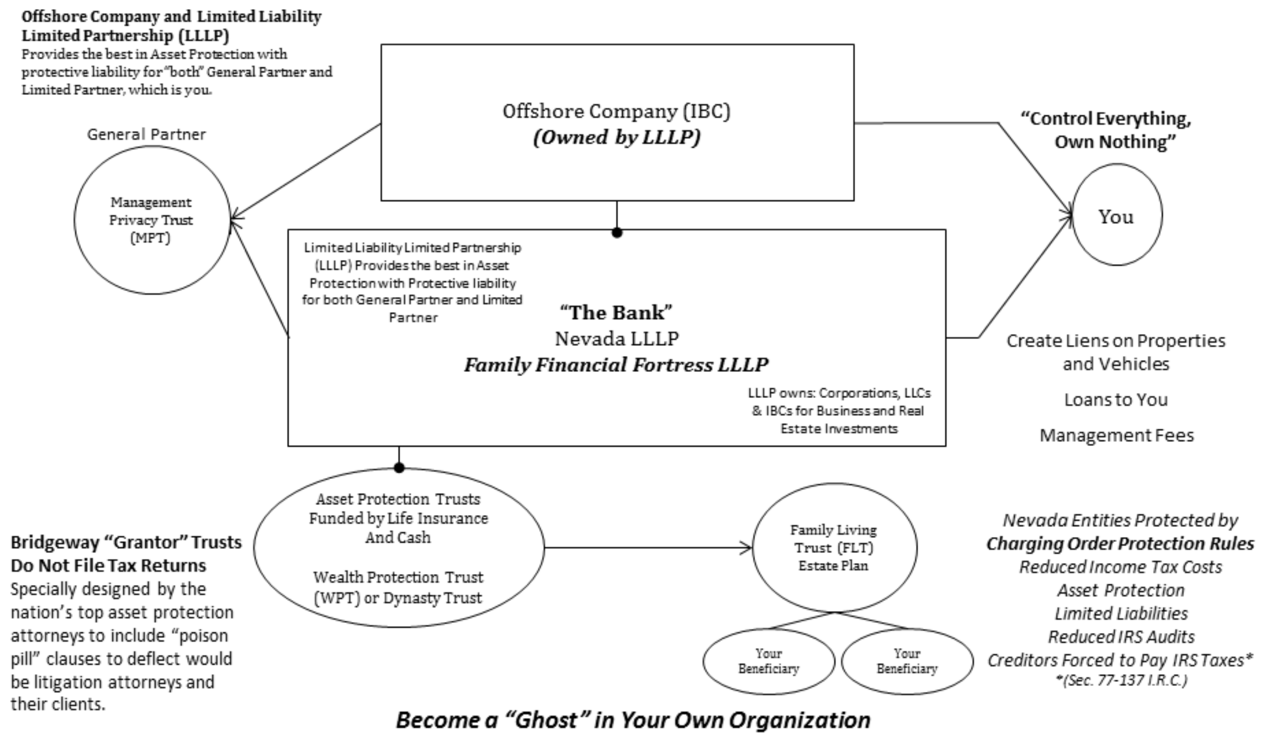

The following steps provide you with the best asset protection:

Step 1: List Assets (jewelry, art work, furniture, real estate, stocks, investment portfolios, et cetera)

Step 2: Limited Liability Limited Partnership (LLLP) – protects your investments. You and your family are kept private and protected by charging order protection and privacy rules.

Step 3: Management Privacy Trust (MPT) – gives you privacy because this trust is not on public record. When used as the General Partner, your personal name does not appear and allows you to control by directing the trustee.

Step 4: Wealth Protection Trust (WPT) or Dynasty Trust (DT) – Owns the family Limited Liability Limited Partnership (LLLP) units and its assets. Directs the wealth of the beneficiaries to the family living trust.

Step 5: Family Living Trusts (FLT) – contains a Living Will (medical) and Last Will & Testament, Guardianship, Durable Powers of Attorney, Letter of Wishes, Non-Contestability & Pour Over Will Provisions to finally secure your family's estate for your spouse, children and grandchildren.

Step6: Encumber (lien up) Assets through a Limited Liability Limited Partnership

Step 7: Life Tenancy Trust (LTT) & Personal Property Trust (PPT) – protect your right to permanent interest in your home and to your furnishings and personal assets.

Step 8: Nevada Limited Liability Company (LLC) – Allows you to protect cash and fixed assets and your real estate.

Step 9: International Business Corporation (IBC) – move your large nest-egg beyond the reach of US courts.

Step 10: Transfer your assets – and begin to sleep soundly, knowing that your family is protected.

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CHAPTER 1: WHY IS ASSET PROTECTION PLANNING NECESSARY?

THE LITIGATION EXPLOSION

Primarily due to the litigation explosion that started in the US toward the end of the twentieth century, asset protection planning has become a financial necessity in the US. The litigation environment has become hostile to defendants with unpredictable judges, higher damage awards, runaway juries and expanded theories of liability. Traditional forms of protection have become inadequate. Insurance policies contain many exclusions, policy limits are inadequate, the rates are high and policy lapses can occur. Piercing the corporate veil has become easier and there has been an increase in litigation seeking damages from Officers, Directors and shareholders.

Although asset protection is not yet a class offered in law school curricula, it has become a necessity of everyday life. The American Bar Association has formed an Asset Protection Committee and some Continuing Legal Education (CLE) programs around the country are sponsoring Asset Protection CLE seminars.

Columbia Center Tower Building Seattle, WA

Attorneys practicing law in the US account for 80% of the attorneys worldwide and our law schools are increasing this disproportionate share annually. There were 1,633,127 lawyers actively practicing law in the US in the year 2000. An article in a Seattle paper stated that there are more attorneys in Seattle's Columbia Center Tower building than in all of Japan. It is anticipated that the number of practicing attorneys will double in less than ten years. Due to the excessive number of attorneys, it is becoming difficult to make a living as an attorney. This results in more and more frivolous and vexatious lawsuits being filed every year.

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One in every four small businesses has been sued or threatened with a lawsuit in the past five years. The average professional or business owner in the US will be sued five times during his or her lifetime. A new lawsuit is filed every 2 seconds in the US and nine out of ten lawsuits in the world are filed in the US. A US citizen has a one in three chance of being sued this year. Businesses are the number one target of lawyers; two out of every three will be sued this year.

Tom Stanton thought he had it all: a beautiful home for his family, the car he'd always wanted, a growing list of investments, his children in excellent schools, and dream vacations with his wife. But that all changed when he was served with process naming him as a defendant in a lawsuit. It did not matter that he was convinced he had done nothing wrong. He lost everything he had, and he still owes his attorney for the legal costs.

THE CONTINGENCY FEE SYSTEM

The US legal system is more favorable to persons filing a lawsuit (plaintiffs) than to the persons being sued (defendants). In England, and most other common law jurisdictions, the loser must pay the prevailing party's attorney fees. This deters attorneys and claimants from filing frivolous claims or claims without merit. In the US, we allow plaintiffs' attorneys to take cases on a contingency fee basis in which they receive a percentage of the proceeds (usually 30-40%). Many large plaintiffs' firms will spend thousands or even hundreds of thousands of dollars of their own money for expert witnesses, including accident reconstruction experts, investigators, economists, medical experts and other professional witnesses. Once a firm starts winning large verdicts, the firm retains capital to use for the preparation of future cases. A plaintiffs' firm may advance funds for their client and then reimburse themselves from the proceeds of

Why Take a Chance on Losing Everything You Have?

Contingency fees encourage the filing of spurious lawsuits. A new lawsuit is filed every two seconds and the deck is stacked in favor of the plaintiff. The average business owner or professional person stands a chance of being sued several times in his or her lifetime. Under the current system, any lawsuit, no matter how apparently worthless, can result in a ruinous judgment since one in every ten lawsuits results in a multimillion dollar verdict!

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the trial, in addition to their contingency fee.

The defendant must pay his or her attorney by the hour as the work is done and the defendant must pay for all expert witness and trial preparation expenses. Even if the defendant wins, the defendant is usually not reimbursed for attorney fees, court costs and witness fees. Something is wrong when an innocent defendant can be financially ruined by a frivolous lawsuit, while the claimant suffers no financial distress.

EXCESSIVE JURY VERDICTS

At the same time, runaway juries are frequently granting awards far in excess of the injuries sustained by the plaintiff. Every day we see headlines like the McDonalds case where Stella Liebeck spilled coffee on herself and got a $2.1 million settlement because the coffee was "too hot." Shortly after Stella's lawsuit, another customer filed a lawsuit against McDonalds claiming a "hot pickle" fell out of a burger and burned her chin. She is asking for $100,000 damages and her husband wants $25,000 for an alleged loss of marital services.

Nationally, 12 % of all jury awards are $1 million or more. The bottom line is that many plaintiffs' attorneys are consummate trial attorneys with great expertise. Through lawsuits, plaintiffs' attorneys have made more persons millionaires than all the lotteries and casinos in the US.

THE LIABILITIES OF EVERYDAY LIFE

Although there are many frivolous lawsuits, there are many defendants with valid claims that have merit. These defendants may be entitled to substantial damages that are not unreasonable due to the circumstances of the case. We are all vulnerable to substantial liabilities no matter how careful we may be.

For example, many people have pet dogs, but no matter how wonderful your dog may be, dogs are unpredictable and it is the little cute ones that bite more often than the big ones. You can be very responsible and careful with your pets, but that beloved pet may still bite and/or chase someone. Serious dog bite cases usually settle for $30,000 to $50,000 and are covered by insurance, but occasionally a child or elderly person running from a dog will fall or get hit by a vehicle, resulting in death or serious injuries. There have been jury awards for such cases ranging from $500,000 to $6,000,000.

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The government's powers have grown exponentially every year over the last 30 years. These acts were supposed to fight crime & terrorism, but even though the intent was good, the effect has been to destroy the rights that were granted to us in The Bill of Rights.

We all drive cars and we all make mistakes. If you fall asleep at the wheel, sneeze while turning or your brakes fail, you could be economically ruined. The damages could cost you millions of dollars that will not be fully covered by your insurance policy. In addition, every time you let your teenager or friend drive the family car you are financially responsible for any damages he or she may incur while driving.

Unlike our ancestors who were frugal, we live in a society that encourages debt. We all carry debts: auto loans, mortgages, personal loans, credit cards, medical bills, lines of credit, real estate loans, alimony, child support, medical bills, legal bills and taxes are typical. In most situations debts are under control. Nevertheless, unforeseen circumstances may overwhelm your ability to meet your obligations.

Slowdowns in gross revenue, reductions in workforce, medical emergencies or a divorce can financially destroy a fiscally responsible individual. Astronomical medical and legal bills can strike without warning due to accidents, illness or divorce. Miscalculations on a tax return or errors based upon good advice may result in a surprise assessment years later with accumulated penalties and interest. You may not be able to pay off a large assessment because the IRS charges 25% for interest & penalties. This fiscal burden is so high that substantial monthly payments do not reduce the principal.

To a significant extent, we are all at the mercy of the liabilities of everyday life which are beyond our control. It does not matter how prudent, fiscally responsible or careful you are. We all make mistakes and we may be held liable for the errors and omissions of others.

Ignorance of the Law is No Excuse

Our system of jurisprudence states that, ignorance of the law is no excuse even though it is impossible for anyone to keep up with the hundreds of thousands of rules and regulations enacted by various local, state and federal agencies and legislative bodies every year. We have zoning laws, labor laws, civil rights laws, anti-harassment laws, securities laws, communication laws, municipal

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ordinances, criminal laws, county ordinances, animal rights laws, employment laws, consumer laws and the list goes on.

Violations of civil laws or regulations can result in the imposition of fines and even criminal penalties for violations of civil regulations. The line between civil and administrative law and criminal law has grown very thin indeed. An area of law has developed called 'quasi criminal'. This area of law usually deals with instances where violations of civil or administrative codes have been given criminal sanctions or designated as misdemeanors. The designation 'quasi criminal' has been used to justify the denial of due process of law typically provided a person in a criminal proceeding. Likewise, administrative law has been used to deny persons the level of due process of law required in a civil proceeding.

Civil forfeiture laws are essentially an administrative remedy given to the state to confiscate property that: a) was purchased with the proceeds of a crime; b) was the location where a crime occurred; or c) was used to facilitate a crime. These laws arose as a response to the Wars on Organized Crime, Drugs and Terrorism. At first, this seemed like a good idea. Why not confiscate the property where drugs are manufactured or a car that has been used to transport drugs or property purchased with drug profits? But the civil forfeiture laws have expanded far beyond the limitations of drug dealing, terrorism and organized crime. The problem is that the scopes of these laws have expanded to such an extent that innocent parties' property rights are in danger.

Civil forfeiture laws often allow the police to confiscate property without a warrant, court order or even a hearing prior to seizure. The police may be able to confiscate your property even if they have not charged you with a crime. Typically, unless you initiate a legal action within a short deadline period specified in a forfeiture notice, your property will be sold at an auction. If you fail to respond in time, you will lose your property. If you have sufficient funds to retain counsel and file a timely civil action, you may receive a post confiscation hearing. However, you are guilty until proven innocent. You will be required to prove by a preponderance of the evidence that you and your property are innocent.

Asset Protection is no longer just for the rich and famous. These days Asset Protection is needed by everyone.

Do you think this is ridiculous? It gets worse. You may not have the right to a jury trial. In some states, the initial hearing is presided over

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by the local sheriff, chief of police or their nominee who sits as the administrative judge. In these jurisdictions, after you are found guilty, your only remedy is an appeal. You will be denied the opportunity of a new trial with judge and a jury of your peers. On appeal, the only issue will be whether there was sufficient evidence or minimal evidence supporting the administrative judge's opinion.

Sometimes this can be avoided by filing a petition to remove the case to a municipal or county court. In other jurisdictions, the process begins before a local or administrative judge. Due to the complexity of civil procedure, you will probably need to retain an attorney. And even though you are the accused in the civil proceeding, you are forced into the position of the plaintiff or petitioner and will be required to initiate the action by filing a petition or complaint and paying the filing fees and other costs, which are usually the obligation of the accuser, the government, in a criminal action.

Most Government Agencies have the power to seize your assets at any given time without due process.

Normally, a person accused of complicity in a crime is the defendant and is presumed innocent; and the plaintiff has the burden of production to prove the accused guilty beyond a reasonable doubt. However, under the civil forfeiture laws, the burden is placed upon the accused, as plaintiff, to prove their innocence by a preponderance of the evidence. Consequently, the accused as plaintiff or petitioner appears before a judge who is required by law to presume the he or she is guilty of complicity in a crime. Hence, the accused is denied the presumption of innocence and the burden of proof is placed upon the accused instead of upon the government.

Originally, civil forfeiture actions were narrowly applied only to serious felonies such as organized crime and drug distribution. Now the scope of actionable offenses is outrageous and in some states civil forfeiture is being extended to all criminal violations, including misdemeanors. In Texas, Florida and New Jersey civil forfeiture applies to any kind of criminal violation, no matter how trivial. This includes violations of administrative regulations that are classified as 'quasi criminal' misdemeanors.

A gynecologist in New Jersey who allegedly performed examinations in violation of a state regulation had his office building and equipment confiscated. Many jurisdictions now routinely confiscate the vehicles of persons charged with

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drunk driving. There have been many cases where parents or grandparents have lost their homes or cars because their children or children's friends sold marijuana on their property. Under a new federal law, placing false information on a loan application is a minor federal offense that can result in the confiscation of property purchased from the proceeds of the loan.

The number of agencies given forfeiture authority has gotten overly broad in scope. Currently, there are over one hundred federal civil forfeiture statutes, both civil and criminal. Federal agencies with civil forfeiture authority include, but may not be limited to, the following agencies: DEA, Customs, IRS, Coast Guard, Bureau of Land Management, US Postal Service, Fish and Wildlife Bureau, Securities and Exchange Commission, Food and Drug Administration, Justice Department, Immigration and Naturalization Service, and HUD. There are also thousands of state and local police agencies that have been given civil forfeiture authority.

You don't have to be rich & famous to be protected from the litigation nightmare.

LIABILITY FOR THE ACTS OF OTHERS

Although we have little or no control over the acts of others, the law may hold you financially accountable for their actions. You may be accountable for the actions of your partners, employees, agents, family members and persons who drive your vehicles. If your employee sexually harasses a coworker, if your partner commits malpractice or if your teenager runs over a nun with your SUV, you may be held responsible.

Environmental cleanup costs are extremely expensive. Why worry about it if you are an environmentally responsible person? You may be held responsible for contamination that spreads to your land, that's why! If the man living next door spills toxic chemicals into the ground and they flow underground onto your property, you may have to pay for cleanup that may cost hundreds of thousands of dollars. Think about that the next time you see him dumping battery acid or the spent oil from his oil changes on the ground behind the garage next to your fence.

Rare and difficult to kill molds have infected thousands of homes in the Southwest. You may be liable for harm to persons infected by toxic mold. You may be liable for infected real estate sold to others. You may have to pay damages for the harm to the new owners, as well as the cleanup costs and loss of

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the use of the property. Toxic mold cases have incurred multi-million dollar settlements.

Civil forfeiture laws will hold you accountable for the misconduct of persons using your vehicle. Parents have lost their vehicles when their teenager got caught with marijuana in the family car. Grandparents have lost their homes because their grandchildren sold marijuana in the backyard or on the porch. Many landlords have lost their buildings because of the misconduct of tenants.

Multi-level and network marketing (MLM) groups are sometimes vulnerable to allegations that they are unlawful pyramid schemes, unlawful business opportunities, theft, fraud, et cetera. After some of these businesses have operated for several years and many members have made a lot of money, an attorney general or federal agency may declare the program to be unlawful. Individuals who participated in good faith in a program they believed to be lawful are sent letters telling them that the program was a ponzi scheme or fraudulent endeavor. The letter may state that the profits they received were obtained by theft or by means of a criminal endeavor and they are instructed to return all of the profits they received from the program. These demand letters are often received after the MLM participant has and used the money to buy a new home, real estate, boats, stock, et cetera. If the money is not returned, the trustee and/or receiver may ask for a sworn financial disclosure and may initiate a civil forfeiture action, if there are sufficient assets.

The Liabilities of Professionals and Small Business Owners

In today's litigious society, many different kinds of legal actions can financially ruin a business. The typical risks include, but are not limited to: company vehicles accidents, malpractice claims, breach of contract claims, failure of a business venture, sexual harassment litigation, IRS audits or assessments, SEC or FTC violations, environmental accidents, defective product claims, negligence, class action lawsuits, contamination soil cleanup costs and the list goes on and on. Even if your company prevails, the legal fees alone may destroy the business financially.

Typically, one out of every three employees in a company will eventually file a complaint against their employer with a government agency and/or file a civil action against their employer. Two out of three small businesses will be sued in any given year. Statistics provided by the US Chamber of Commerce indicate that small businesses are spending millions each year to defend against lawsuits.

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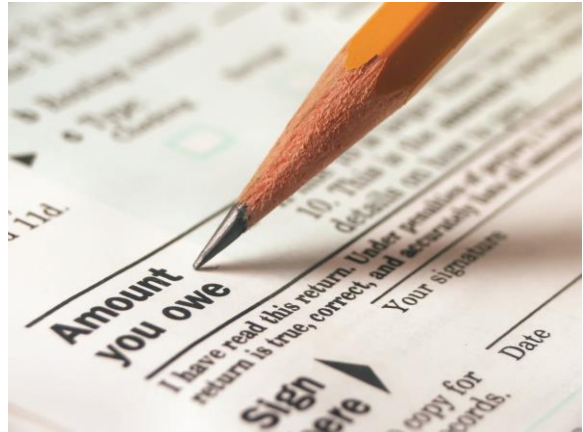
Although small businesses only take in 25% of the gross revenue in the US, they bear the burden of 68% of business tort costs.

Most professionals are aware of these risks, but do nothing to reduce their risk because they do not know better and their attorneys and accountants do not advise them to take protective measures. Accordingly, persons at risk often rely simply upon insurance for asset protection.

TAX LIABILITIES

Our founding fathers fought a revolution primarily because they were upset about taxation without representation. They were upset because it was generally believed that the taxes imposed by the British Parliament were excessive and unfair because the colonies were taxed absent representation in Parliament. Even so, the taxes at the time were a pittance compared to today. Benjamin Franklin once said: “It would be a hard government that should tax its people one-tenth part of their income.” Never in their wildest dreams would the founding father have conceived that state and federal taxes would someday consume more than 50% of the average American’s gross income.



Everyone is at risk because the IRS Code is such a convoluted mess. You are encouraged to call the IRS for advice, but told you cannot hold them accountable for their advice. In fact, independent surveys have revealed that IRS personnel give incorrect advice the majority of the time.

Many individuals call the IRS to obtain advice and take action reasonably relying upon this advice. A few years later, they may be audited for an error made based upon advice they received from the IRS. The fact that they relied upon advice from an IRS employee will not protect them from penalties and interest because ignorance of the law is no excuse.

An opinion, by a tax attorney that practices before the IRS that is in compliance with Rule 230, may protect taxpayer from penalties initially imposed for an error. A Rule 230 opinion requires a written opinion citing all the facts and

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relevant authority with a conclusion on a more reasonable than not basis that the tax shelter discussed is lawful.

It is difficult to obtain a written opinion in compliance with Rule 230 from an attorney. The requirements of Rule 230 are so demanding that the opinions are very expensive to prepare and therefore, they are not cost effective unless there is a substantial amount of taxes that may be lawfully avoided. On the other hand, attorneys do not like to write Rule 230 opinions because the standard of review is that a prudent person would assume on a more reasonable than not basis that the proposed tax shelter is in compliance with the IRS Code.

An attorney that writes a Rule 230 opinion may be held liable if he or she is wrong. Sometimes the penalty may be as much as 50% of the value of the error. If the proposed tax savings is low, the opinion would cost too much to be effective. If the proposed tax savings is too high, an attorney will be unwilling to write an opinion due to professional liability.

An IRS audit for an error on a prior return may leave you with a substantial assessment for taxes including penalties and interest compounded back to the date of the return. IRS debts are not dischargeable in bankruptcy. The IRS collections division may freeze your financial accounts and place liens on all the assets they can find in the US. They may take everything you own to satisfy their debt.

A contested error in a tax return may be several years old when discovered and may take time to resolve. If the IRS prevails, they may impose substantial penalties and interest that may be compounded retroactively. Thereafter, a taxpayer may be charged 25% percent per year on the unpaid balance.

In most circumstances, the financial burden is so great that most taxpayers will need to set up a monthly payment plan because it is not possible for them to pay off the debt in a lump sum. The IRS imposes penalties and interest at the rate of 25% per year on the unpaid balance. The 25% burden is so severe that, even with substantial monthly payments, most taxpayers can only afford to pay off the interest and the principal remains or increases. As a result, payment of the back taxes becomes a lifetime obligation the taxpayer must pay to prevent IRS from liquidating his or her assets.

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First Major Cause of Bankruptcy is Medical Expenses

America is facing a health care crisis. The cost of medical care in the US is exorbitant and the cost of insurance is beyond the reach of many. The Centers for Disease Control and Prevention reported that 54.5 million people are uninsured. The Institute of Medicine has reported that 18,000 Americans die unnecessarily each year due to lack of health insurance.

Health insurance companies are denying coverage by finding slip ups on your application or a pre-existing condition, even one you did not know about!

If you think you do not have to worry because you have health insurance, you may be mistaken. About 30% of persons with health insurance are underinsured, 49% of persons with health insurance are unable to keep up with their routine medical expenses.

Of those workers who are well insured 35% may not be able to adequately handle their medical needs. They may have to postpone medical care or supplement it by refinancing their home or by digging into their personal savings or retirement. About 40% of Americans are underinsured and about 63% may be unable to handle their routine medical costs.

The situation gets worse if you have an accident or a serious illness. Recent surveys show that the average person receiving cancer treatment carries about $18,500 a year in co-payments and deductibles. An accident that requires hospitalization and/or surgery can be overwhelming financially. Even if you have coverage, your claim may be denied. If your claim is covered you may be liable for 20% or more of the cost plus the annual deductible expense. Surgery plus a week or more in the hospital can easily run into a six figure bill. Thereafter, there may be additional surgeries, rehabilitation therapy, prescription drugs, follow up visits and diagnostics, et cetera. A serious injury requiring lifetime treatment and therapy can cost millions of dollars over the course of time.

Denial of Claims

Health insurance companies have the right to use medical reviewers to screen claims. Dr. Linda Peeno, a medical reviewer for Humana, testified before Congress that she was told when she started working for Humana that she had to keep a 10% denial rate. She alleged that the company kept weekly reports on denial rates and that the medical reviewer with the highest percentage of denials

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> ***Always ask for the maximum amount of PIP coverage your insurance company offers on auto insurance policies.***

was given a bonus. Dr. Peeno testified that payments of claims were referred to as 'medical losses' and that the denials of claims were referred to as a 'savings to the company'. She confessed that she denied a man a necessary operation that caused his death in order to save the insurance company a half million dollars. As far as the insurance industry is concerned this was not a denial of coverage, it was a denial of payment. Dr. Peeno testified that her denial of the man's surgery "secured her reputation as a good medical director and insured her advancement to the position of 'Physician Executive' and a six figure income".

Personal Injury Protection Coverage (PIP)

Inadequate coverage and uninsured motorists are a major problem. In many states, a part of your insurance coverage is designated PIP. In at fault states, the third party carrier, the other party's insurance company, is not required to pay your medical expenses if they deny liability in good faith. Payment is discretionary and they may not pay until the case is settled. Consequently, when injured in an auto accident you will first collect your medical expenses from your auto insurance policy's PIP coverage and then from your personal health insurance. It is very important that you carry as much PIP coverage as possible because there is no copayment requirement and state laws require your insurance company to provide coverage. The payment of PIP benefits is not discretionary. However, at some point the insurance company may demand that you see their specialist to determine if you have reached maximum medical improvement (MMI). They are concerned about this because once you achieve MMI; they no longer need to provide any further services.

After your PIP coverage is used up, you should notify your health care providers to bill your personal health insurance carrier to recover payment services provided. You may have to pay for services until your deductible is satisfied. Thereafter, most policies also have a copayment schedule.

On the other hand, you might be without health insurance or your claim could be denied. Injuries sometimes occur during a lapse in coverage or an injury might not be within the scope of your health insurance coverage.

In any of these situations, you may be paying for all or most of your medical expenses after your PIP coverage are used up if your claim has not been settled

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with the liable insurance carrier. Once PIP coverage expires, you are going to want to expedite resolution of your case, but the insurance company liable for the claim is going to hunker down like a roman general laying siege to a city. Their strategy will be to starve you out to encourage a minimal settlement because they assume that the payment or copayment of your medical expenses will financially overburden your personal resources.

The Second Major Cause of Bankruptcy is Divorce

The two major causes of bankruptcy are medical bills and divorce. This was the conclusion reached by a South Carolina bankruptcy attorney who reviewed every bankruptcy petition filed in his state over a seven year period. My experience filing chapter 7 bankruptcies for several years concurs with this assessment that divorces are secondary to medical expenses.

Every year approximately 38% of the existing married couples initiate a divorce or separation proceeding. About fifty percent of marriages in the US end in divorce. In 1970, 72% of the adult population of the US was married; this figure dropped to 59% by 2002, then 57% in 2009 and it continues to drop. Only 5% of the married couples in America may survive to their 50th wedding anniversary, 33% may last 25 years and 20% may last 35 years. If you are married, your marriage has a substantial chance of ending in divorce. Be faithful and positive, but I also recommend that you follow the scouting creed, 'always be prepared'.

An uncontested divorce is a Win-Win situation.

If you are a wealthy individual and have significant personal assets, there are many ways to protect your separate property prior to marriage. However, this is a topic that goes beyond the scope of this book. Prenuptial agreements, community property agreements, dynasty trusts and spendthrift trusts are a few of many techniques that can be used to protect your separate assets prior to marriage.

Contested divorces are very expensive and result in a division of assets, as well as assessments for alimony, child support and a division of marital debt between the parties. The only persons that benefit from a contested divorce are the parties' attorneys. It is in the best interest of all concerned to mediate an uncontested divorce.

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If you do not believe it is possible to mediate with your spouse, do not let your spouse know that you are even considering a divorce. Go to see all of the best divorce attorneys in your area and then retain the attorney that other attorneys believe is the best divorce attorney around. This may prevent your spouse from being able to retain them, because you shared confidential information with them, the attorneys you conferred with may have to decline your spouse's case due to a conflict of interest.

A divorce, just like a bankruptcy, requires advance planning in order to protect your assets and to position yourself so that you may prevail at trial. Your attorney may assist you in getting prepared to initiate the divorce proceeding. The general idea is to be fully prepared to serve the petition for divorce along with a notice for the first motion hearing seeking temporary orders. In most states this is the decisive opening battle and whoever prevails holds the high ground. After your spouse receives the paperwork, he or she may discover that the financial accounts are almost empty and that great representation is not available.

The reason divorce is the second major cause of personal bankruptcies is because most marital communities are not financially solvent. Most are seriously in debt and barely getting by at the time of divorce. Americans are fond of mortgages, credit cards and debt. If a marital community is in financial difficulty living as one household, the parties are certainly not prepared to absorb the costs of their divorce and maintain two separate households. A divorce causes a significant reduction in the standard of living of both parties even when both are gainfully employed. The result is one or both become unable to pay their bills on time.

This is problematic for the divorce practitioner because the spouse that is required to pay off the majority of the marital debt may elect to file bankruptcy to avoid the responsibility. When this occurs, the marital creditors then may pursue the remaining spouse to pay the debt. He or she may attempt to contest the discharge, contest liability, look to the other spouse for reimbursement, file for bankruptcy or pay the debt. All

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of these options are 'no win' scenarios. Due to this potential problem many divorces are organized in conjunction with a joint Chapter 7 bankruptcy by the marital community.

UNINSURED/UNDERINSURED MOTORIST COVERAGE (UIM)

Always obtain uninsured motorist coverage and obtain a high maximum policy limit.

What happens if the party that hits your vehicle is at fault or responsible for the accident and has no insurance coverage or is underinsured? In this situation, you may have to seek compensation from your own insurance company. This is only possible if you have uninsured motorist coverage.[1] If so, you can collect damages from your insurance company and your recovery will be subject to your maximum policy limit. If you do not have uninsured motorist coverage or your injuries exceed your coverage, you will be personally obligated to pay all the medical expenses not covered by your auto insurance carrier unless they are covered by your health insurance policy.

THE INSURANCE INDUSTRY'S SUBROGATION SCAM

Even if you have coverage, you may face the issue of subrogation when you settle your case. Subrogation refers to claims by insurance companies, government agencies, and health care providers seeking reimbursement for the expenses they paid on your behalf from the settlement you obtain. With respect to insurance companies, why should they be reimbursed since you bought insurance to receive compensation in case of an accident or injury? If you are compensated by the at fault party why should they have a claim for reimbursement superior to yours?

Insurance companies do not have a common law or statutory right to reimbursement. Their claims are usually based upon their contractual agreements with their insured. The major insurance companies now include subrogation clauses in their policies or demand that you agree to reimburse them for their expenses. In addition, the insurance companies often place a subrogation clause in their claim forms. If you contest or strike the clause on your policy, you may not be able to obtain insurance. If you strike the subrogation clause from your claim application, your claim may be denied.

The US Supreme Court has held that the insurance companies are entitled to collect subrogation even if you are left without reasonable compensation for

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your pain and suffering, for your lost wages, for your loss of enjoyment of life or for your future medical expenses. The insurance company shall be paid.

The Asset Protection Bottom Line

The health care industry is aggressive in collecting its debts. During post judgment collection proceedings, your assets may be attached, foreclosed and/or liquidated. After it has taken all your assets, it may garnish your paychecks.

According to a study published in Norton's Bankruptcy Adviser, approximately 50% of the people who file for bankruptcy do so because they cannot afford to pay their medical expenses; 75% of these bankruptcy cases are filed by persons who have health insurance coverage but had their claims denied or were overburdened by the copayment requirements. Half of all US bankruptcies are caused by soaring medical bills and most people sent into debt by illness are middle class workers with health insurance, according to research published in the Journal of Health Affairs.

Bankruptcy court is a heartless place. The exemptions are small. The federal homestead exemption is only $125,000, which is insufficient to protect most homes from foreclosure. Other than that there are minimal exemptions for household goods, tools of the trade, et cetera, the only debts you may be able to walk away from are your credit card debts and that may not include department store credit cards or gas cards. You may also be forced to disclose all of your financial resources under oath and penalty of perjury.

Without asset protection an unforeseen accident or illness can wipe you out financially. It does not matter whether you have insurance. The US Bankruptcy Court’s courtrooms are filled with debtors who had full health coverage and auto insurance. The bottom line is that insurance is not enough. You need a serious asset protection plan in place to protect the fruit of your life’s endeavors.

Insurance is Not Enough!

Insurance is a useful asset protection tool. To the extent that it makes economic sense, insurance should be your first line of defense, but unfortunately, insurance coverage cannot provide comprehensive asset protection for numerous reasons:

- The insurance company may deny your claim.
- The insurance company may become insolvent.

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- A judgment may be entered in excess of insurance coverage. (67% of all lawsuits against doctors exceed policy limits.)
- The incident may occur during a lapse in coverage.
- You may not be able to obtain or afford adequate coverage.
- Insurance does not cover intentional torts and many other potential liabilities.
- The type of damage incurred or person injured may be excluded by the policy.
- Insurance will not protect you from IRS collections, alcohol related accidents, child support, student loans, secured creditors and most claims by government agencies.
- Nor can it protect you from civil forfeiture claims or provide compensation for damages from civil forfeiture actions.

Insurance is a useful tool as the 'First Line of Defense', but insurance by itself is not capable of protecting your assets. It is only a small part of a much larger strategy.

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CHAPTER 2: UNDERSTANDING COLLECTIONS PROCEDURE

THE BASICS OF CREDITOR/DEBTOR LAW

In order to understand asset protection, it is necessary that you be given a rudimentary idea of the debtor/creditor relationship and how creditors collect their debts. There are two fundamental sources of debt: voluntary and involuntary.

Voluntary debts are credit cards, mortgages, leases, loans, promissory notes and contracts implied, oral and written. Voluntary debt is generally an extension of credit. It is an acknowledged uncontested debt. Persons owed the debt are referred to as creditors.

Involuntary debt generally arises from litigation or government assessments or sanctions. It is usually contested or imposed debt. Examples are tort claims, civil forfeiture, traffic tickets, malpractice actions, criminal fines, penalties and tax assessments. Persons or entities claiming entitlement to involuntary debt or damages are referred to as claimants until they obtain a judgment, after which they are referred to as creditors. A judgment obtained through a lawsuit is generally required to complete a private party's claim, except for secured transactions. A secured transaction occurs when a debtor has pledged property as collateral in a contract that gives the lender the right to reclaim the collateral if the debtor defaults by failure to make the loan payments on time.

Creditors may be secured or unsecured. A secured creditor has a claim on your property that is obtained via an agreement in which you pledged collateral to obtain a loan or a mortgage. Unsecured creditors do not have collateral or a secured interest in any of your property. Therefore, their claims are inferior to the claims of secured creditors. An unsecured creditor can receive a secured interest in a debtor's property by obtaining a civil judgment.

Even if an unsecured creditor obtains a judgment, the unsecured creditors claim may be inferior to the claim of a secured creditor that completed his or her secured interest before the unsecured creditor obtained judgment. A debtor may have a mortgage on the family home for $100,000. Although the debtor has been making payments for a few years, the payments have not affected the principal yet so the debtor still owes $100,000, and the fair market value (FMV) remains at

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$100,000. The unsecured creditor that obtained a judgment lien may not be able to collect against the home because the secured creditor has priority.

A lender that has a secured loan is usually entitled upon a default in payments to recover the collateral and sell it at a public auction. Depending upon the contract and state laws, the borrower/debtor may still be liable for any deficiency between the sales price and the balance due on the debt. In Washington State, when a home loan is secured by a Deed of Trust, the lender can simply take the home back and the debtor is relieved of any responsibility to pay for any deficiency. If the home is secured by a mortgage, the creditor has to initiate a mortgage foreclosure proceeding that will result in the forced sale of the home. In a mortgage foreclosure proceeding, the sale does not release the debtor from the debt; the debtor may have to pay the deficiency plus any costs and interest incurred.

Another example of a secured transaction is a vehicle or heavy equipment loan. This kind of contract usually has clauses allowing the creditor to recover the property if the debtor misses a certain number of payments. The collateral is then sold at a public auction and the debtor is liable for the deficiency plus other repossession and collection expenses plus compounded interest.

Consumer credit accounts are secured by products purchased with the credit cards. Furniture and expensive household goods such as washers, dryers, refrigerators and home entertainment equipment are collateral until the debt on the card is paid off. A consumer credit card issued by a department store differs significantly from a credit card issued by a bank. A bank credit card can be used at any store anywhere that accepts the brand of credit card issued by the bank. This is general credit because it can be used almost anywhere. Bank credit cards can be discharged in bankruptcy.

Stop Being a Target for Money Hungry Lawyers

David Kauffman worked hard at his profession and he accumulated the rewards that go with success. Then a disgruntled client named him as a Defendant in a lawsuit and threatened to "take him for everything he owned." But after David had a talk with the plaintiff's attorney, the suit was quietly dropped. The reason? In spite of his apparent wealth, he doesn't legally "own" anything that a lawsuit or court judgment can take. David had the foresight to shelter his assets in a judgment-proof international business company long before the claim was ever filed.

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On the other hand, the consumer contract you sign when obtaining a credit card with a department store states that the card can only be used to purchase products at their store. It also requires that products purchased are collateral for the credit extended and can be recovered upon demand if you do not make payments on time. Accordingly, in bankruptcy there are three methods of disposing of consumer debt: a) return the products purchased, b) negotiate a settlement or c) reaffirm the debt and continue payments. If you have disposed of the product, the debt usually cannot be discharged in the bankruptcy proceeding and the debtor will have to affirm the debt and negotiate a reduced lump sum pay off or a payment plan.

Generally speaking, all other types of claims regarding private claimants such as torts, breach of contract, malpractice and disputes regarding unsecured debts will be litigated in a civil proceeding. A defendant will be entitled to due process of law in a civil proceeding.

How Creditors Locate Your Assets

The first step any creditor takes before pursuing a debtor is a preliminary asset search to determine whether the debtor has sufficient assets to justify further collection activity. Financial privacy generally disappears once a civil action is filed and discovery begins. Nevertheless, many lawsuits can be avoided or settled out of court if credit reports and asset searches indicate that the defendant does not have any significant assets. There are many privacy strategies that can be employed to lawfully make your assets invisible to credit reporting agencies and computer asset searches. Federal agencies can identify the location of a taxpayer's financial accounts through the US Treasury Department's data base Financial Crimes Enforcement Center (FinCen) and other networks. The Bank Secrecy Act and US Treasury Department regulations require all financial institutions to disclose the social security numbers of persons who open bank accounts and/or have signature authority. An investigator simply inputs a debtor taxpayer's social security number (SSN). Every financial account in the US that the debtor has opened and/or has signature power over will be listed. Companies' accounts can be identified by their Employer Identification Number (EIN) or Taxpayers Identification Number (TIN) State agencies may have access to FinCEN or other federal data networks through mutual assistance pacts. Otherwise, they can find your accounts through phone records, credit reporting agencies and asset search services and other sources.

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Private parties and plaintiffs' attorneys can usually obtain credit reports and asset search reports at minimal expense within 24-48 hours. These materials will identify all of a debtor's financial accounts and assets, as well as his or her credit history unless the debtor has employed asset protection and privacy countermeasures. Creditors will be able to access the debtor's credit reports and computer asset searching services that sweep government license and title registries and other public databases.

If the defendant does not have insurance or any significant assets, the plaintiff's attorney may decide not to pursue litigation since there are no deep pockets. An attorney is not going to pursue litigation if there is no hope of recovering capital. On the other hand, if the defendant has insurance covering the claim, the plaintiff's attorney will determine the policy limits. If the claim is a large claim and the plaintiff is clearly at fault, both parties may agree to settle the case for the policy limits unless the credit reports and asset searches indicate that the plaintiff appears to have substantial assets. If so, the plaintiff's attorney will proceed to litigate in the hope that the plaintiff will be able seize all or most of the defendant's assets.

UNDERSTANDING CIVIL PROCEDURE

A civil action is initiated by filing a complaint with the court clerk. The complaint will identify the parties, explain why the court has jurisdiction and identify the claims and damages sought by the plaintiff. It will also contain a statement of facts in support of the claims alleged in the complaint. The complaint must be served upon the defendant after the complaint is filed, usually 120-180 days. In most jurisdictions, a defendant has 21 days to respond to the complaint being served. If the defendant fails to respond, the plaintiff can file a motion for default judgment. Unless the defendant has retained an attorney, the motion for default usually can be filed without further notice to the defendant. At the hearing the judge will verify proof of service and if the record shows a failure to file an answer, the judge will enter a default judgment granting the plaintiff the relief requested, unless it appears to be unreasonable to the judge.

> ***"I thought I'd have to go bankrupt. But with my assets protected, it wasn't necessary."***
> ***~ L.K. Barton, Nevada***

If a defendant answers the complaint or has an attorney appear on the record on behalf of the defendant, the plaintiff will not be able to obtain a default judgment

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against that particular defendant and the civil action shall proceed into a process called discovery.

Discovery is a process used by the parties to discover all of the facts and evidence relevant to the case. Modern discovery rules impose a duty upon all parties to voluntarily disclose all material facts and evidence in their possession in most jurisdictions. Both the plaintiff and defendant are entitled to discovery. False statements or material omissions in response to discovery requests may result in a motion for contempt of court and/or the debtor's being prosecuted for perjury.

A party may depose or question an opposing party or witness under oath before a court reporter. Third party witnesses, as well as the defendant, may be deposed. A witness may be deposed for as long as the party has relevant questions and a deposition of a witness can last for days depending upon the complexity of the case.

The discovery process also allows for the use of interrogatories, which is a list of written questions that must be answered. Requests for admissions of facts are allowed. This allows the parties to determine what evidence is uncontested and define the facts that will be contested at trial. Discovery also allows written requests for the production of documents, telephone records, financial statements, checkbook registers, financial ledgers, computer files and other evidence. A plaintiff may even request permission to enter and inspect a home, office, vehicle or building.

If the plaintiff wins the lawsuit, the judge will sign a judgment against the defendant. A judgment is a statement of what the defendant legally owes the plaintiff. Thereafter, the plaintiff will be referred to as the creditor and the defendant as the debtor.

CONTEMPT OF COURT

There is no law requiring a debtor to pay a judgment. A debtor cannot be jailed for the failure to pay a judgment and debtors' prison has been abolished. However, you may find yourself indefinitely in jail for contempt of court for the failure to pay child support or alimony or for the failure to recover offshore funds.

I heard a radio commentator talk about an older gentleman in his seventies in Northern Michigan (hereafter referred to as the 'old soldier') who had been

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incarcerated for an indefinite period of time by an overzealous judge for the failure to pay alimony to his dead wife. The man was a retired veteran living in poverty. Apparently, the state placed the burden of proof on the old soldier to prove the wife was dead.

At the old soldier's divorce several decades prior, a judge imposed alimony although the wife did not request it. The wife did not request alimony, told her husband to forget about it and never asked the court to collect it for her. She had been dead for many years, and died at an unknown location in another state. A court administrator known as a friend of the court discovered the deficiency in the public records and had the old soldier charged with contempt of court for non-payment of the alimony to his dead wife. The judge ordered the old soldier to prove his wife was dead. He said he did not know how to prove it. The judge threw the old soldier in jail and brought him before the court once every couple of weeks to see if he had obtained proof.

I looked into the matter and called the judge, who sarcastically asked me if I wanted to volunteer to pay the old soldier's arrearage. I told him I was going to obtain a writ of habeas corpus, call a press conference on his court house steps and force him to release the old soldier. When I got to the court house, the judge greeted me with the county sheriff by his side. Apparently, the judge did not want any bad publicity and had already released the old soldier.

My friend and I went out to meet the old soldier at his farm house. The old soldier lived in a hundred year old farm house with no windows or heating other than a wood stove in the kitchen. Clear plastic drop cloths were stapled where windows should be. The old soldier was a combat veteran living on social security and he survived by fishing, hunting and growing some vegetables. It was early spring in Michigan and still pretty cold. The old soldier was living in the kitchen with his bed across from the woodstove.

The old soldier thanked us for inspiring the judge to release him, but indicated he liked it in jail because it was warm, the food was good and he enjoyed the tall tales and stories told by the characters he met in the jail. The sheriff also took a

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liking to him, gave him special privileges and let him wash and polish the police cars. He said he was prepared to defy the judge indefinitely and spend the rest of his life in the county jail if necessary.

The claim that debtor's prison no longer exists is a partial truth. As the foregoing story shows, you can be incarcerated on the grounds of contempt of court for refusal to pay a debt. Furthermore, there is no time limit upon how long you may stay in jail in a civil contempt situation. You can spend many years in jail for civil contempt due to failure to pay a debt.

Never refuse to comply with a court order. If you are unable to comply with a court order, you should be prepared to prove at a contempt hearing that a good faith attempt to comply was made and you must be prepared to present substantial, credible evidence to document and explain the failure to comply with the court order. In most jurisdictions, an intentional failure to comply is grounds for contempt. A failure to comply is generally unacceptable except for good faith efforts that failed due to accident, inability to comply, impossibility, delay caused by unforeseen circumstances or obstruction by an independent intervening event. If held in contempt, you may appeal the finding of contempt and seek a stay pending appeal.

The Post Judgment Collection Process

Post Judgment Collection by Private Creditors

In civil actions, private creditors who prevail obtain judgments.[2] A debtor can pay the judgment voluntarily or the creditor can try to locate and seize any assets titled in the debtor's name. There are various procedures available to a creditor:

Garnishment

A creditor can obtain a writ of garnishment that can be used to seize funds held in bank accounts or brokerage accounts. Wages and commissions can be garnished. The debtor is entitled to notice and a hearing before a prejudgment writ of garnishment may be issued.[3]

Lien Foreclosure Actions

In most states a lien can be placed on the title or registration of real or personal property to prevent the transfer of title until the lien creditor is paid. In some states, a debtor can seek reimbursement for costs and fees if a lien is invalid.[4] Lien foreclosure is generally available for civil judgments or unpaid debts due for

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services, labor, materials, rent or professional fees. Liens for debts that are not judgment debts may require that litigation commence within a specific period of time or the lien expires.[5]

Writs of Attachment

After obtaining a judgment, a creditor may seek a writ of attachment to seize the debtor's property and/or sell it at a public auction.[6] Notice and a hearing are generally required to obtain a writ of attachment.[7]

Prior to starting litigation, a claimant may place a notice of lis pendens (pending litigation) or a lien in the public record to alert potential buyers that litigation or claims are pending regarding the debtor's property. If the attorney has reasonable proof that the debtor may sell, destroy, transfer or liquidate assets, a prejudgment writ of attachment can usually be obtained prior to judgment.[8] An injunction or prejudgment writ will prevent the sale or transfer of the property prior to conclusion of the lawsuit. After a judgment is obtained, the creditor may place judgment liens on any or all of the debtor's property that has a registration or title in the public record. Once a judgment lien is filed, the title or registration for the property cannot be transferred to a new owner unless the creditor's judgment is satisfied.

In order to locate all of the debtor's assets, a judgment creditor may seek post judgment discovery. The debtor may be required to produce documents and attend a deposition for the purposes of identifying all of the debtor's assets. A good defense attorney may be able to thwart any prejudgment discovery attempts prior to trial to identify the debtor's assets on the grounds that the defendant's assets and financial records are not relevant unless the plaintiff obtains a judgment. If the defendant's attorney is unable to limit the scope of pretrial discovery to protect your financial privacy, a post judgment deposition may be unnecessary. If the defendant's attorney succeeds in limiting pre-trial discovery, a post judgment deposition will certainly occur and all will be revealed at that time.

Elimination of Liens in State Court Proceedings

A lien is a notice of legal claim upon real or personal property to insure the satisfaction of a debt before record of ownership can be transferred. A lien is placed in the public record on property that has a title, registration or deed recorded with the state. If the property is sold, the record of ownership cannot be transferred into the name of a new owner until the lien is satisfied. There are

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three types of liens: 1) consensual 2) statutory and 3) judgment liens. Consensual liens arise from secured interests by contract. Statutory liens are liens created by statute such as mechanic's liens and tax liens. Judgment liens are acquired by obtaining a court judgment.

Judgment liens are the most dangerous form of lien, but a judgment lien may be eliminated if: a) the lien is against exempt assets, b) the lien is a type of lien that can be eliminated or c) the amount of the lien impairs the state exemption.

Even if a creditor obtains a judgment against a debtor in a state court proceeding, the debtor may be protected by state exemptions. Each state has its own list of exempt properties. For each type of exemption (homes, vehicles, tools of trade, et cetera) a specific amount of value is exempt. A lien impairs a state exemption if the sum of all of the liens on the property, plus the amount of the exemption, exceeds the value of the property.

Suppose a debtor has a home worth $130,000 with a secured mortgage of $100,000 and the debtor has a state homestead exemption of $30,000. The homestead exemption gives the homeowner a $30,000 interest in the home that is inferior in priority to any secured creditors' interests, but superior to unsecured creditors' interests. An unsecured creditor's lien will be ineffective against the homeowner because the values of the homestead exemption and the secured interest leave no remaining value for the unsecured judgment creditor.

The homeowner could initiate an action to remove the unsecured creditors lien unless there is some statutory or case law prohibiting such. Most states do not expressly describe by statute the types of liens that can be eliminated in state court when a lien impairs an exemption. The problem with the rule outlined above is the second criterion that refers to liens that can be eliminated. Research in each state must be performed looking for statutory provisions or case law prohibiting elimination of the type of lien at issue. This will vary from state to state. Alabama courts prohibit the elimination of liens arising from tort judgments, whereas most states do not follow this rule.

In some states, statutory liens may be contested. A motion to set aside a lien (for labor, services, material or equipment) may be filed in Washington State if a lien is excessive, frivolous or without merit, and the prevailing party may recover costs and fees.[9] In Washington State, a prejudgment lien expires after 8 months unless a civil action is initiated within the 8 month limitation and the defendants are served within 90 days thereafter.[10] A prejudgment lien must be filed not

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later than ninety days after the person has ceased to furnish labor, professional services, materials, or equipment or the last date on which employee benefit contributions were due.[11] There are also statutory requirements concerning the language and content of the lien notice. Failure to comply with procedural regulations may result in the removal of a lien; a prohibition against the creditor's resubmitting the lien and/or a limitation on the ability of the creditor to collect the underlying claim.

Every state has procedural rules regarding notice, filing, content and manner, and time limitations with respect to liens, garnishments, attachments and complaints. The failure of an attorney to comply with any one of a state's many complex procedural regulations may result in the inability to collect a judgment. An attorney's greatest fear may be the failure to meet a limitations deadline with respect to the filing of a complaint, petition, motion or appeal. Such errors can result in a civil action being dismissed or barred from proceeding.

GOVERNMENT AGENCIES' COLLECTION PROCEDURES

Citizens and business creditors are generally required to obtain a judgment by prevailing at trial before they can proceed to lien, levy or garnish assets. This is because the claims arise under the common law which requires due process of law. However, government agencies are governed by administrative law which provides minimal due process. This means that in some instances your property may be seized without prior notice and you may be given a post-deprivation hearing.

In some states, non-payment of real estate taxes may result in state tax liens or deeds being sold. The debtor's property will be forfeited to the lien holder if the debt is not paid within a specified period of time. In other states, nonpayment results in a notice of deficiency once taxes become delinquent for a certain number of years. After receiving notice, the debtor will be given a period of time to contest or correct the deficiency before the state or county will sell the

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property at auction. The procedures vary from state to state, but usually follow a procedure similar to one of the examples provided above.

Nonpayment of income taxes gives the agency owed the deficiency the authority to assess interest on the unpaid balance, to assess penalties and interest, to place liens on property and to levy the debtor's financial accounts without obtaining a judgment. The failure to file a return usually gives a revenue agency the authority to issue notices of assessment in which they assess an estimated tax, plus penalties and interest, based upon prior returns. If the assessment is not contested, the deficiency is sent to the collection department of the agency.

With respect to financial accounts, the same day the government posts the taxpayer a notice of intent to levy notice in the mail, they also serve the notice on the bank which freezes the taxpayer's bank account. The notice will usually give the taxpayer a couple of weeks to contest the levy. If the notice of levy is not contested by the deadline, the deficiency will be taken from the financial account.

Civil Forfeiture Actions

The purpose of civil forfeiture is to confiscate property used in violation of the law or acquired from the proceeds of criminal activity. Forfeiture laws have become increasingly popular with state and federal law enforcement officials. This legal procedure created to combat drug dealers, organized crime, terrorists and serious felonies, has quickly grown to encompass trivial 'crimes' and the general public. Due to its ability to generate billions of dollars of capital, it has quickly become the darling of the law enforcement growth industry.[12]

The civil forfeiture process allows law enforcement officers to confiscate property without a warrant, court order or even a hearing prior to seizure. Property can be confiscated even if the owner has not been charged with a crime. Generally, unless the owner initiates a legal action within a short deadline period specified in a forfeiture notice, the property will be sold at an auction. If the owners fail to respond in time, they can lose their property. The 'property' is guilty until proven innocent. The owners must prove that the property was not used to facilitate a crime and that it was not acquired from the proceeds of a crime.

Law enforcement agencies are supposed to have probable cause before they seize property and/or issue a notice of forfeiture. However, the federal judiciary system has held that there is sufficient probable cause based solely on the

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inadmissible hearsay of informants that the money was related to drugs after a search that netted neither drugs nor arrests.[13]

As civil forfeitures become increasingly popular with law enforcement officials, efforts have begun to expand government forfeiture powers. Originally, forfeiture applied only to organized crime and drug distribution. In Texas, Florida and New Jersey civil forfeiture now applies to any kind of criminal violation, no matter how trivial. In 1990, Arizona attorney general's office unabashedly proclaimed that the mission of Arizona's forfeiture laws is "'social engineering' accomplished through government intercession in commercial activity harmful to the economy as a whole."[14]

A New Jersey construction company and all of its assets, including heavy equipment, were seized based upon an allegation that the company obtained and performed three municipal contracts it was ineligible to perform.[15] A New Jersey couple's home and two cars were seized by local police based upon an allegation that they stole Express Mail packages from their neighbors' property.[16] In Ohio, the Public Utilities Commission (PUCO) regulates the inspection of motor carriers. PUCO has authority to initiate civil forfeitures for violations of highway safety guidelines. PUCO collects $2.5 million a year through civil forfeitures.[17] In Florida, a sheriff's department has initiated a program to stop and question people on the streets or highways if they fit the department's profile for drug couriers. If so, the deputies seize any cash in amounts over $100 that such people may be carrying, regardless of whether drugs are found.

There is a dangerous conflict of interest in the civil forfeiture laws because they allow law enforcement to retain the proceeds from the forfeited property. Consequently, undercover officers may be motivated to arrange for transactions to occur at locations where there is valuable real estate or to entrap innocent parties for their property. Most officers would not do such a thing, but every barrel may have a few bad apples.

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On October 2, 1992 millionaire Donald Scott was shot to death during a raid by Los Angeles Sheriff's Department and agents from five federal law enforcement agencies. Mrs. Frances Scott was awakened by the sound of the police breaking down their door. She ran downstairs and found men with guns aimed at her. Donald Scott, who was recovering from cataract surgery, woke up hearing his wife scream "don't shoot me, don't kill me." He got his gun and ran to the defense of his wife. He emerged at the top of the stairs and the officers told him to lower the gun. As he did, they shot him to death. A 64 page report filed by the Ventura County District Attorney, Michael Bradbury, concluded that the police lied to obtain a search warrant, hoping to find marijuana on the property. The DA also concluded that there had never been any marijuana cultivation on the property. The DA concluded in his report that the raid was motivated by a desire to forfeit the multi-million dollar ranch.

Civil forfeiture laws show little mercy to innocent third parties, such as landlords and persons who unwittingly loan their vehicles to friends or relatives who commit a crime in the vehicle. Unknown to a landlord a tenant may be involved in unlawfully manufacturing or distributing a controlled substance on their rental property. The police may file a civil forfeiture notice on the landlord and require the landlord to retain counsel and file a civil action to stop the forfeiture. The police may confiscate an entire hotel or apartment complex even though only one tenant is involved in an illegal activity.

James Hoyle's 72-year-old mother's home was seized by FBI agents and DC police officers because her nephew, who was staying overnight, was suspected and later charged with drug dealing. More than 15 FBI agents, armed with what appeared to be automatic weapons, placed her nephew under arrest and searched the house. After handcuffing Ms. Hoyle, the officers took all of her televisions, VCRs, family photos, personal papers, and an automobile. Over twelve officers participated in tearing Ms. Hoyle’s wide-screen built-in television set out of the wall. One of the officers ripping up Ms. Hoyle’s house was caught on camera asking Ms. Hoyle: "How do you like your new house?" The warrant was based on an informant's claim that he made a drug deal with her nephew Mark on the front porch years earlier.[18]

Civil forfeiture laws are also being used to shut down and foreclose on multi-level marketing (MLM), network marketing and high yield investment programs. Many attorney generals are hostile to MLM programs and network marketing. Nevertheless, the courts have held that multi-level programs when properly

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structured and operated are lawful. However, the law is not always clear and some businesses open without consulting first with a multi-level marketing attorney to be certain their business design is lawful.

When an attorney general's office gets complaints about a high yield investment program or multi-level marketing program, it may trigger an investigation that may result in the State's Securities and Exchange Commission declaring the business to be a ponzi scheme. Cease and desist orders may be entered. The business's financial assets may be seized and placed in trust. Based upon the business records, the trust administrator may send letters to all of the members who made money, declaring that the money they received was 'stolen' and obtained by theft through an illegal ponzi scheme. A demand may be made to either return the proceeds or answer a detailed financial declaration. The purpose of the declaration is to see if the MLM member has sufficient assets to justify initiating a civil forfeiture action to recover assets.

Civil forfeiture laws have been enacted federally and in every state. There currently are over one hundred federal forfeiture statutes. Federal agencies with civil forfeiture authority include, but may not be limited to, the following agencies: DEA, Customs, IRS, Coast Guard, Bureau of Land Management, US Postal Service, Fish and Wildlife Bureau, SEC, DHHS, FDA, the Justice Department, INS, and HUD. There are also thousands of state and local police agencies with civil forfeiture authority. Civil forfeiture has become a frightening liability for all American businesses, as well as the general public.

State and Federal Exemptions

The federal government and all states have laws designating certain property to be exempt from the claims of creditors. They are prohibited from trying to seize or liquidate exempt property. How much property is exempted is a policy decision which varies from state to state. Some states do not exempt much property while others exempt millions of dollars' worth of property. The reason for exemptions is to prohibit creditors from financially destroying the debtor. Otherwise, the debtor and family would become a burden on society. Therefore, the laws are designed to allow the debtor to keep enough property make a fresh start.

Retirement and Pension Plans

Under US federal law, retirement plans subject to ERISA (Employee Retirement Income Security Act) are a relatively safe harbor for your assets because the US

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Supreme Court has held that ERISA qualified retirement plans are excluded from a petitioner's bankruptcy estate.[19] Therefore, they cannot be reached by creditors in a bankruptcy proceeding. Under the Bankruptcy Abuse Protection Act of 2005 (BAPA)[20], establishes a general rule that most tax deferred pensions are exempt. Under both the pure federal exemption scheme and the state exemptions [21] the following pensions are exempt from the bankruptcy estate: IRC §§ 401, 403, 408, 408A, 414, 457 or 501(a).

Prior to 2005, it was unclear whether IRAs were exempt under federal law. In fact, the Eighth Circuit Court of appeals held that they were not in 2004. However in 2005, two things happened. First on April 4, 2005, the US Supreme Court held that IRA accounts are exempt from a bankruptcy estate because they provide a right to a payment of funds on account of age pursuant to IRC § 522(d)(10)(E)[22]. Later on October 17, 2005, the new Bankruptcy Reform Act took effect. It specifically exempts IRAs from the bankruptcy estate, but added a new section 11 USC §522(n) that places a cap on individual debtor's IRAs and Roth IRAs at $1,000,000. Therefore, any traditional IRA or Roth IRA funds over $1,000,000 may be reached by your creditors. However, the following IRAs are not subject to the cap: Simplified Retirement Accounts under IRC § 408(p), Simplified Employee Pensions under IRC § 408(k) and rollover contributions under IRC § 402(c), 402(e)(6), 403(a)(4), 403(a)(5) & 403(b)(8). A judge may also raise the cap in the interests of justice.

Each state has different laws with respect to the status of IRAs. Some states exempt all IRAs from state civil actions. Some states only exempt some kinds of IRAs and do not protect others. If the debtor resides in a state that does not exempt IRAs, the debtor may elect to file a federal bankruptcy petition or the debtor may be able to present a strong argument in state court that the Supremacy Clause of the US Constitution and the Doctrine of Federal Pre-emption require that the state law must be disregarded in favor of federal law.

ERISA compliant retirement plans and IRAs provide significant asset protection. It is a good strategy for high income professionals to place as

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many funds as possible into ERISA plans such as a qualified retirement plans (QRP). The maximum allowable contributions of income should be made every year. With respect to IRAs, we recommend the use of a self-directed IRA that holds its investment through an offshore Nevis LLC. This provides maximum asset protection while accumulating wealth by deferring taxes.

Homestead Exemptions

Almost all states offer an exemption of a person's homestead from creditors' claims. A homestead generally refers to your ownership interest in a personal residence. In some states only traditional homes are protected. Others include condominiums, co-op apartments and mobile homes. You may lose the homestead protection if the dwelling is not used as your primary residence. You generally will not lose homestead protection if temporarily hospitalized in a nursing home or temporarily staying with relatives due to illness.
The amount of the exemption varies from state to state. In many states, the exemption is less than five thousand dollars. In other states, it may be much higher. For example, the exemption in Arizona is $150,000, Washington State is $125,000, Minnesota is $300,000, North Dakota is $80,000, and Massachusetts is $500,000. The exemption in the majority of the states is $50,000 or less. However, the good news is that the homestead exemption is unlimited in Arkansas, Florida, Iowa, Kansas, Oklahoma, South Dakota, Texas and Washington DC.

A state homestead exemption will not protect your interest from a secured creditor and it might not protect you from a creditor that files a civil collection action in US District Court, depending upon the jurisdictions and circumstances of the case.

The value of the homestead is calculated differently in different jurisdictions. In some states, the exemption is based upon the person's equity in the property and in other states it is based upon the value of the entire property. In most states, upon the death of the owner, the homestead passes to the spouse and/or heirs free of creditor's claims, but in some states it does not. In most state, the homestead can be sold and the debtor is given a reasonable amount of time to use the proceeds to buy another homestead.

In most states, a person does not have to file a homestead exemption in order to obtain the exemption, but in some states it is necessary. If a declaration of homestead is required, you must be sure to carefully fulfill all of the statutory

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requirements pertaining to the drafting and filing of the declaration of homestead. An error may cause the loss of the exemption.

In a few states the exemption only applies to the head of household. Therefore, you must financially support a wife or child in order to qualify for the exemption. In most states, a person must occupy the homestead in order to qualify for the exemption or at least manifest an intent to make the property his or her homestead.

There are also exceptions to the homestead exemption that vary from state to state. For example, in some states the homestead exemption does not apply to: a) debts incurred before the homestead was purchased; b) judgments obtained before the homestead was acquired; c) debts relating to the acquisition, construction or improvement of the homestead; d) debts owed for unpaid taxes, e) criminal penalties or alimony debt.

It is very important that you become familiar with the provisions of your state code to ascertain what is the size of the homestead exemption, what types of dwellings are exempt, what is necessary to qualify for exemption, and what types of debts are excluded from the exemption. Knowledge of the dollar limit of the exemption is not enough. You must know much more in order to make sure the exemption will protect your residence.

There is also a federal bankruptcy homestead exemption that has a limit of up to $125,000 if the property was acquired within the previous 1215 days (3.3 years). The cap is not applicable to any interest transferred from a debtor's previous principal residence, which was acquired prior to the beginning of such 1215-day period. The state you use for your exemptions is: The state you lived in for the 730 days (2 years) before filing; or if you did not live in a single state in the previous 2 years, you use the state where you lived the majority of the 180 day period preceding the 2 year period; or if the preceding renders you ineligible for any exemptions then the debtor is allowed to choose the federal exemptions.

If you reside in a state that has a low state homestead limit, you may obtain protection from the federal homestead limit by filing a bankruptcy petition or by developing an argument that the federal homestead limit is applicable based upon the Supremacy Clause of the US Constitution.

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The following is a listing of state homestead exemptions (exemptions are to change):

Alabama	$5000	**Alaska**	$67,500
Arizona	$150,000	**Arkansas**	$2500
California	Up to $75,000	**Colorado**	Up to $60,000
Connecticut	$75,000	**Delaware**	$50,000
Florida	No Limit	**Georgia**	Up to $20,000
Hawaii	$20,000	**Idaho**	$100,000
Illinois	$15,000	**Indiana**	$15,000
Iowa	No Limit	**Kansas**	No Limit
Kentucky	$5,000	**Louisiana**	$25,000
Maine	$35,000	**Maryland**	$5,000
Massachusetts	$500,000	**Michigan**	$34,450
Minnesota	$300,000	**Mississippi**	$75,000
Missouri	$15,000	**Montana**	$250,000
Nebraska	$60,000	**Nevada**	$500,000
New Hampshire	$100,000	**New Jersey**	None
New York	Up to $50,000	**North Carolina**	Up to $70,000
North Dakota	$80,000	**Ohio**	$20,200
Oklahoma	$10,000	**Oregon**	$40,000
Pennsylvania	None	**Rhode Island**	$200,000
South Carolina	$53,375	**South Dakota**	$30,000
Tennessee	$5,000	**Texas**	No Limit

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Utah	$20,000	**Vermont**	$75,000
Virginia	$5,000	**Washington DC**	None
Washington State	$125,000	**West Virginia**	$25,000
Wisconsin	$75,000	**Wyoming**	$10,000

****NOTE: State homestead exemptions are subject to changes. Be sure to seek consultation regarding changes to your state.**

If you reside in a state that has a greater homestead exemption, you may find that the state homestead exemption is pre-empted by the US Supremacy Clause in federal civil proceedings unless you are in US Bankruptcy Court in a state where the debtor is allowed to elect whether to use the state or federal exemptions in their bankruptcy proceeding.

Other State Exemptions

Each state will generally have exemptions for other types of property that mirror the categories of property that are exempt in US Bankruptcy Court. The types of property that are generally included are: vehicles, tools, annuities, household goods and personal property.

For example, in Washington State there are the following state exemptions:

$40,000	Homestead Exemption, must be filed before sale
$2,500	Motor Vehicles per person limit 2 per household
$2,700	Furniture, household goods & yard equipment
$1,500	Books
$1,000	Clothing, jewels & ornaments
$16,500	Personal injury/loss of injury payments
$2,000	Wild card personal property exemption, includes up to $200 cash and $200 in securities, share or bonds
$250	Maximum annuity payments per month
$5,000	Tools of trade
$5,000	Office Equipment
$5,000	Farm Equipment

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In Washington State, only 25% of your wages can be garnished. Most pensions and all IRAs are exempt. Pictures, keepsakes, insurance proceeds, disability benefits, most public benefits and child support are exempt. Each state may differ in the amounts exempt and may differ in the types of property that are exempt from collections.

It is important to note that state exemptions generally do not require you to file a bankruptcy petition to be protected. You must check the statutes to be sure. Most of the Washington State exemptions listed above fall under the personal property exemption[23], which states that personal property shall be exempt from execution, attachment, and garnishment. This means creditors are prohibited from executing a judgment by attachment or garnishment against property listed as exempt. It is a prohibition against any post judgment civil proceeding in state court and you do not have to file bankruptcy for protection.

In Washington State, the debtor can protect exempt property by making a list of exempt properties. Each item on the list should contain a description, a declaration of its estimated value, the basis of the exemption and reference to the statutory authority based upon the RCW exemptions. This list must be submitted to the officer enforcing the attachment or garnishment before the sale or disposal of the property. The officer will show the list to the creditor. If the creditor objects, an appraiser will be required to determine the value of the property.

UNDERSTANDING BANKRUPTCY LAW

A bankruptcy can be voluntary or involuntary. This is because bankruptcy law may be advantageous to the creditor or the debtor depending upon the financial circumstances of the debtor. If the debtor has significant assets that are not exempt and unsecured, creditors may elect to force the creditor into bankruptcy. An involuntary Chapter 7 or Chapter 11 bankruptcy requires twelve or more creditors, and at least three of these creditors must have a combined claim

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greater than $12,300. A single creditor with a claim of $12,300 or more can also initiate an involuntary Chapter 7 or 11 bankruptcy proceeding. No involuntary Chapter 13s are allowed.

Involuntary bankruptcies are rare. Most are voluntarily bankruptcies initiated by the creditor.[24] The primary reasons for filing personal bankruptcy are unforeseen medical expenses, excessive credit card debt, loss of employment, and divorce. One of the goals of bankruptcy law is to provide insolvent debtors with an opportunity for a fresh start. Bankruptcy law is primarily comprised of the federal statutory law contained in Title 11 of the US Bankruptcy Code.

Bankruptcy has three traditional purposes: 1) to gather and identify the assets of the estate, 2) to provide an equitable distribution of the estate's assets to creditors and 3) to provide the debtor with a fresh start. In the pursuit of assisting a fresh start, bankruptcy law requires the development of a bankruptcy plan that allows debtors to resolve their debts through the division of their assets among their creditors. Court supervised division provides an orderly manner for debtors' non-exempt assets to be distributed equitably among the creditors. It provides debtors with the assurance that when their bankruptcy is discharged they will have a fresh start free from the financial obligations incurred previous to the bankruptcy.

Chapter 7 Bankruptcy Law

A Chapter 7 bankruptcy is a complete liquidation where all the debtor's non-exempt assets are distributed to creditors and the debtor emerges in a relatively short time, usually less than six months, free of the unsecured debts discharged through the bankruptcy. You are required to disclose all of your assets, all of your creditors and all of your debts in Chapter 7. The property a debtor can keep through the bankruptcy is determined by the specific exemptions available under state law. Residents of some states are allowed to choose federal exemptions instead of state exemptions. A debtor is allowed to keep property in each exemption category up to a maximum limitation expressed in dollars that is assigned to each category.

A Chapter 7 bankruptcy case is commenced by the filing of a petition. You must also file a statement of your assets and liabilities and schedules listing creditors. A bankruptcy proceeding can be initiated voluntarily or involuntarily. Creditors almost never force an individual into bankruptcy because it is easier to reach debtors assets in a state court or federal collection proceeding directly.

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Typically, a debtor will file a bankruptcy petition in order to stop post judgment collection activity in state court. Bankruptcy Court is a superior authority under the Supremacy Clause of the US Constitution.

As soon as a bankruptcy petition is filed, an automatic stay is issued ordering all collection activity to cease immediately. Failure by a creditor to cease and desist can result in sanctions and contempt of court. All creditors are barred from continuing collection activity, but for a few exceptions to the general rule. Any Creditor seeking permission to continue state collection activity must petition the US Bankruptcy Court and prove that he or she is entitled to exemption from the automatic stay.

In Chapter 7 liquidation proceedings, you identify all of your assets, all of your creditors and all of your debts. The property a debtor can keep through the bankruptcy is determined by the specific exemptions available under state law. Residents of some states are allowed to choose federal exemptions instead of state exemptions. A debtor is allowed to keep property in each exemption category up to a maximum limitation expressed in dollars that is assigned to each category. Property that is not secured and is not exempted or exceeds the exempt limitation will be divided by the bankruptcy trustee and distributed equitably to one's creditors pursuant to a federal scheme of priorities used by the US Bankruptcy Courts. In most Chapter 7 bankruptcies, there remains little or no non-exempt property and the unsecured creditors' debts are discharged unpaid.

A Chapter 7 bankruptcy cannot erase the follow types of debts:

- money owed for child support or alimony, fines, and some taxes
- debts not listed on your bankruptcy petition
- loans you got by knowingly giving false information to a creditor, who reasonably relied on it in making you the loan
- debts resulting from willful and malicious harm
- student loans owed to a school or government body, except if: the court decides that payment would be an undue hardship
- mortgage and other liens which have not been not paid in the bankruptcy case (but bankruptcy will wipe out your obligation to pay any additional money if the property is sold by the creditor)

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Secured interests cannot be discharged in a bankruptcy liquidation proceeding. The debtor must either return the property or reaffirm (promise to pay) the debt. On the other hand, unsecured debts can be discharged (declared void) in bankruptcy. However, there are certain non-dischargeable debts (such as child support, taxes, student loans, et cetera) that are not dischargeable in bankruptcy due to statutory prohibitions against discharge. Only secured creditors and creditors holding non-dischargeable debts are guaranteed some recourse in a Chapter 7 bankruptcy. Even creditors with judgments for non-dischargeable debts cannot collect if there are no assets available to liquidate.

Property that is not secured, is not exempted or exceeds the exempt limitation is divided by the bankruptcy trustee and distributed equitably to the creditors pursuant to a federal scheme of priorities. In most Chapter 7 bankruptcies, there remains little or no non-exempt property and the unsecured creditors debts are discharged unpaid.

Federal Bankruptcy Exemptions

The following is a list of federal bankruptcy court exemptions:

- Personal and Real estate:
- Household: Up to $425 per item not to exceed a total of $8,625, including appliances, books, clothing, furnishings, household goods, musical instruments, and pets
- Vehicles: Up to $2,575
- Jewelry: Up to $1,075.
- Burial plot: Up to $16,500, in lieu of real estate exemption
- Health aides: Unlimited
- Work tools, books and tools of trade: Up to $1,625
- Real estate, house, co-op or mobile home: Up to $16,150
- Any property: up to $8,075 of unused portion of real estate exemption can be applied to any kind of personal property.

Pensions, Recoveries and Benefits:

- Lost earnings payments: Unlimited amount
- Unemployment compensation: Unlimited amount

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- Retirement benefits: Amount needed for support
- Social security benefits: Unlimited amount
- Personal injury funds: Up to $16,500, excluding that for pain and suffering or loss
- Wrongful death funds: Any amount needed for support
- Alimony / child support: Any Amount needed for support
- Veterans benefits: Unlimited amount
- Public assistance: Unlimited amount
- Crime victims' compensation: Unlimited amount

Insurance:

- Disability: Unlimited amount
- Unemployment benefits: Unlimited amount
- Unmatured life insurance: Unlimited amount
- Life insurance policy loan value, dividends or interest: Up to $8,625
- Life insurance proceeds: Amount needed for support

Homestead Exemption

Under the BAPA a debtor's homestead exemption is capped at $125,000. This was done in reaction to the growing trend of states to provide unlimited caps on homestead exemptions. The change in the law is due to many high profile cases where a few wealthy public figures moved their domiciles to states with unlimited homestead exemptions and walked out of bankruptcy court with their multi-million dollar homes and their $25,000 a month pensions intact. Wealthy persons who were at a high risk for litigation often would move their domiciles to a state with an unlimited homestead cap and buy a huge multi-million dollar home that would be paid for in cash. In this fashion, their home was turned into a judgment proof piggy bank, a safe harbor that creditors could not reach.

The federal homestead exemption has a 1215 day rule. Unless the creditor acquired his or her amount of interest 1215 days prior to filing their bankruptcy petition their homestead exemption is capped at $125,000. Consequently, people who now move to a state with an unlimited exemption have to wait three

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years and three months before they obtain the ability to use the their state homestead exemption in bankruptcy court. If the debtor acquired the homestead more than 1215 days prior to filing, it appears that he or she can exempt more than the $125,000 limit, assuming there are no constructive fraud or other issues.

There is also a second barrier in the new rule. A debtor's state of domicile is now subject to a 730 day rule[25]. Under the new rules, only persons domiciled in a state for 730 days pre-petition may use that state's local exemption laws. A debtor who fails the 730 day test will be deemed to be domiciled in the state where he or she lived during the 180 days immediately before the 730 day pre-petition period. If the debtor did not reside continuously in one place during the 180 day period, then the federal homestead exemption applies.

Opt-Out States

In most states a debtor in bankruptcy can elect to use either state or federal exemptions. However, some states have opted out of the federal scheme of exemptions. Residents of those states cannot elect to use the federal exemptions and are stuck with their state exemptions. The opt-out rules are based on domicile under the BAPA rules. For example, if a person domiciled in Florida fails the 730 day test, the Florida exemptions cannot be used. If, under the second test, the debtor resided in Ohio for 180 days then Ohio would be the debtor's domicile. Since Ohio has opted-out of the federal exemption plan, the debtor cannot use the federal exemptions and will be required to use the Ohio state exemptions in Bankruptcy Court.

10 Year Look Back Rule

Any party in interest may object to any exemption claimed in connection with any equity acquired by means of a fraudulent conversion of non-exempt assets into exempt assets that occurred within 10 years prior to the filing of the bankruptcy petition. The objection is limited to objections for actual fraud.

Chapter 13 Bankruptcy Law

Chapter 13 is a repayment plan for individuals with regular income and unsecured debt less than $290,525 and secured debt less than $871,550. The debtor keeps his or her property and makes regular payments to a trustee out of future income over about a 3 to 5 year period. Repayment in Chapter 13 generally ranges from 10% to 100%, depending on the debtor's income and the type of debt.

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In reorganization bankruptcy, the court basically determines how you shall repay your creditors – some will be paid only a percentage, others will be paid in full and some will not have to be paid at all.

In Chapter 13 bankruptcy, the debtor files a proposed payment plan with the court, describing how the debtor proposes to pay his or her creditors. The debtor then meets with creditors to discuss the plan. Afterwards, a bankruptcy judge will decide whether or not to accept the proposed repayment plan. If the debtor complies with the approved repayment plan, the remaining portion of the debtor's dischargeable debt will be wiped out at the end of the 3 to 5 year period.

Chapter 11 Bankruptcy Law

Chapter 11 reorganization proceedings are typically for corporations or partnerships. In Chapter 11, the debtor usually remains in possession of his assets and continues to operate any business, subject to the oversight of the court and the creditors committee. Chapter 11 Bankruptcy is typically for corporations who are behind on suppliers' and/or creditors' payments and/or taxes. Chapter 11 offers a way to save your business through a court approved repayment plan. Sometimes, the smartest thing for a business in financial trouble is to file for Chapter 11 bankruptcy.

Bankruptcy & Asset Protection Strategy

Bankruptcy is not a viable option for persons of wealth for three reasons: 1) because the debtor will be required to disclose hidden assets; 2) because the debtor may not qualify to file for bankruptcy anyway; and 3) because everything held in their names will be wiped out except for their homestead exemption and their retirement investments.

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First, you should maintain financial privacy as best you can so that creditors cannot determine the extent of your wealth. This is useful because it makes your assets invisible. Second, since creditors are unable to determine whether the debtor is qualified to file a bankruptcy petition, they will have to assume that the debtor may be qualified and that the exemptions will all be applicable. In any case, most state exemptions prohibit collectors from attempting to attach or garnish exempt property. Finally, through the use of financial privacy, the use of exemptions as safe harbors and the use of other asset protection techniques, there will be no need for a bankruptcy petition.

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CHAPTER 3: UNDERSTANDING FRAUDULENT TRANSFER CLAIMS AND CONSTRUCTIVE FRAUD

There are only a limited number of ways of protecting property held in your name. That is why Rockefeller said, "The secret to success is to own nothing but control everything." The best way to accomplish this goal is to establish business entities and have these entities acquire properties with their own assets from third parties who are not insiders. However, many people fail to start asset protection until they have already acquired substantial wealth in their own names. Since they made the mistake of acquiring wealth in their own names, they need to transfer it out of their names. A problem arises when you desire to transfer properties from your name into a business entity that you have a controlling interest in or when you desire to transfer title to an insider. This chapter deals with the many pitfalls encountered when transferring property.

Definition of Terms

A fraudulent transfer is generally defined as a transfer made with the intent to defraud, hinder or delay a creditor. There are many elements which are not evident, but presumed. Consequently, we need to define our terms.

Assets & Property

Under the Uniform Fraudulent Transfer Act (UFTA), anything subject to ownership is property. The Uniform Fraudulent Conveyance Act (UFCA) and US Bankruptcy Code have no definitions of property. Contingent interests and future earnings constitute property. However, exempt property is not considered property with respect to the issue of solvency, as well as the law of fraudulent transfers. A creditor does not have a claim against exempt property. One cannot be guilty of intent to defraud, hinder or delay a creditor from collecting property to which the creditor does not have a lawful claim. Therefore, exempt property is not subject to the fraudulent transfer laws and it is not usually considered an asset when computing solvency.

Property must have value to the creditor in order for a transfer to constitute a fraudulent transfer. A creditor cannot claim to be damaged by the loss of access to property that has no value to the creditor. For example, exempt property and property in which the debtor has no equity have no value to creditors. The transfer of title to an LLLP, relative or insider of property in which the debtor has no equity is generally allowed.[26] However, the transfer of exempt property

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generally is not allowed. The courts have held that the debtor may waive an exemption by transferring the property. The fraudulent transfer of exempt property may result in a denial of discharge pursuant to 11 USC § 727(a) (2) (A).

In order for a transfer to be fraudulent the property transferred must belong to the debtor. A debtor's interest in the property must be direct and accessible to the creditor. Property held in a tenancy by the entireties is not directly owned by the creditor and it is not considered an asset since it is not accessible to the creditor. Where assets are owned by a partnership, corporation, or some other entity, those assets will not be deemed owned by the debtor simply because the debtor holds a substantial interest in the entity. On the other hand, if a creditor can convince a judge that an entity is a debtor's alter ego, then an order may be entered allowing a creditor to pierce the veil and attach some or all of the assets.

Definition of Claim

The definition of a claim is important because it is necessary to identify valid claims in order to compute liabilities for the purposes of determining, among other things, whether a debtor is insolvent.

Pursuant to the US Bankruptcy Code a claim is a right to payment and includes unliquidated, contingent, unmatured, disputed, undisputed, legal, equitable, secured or unsecured claims.[27] A right to payment is an obligation that is enforceable at law. Claim means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.[28] A claim must be an enforceable obligation, and a claim that is barred by the statute of limitations is not a claim. The value of future contingent claims are determined by judicially created methodologies. A claim does not include an equity interest such as share in a corporation or the interest of a limited partner or the right of one to acquire such interests.[29]

Definition of Creditor

A creditor is a person who has a claim. This includes a wide range of individuals or entities to which the debtor may owe money, including guarantors. The term creditor is so broad in scope that it must include future creditors in connection with actual fraudulent intent. Regarding constructive fraud, two of the three subcategories of constructive fraud pertain to whether a debtor has sufficient assets to meet future obligations. As a result, under the UFTA, actual fraudulent intent as to a creditor can be fraudulent whether the creditor's claim arose

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before or after the transfer was made. Although the definition of a future creditor would appear to be broad, case law has narrowly defined future creditor.

The term future creditor generally means a creditor who, prior to the effective time of a contested transfer, held a contingent, unliquidated or unmatured claim or one who holds a claim that was reasonably foreseen by the transferor at the effective time of transfer. A credit card company, with whom a debtor has a zero balance at the time of a transfer, may become a future creditor if the account later goes into default.

A transfer must be made with fraudulent intent directed at a specific future creditor in order to be a fraudulent conveyance. A person whose claim arises after the fraudulent transfer can qualify as a future creditor capable of voiding the transfer as fraudulent if the transfer was made with the intent to defraud that particular creditor. Once specific intent is proven against one future creditor, this opens the door for all other future creditors. It is required that the debtor intend to hinder, delay or defraud any creditor. Hence, a transfer intended to defraud the IRS was also fraudulent as to other future creditors.[30] On the other hand, if a transfer is not made to defraud a specific person who does not currently hold a claim against the debtor it will not be set aside.

Definition of Transfer

The UFCA pertains to conveyances, not transfers, and a conveyance is defined as every payment of money, assignment, release, transfer, lease, mortgage or pledge of tangible or intangible property, and also the creation of any lien or encumbrance. The UFTA and US Bankruptcy Code pertain to transfers and define a transfer as: every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an

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interest in property, including retention of title as a security interest and foreclosure of the debtor's equity of redemption.

Generally speaking, any kind of transaction that may diminish a creditor's interest in the debtor's transferred property may be considered fraudulent. Depending upon the circumstances, any of the following actions of omissions could constitute a fraudulent transfer.

Although a transfer is an essential ingredient of a fraudulent transfer, it is only one of the numerous requirements. Thus a transfer will remain undisturbed unless the other elements are present. A transfer can encompass many different types of conduct. Depending on local law, a transfer may include:

- Cancellation of a debt
- Consent to judgment or default judgment, a collusive action
- Conversion of nonexempt assets into exempt assets
- Placement of a friendly lien
- Rental of property for less than fair market value
- Withdrawal of debtor's corporation as General Partner and substitution of relative as General Partner in its place
- Distributions from a liquidating partnership
- Failing to redeem a pawned item
- Voluntary dismissal of a cause of action
- Withdrawal of cash from a bank account with fraudulent intent
- Equity stripping with fraudulent intent
- Failure to assert a claim against an estate
- Transfer of property to an insider absent adequate consideration

The Effective Date of Transfer

The effective date a transfer occurs or is completed may be significant because a change of circumstances, such as the filing of a complaint or the insolvency of the transferor, can occur between the time a putative transfer is made and the time it is perfected.

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The fraudulent transfer provisions of the US Bankruptcy Code state that a transfer occurs when title is perfected in such a way that no bona fide purchaser could acquire from the debtor an interest in the property transferred that would be superior to the rights of the transferee. This means that the transfer is not good until it would be binding upon a good faith purchaser. In a scenario where A sells a house to his cousin B by signing off on a quit claim deed on June 1st, but the quit claim deed is not recorded until July 15th, if C buys the house from A after it has been recorded, C cannot contest B's right to the house because C bought it after recording. Therefore, the effective date of transfer is when the quit claim deed is recorded, rather than when it was executed.

A fraudulent transfer may also occur by encumbering property with debt with the intent to hinder, delay or deter a creditor. Thus, incurring a debt may be considered a fraudulent transfer under some circumstances. With respect to debts, a debtor incurs a debt when he becomes legally obligated to pay it.

With respect to an acquisition transaction, the transfer occurs when the obligation to pay the purchase price arises. Suppose John Doe bids on a painting at an art auction. Mr. Doe is known by the gallery and the transaction is closed by Mr. Doe's signing a promissory note before taking possession of the painting. This matter would be determined as a matter of state law. Suppose Mr. Doe lives in a state where he would only be obligated to pay a penalty if he failed to pay or backed out of the deal prior to signing a promissory note. In such a jurisdiction, the transfer would not be effective until Mr. Doe signed the note because he would not legally be obligated to pay the debt until he signed the note.

The UFTA rule is similar to the US Bankruptcy Court's rule regarding effective transfers except that it draws a distinction between real and personal property. The rules are virtually identical with respect to real estate. The transfer of personal property becomes effective as soon as the transferor parts with an interest in the asset. Pursuant to UFTA[31] transfer means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

With respect to debts and obligations, the UFTA also provides that a transfer occurs when an obligation is incurred. The transfer is effective when a writing legally memorializing the obligation has been executed by the obligor and

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delivered to the obligee. If the agreement is oral, then it becomes effective between the parties.

Definition of Insider

The definition of an insider is relevant for purposes of establishing whether a transfer was fraudulent because, pursuant to the badges of fraud, an indication of fraud arises when the transfer is made to an insider.

UFTA § 1(7) defines an insider as follows:

- IF the debtor is an individual
    - a relative of the debtor or of a General Partner of the debtor
    - a partnership in which the debtor is a General Partner
    - a General Partner in a partnership in which the debtor is a General Partner
    - a corporation of which the debtor is a director, officer, or person in control
- IF the debtor is a corporation
    - a director of the debtor
    - an officer of the debtor
    - a person in control of the debtor
    - a partnership in which the debtor is a General Partner
    - a General Partner in a partnership in which the debtor is a General Partner
    - a relative of a General Partner, director, officer, or person in control of the debtor
- IF the debtor is a partnership
    - a General Partner in the debtor
    - a relative of a General Partner in, a General Partner of, or a person in control of the debtor
    - another partnership in which the debtor is a General Partner

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  - a General Partner in another partnership in which the debtor is a General Partner
  - a person in control of the debtor; a agent of the debtor

Under the UFTA a 'relative' as referenced above is an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree[32].

Definition of Affiliate

A definition of an affiliate is necessary because an affiliate is included in the definition of an insider. Pursuant to UFTA § 1(1) an affiliate is defined as:

- A person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities,
  - as a fiduciary or agent without sole discretionary power to vote the securities; or
  - solely to secure a debt, if the person has not exercised the power to vote;
- A corporation 20% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds, with power to vote, 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities,
  - as a fiduciary or agent without sole power to vote the securities; or
  - solely to secure a debt, if the person has not in fact exercised the power to vote
- A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor
- A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

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AN OVERVIEW OF FRAUDULENT TRANSFERS

The law of fraudulent conveyances finds its origin in the common law that prohibits transfers made with the intent to defraud, hinder or delay creditors. Over the years, the common law has been codified into the Uniform Fraudulent Transfer Act (UFTA), the Uniform Fraudulent Conveyance Act (UFCA) and certain sections of the US Bankruptcy Laws. Most states have adopted the UFTA and some have adopted the UFCA. A few states have not adopted either. Transfers that violate these rules may subject the transferor and others who assist in implementing the transfer to civil liability and criminal prosecution. A debtor who engages in a fraudulent transfer may be denied a discharge in bankruptcy. Therefore, you must take these laws into account with respect to many transactions.

Actual Fraud

There are two kinds of fraud: actual fraud and constructive fraud. Actual fraud occurs when a debtor intentionally engages in conduct to deceive, hinder or delay a creditor. The test used to determine whether fraud occurred is a subjective test looking at the intent or state of mind of the debtor to determine whether the debtor actually intended to defeat or defraud his or her creditors. The actual fraud test looks for admissions by the debtor to third parties. If no admissions are available, it looks at the context in which the transaction occurred for indications of fraud called the badges of fraud. The three most fundamental indicators are: 1) the debtor was insolvent, 2) the consideration was inadequate or 3) the transaction was concealed.

Constructive Fraud

Constructive Fraud does not concern itself with the state of mind of a debtor. It uses an objective test that looks at the context in which a transaction or transfer of property occurred. Constructive fraud occurs where a transfer is made without consideration or absent fair consideration and:

- The debtor is insolvent or will be rendered insolvent as a result of the transfer.
- The debtor is engaged or is about to engage in a transaction with unreasonably small capital.
- The debtor intends to incur or believes that he or she will incur debts beyond the debtor's ability to pay.

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Although insolvency is a stated requirement for only one type of constructive fraud, insolvency analysis is often determinative of whether the debtor has unreasonably small assets or will be unable to pay current debts as they mature. There must be a causal connection between the fraudulent transfer and the failure to satisfy the debt.

Badges of Fraud

Actual intent is a subjective test that looks to the intent of the debtor at the time of transfer. Direct or indirect admissions by the debtor rarely are available as evidence. Intent is usually established by proving the existence of the badges of fraud, which have evolved through common law over several centuries. The badges of fraud are also significant in that, if several badges of fraud are established, a presumption in favor of the creditor will arise. Nevertheless, under some circumstances, a finding of a single badge can be sufficient to establish the presumption of a fraudulent transfer. After the presumption arises, the burden shifts to the debtor transferee to prove some legitimate supervening purpose for the transfers in issue.

The UFTA lists of the most common badges used by the courts as follows:

- The transfer or obligation was to an insider.
- After the transfer of property, the debtor retained possession or control of the property.
- The transfer or obligation was not disclosed. It was hidden or concealed.
- The debtor was served a complaint or threatened with litigation before the transfer was made or before the obligation was incurred.
- The transfer contained substantially all of the debtor's assets.
- The debtor absconded.
- The debtor concealed assets or removed assets beyond the reach of the creditors or the court.
- The debtor was insolvent, became insolvent because of the transfer or became insolvent shortly after the transfer was made or the obligation incurred.
- The transfer occurred shortly before or after a substantial debt was incurred.

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- The debtor transferred the essential assets of the business to a lienor, who then transferred the assets over to an insider of the debtor.

Frequently, the circumstances that support a finding of actual fraud are also elements of constructive fraud. The following are common fact patterns that give rise to an inference of a fraudulent transfer:

- The presence of a claim can be of great significance if it is substantial and the claim has merit. On the other hand, a disputed claim that has been pending for a long time and the creditor has failed to take action may have little weight in a determination of whether there was fraudulent intent.
- Transactions that are concealed or otherwise undertaken in a secretive manner. For example, the failure to record legal documents or non-disclosure absent a legitimate justification may indicate concealment.
- The consummation of the transaction in accordance with usual and customary business practices and formalities.
- The presence or absence of full and adequate consideration in connection with the transfer. A substantial difference between the value of property and the amount paid for it is a badge of fraud.
- Retention of any interest in the transferred property suggests fraud: retaining a life estate; use of a residence without paying adequate rent; retaining an indirect interest or control of property; retaining a beneficial interest by means of a secret trust.
- The presence of criminal or illegal activities.
- Making transfers to insiders or related parties.

Mixed Motive Transfers

Generally, when the motives for the transfer are mixed, the dominant motive will control the characterization of the transaction.[33] But case law is not always consistent. In *US v. Murray*[34], the court held that any valid purpose would prevent avoidance as a fraudulent transfer. In this case, a wife and husband transferred property to a trust for a term of twenty years. The trust could be revoked by a majority of the trustees, who were the husband, the wife, and the wife's stepbrother. The court held that the formation of the trust was not fraudulent because it was used as an entity to make additional investments. The court noted in the dicta of the case that if the sole purpose was to protect assets from creditors, the transfer would be set aside. In contrast, another case held

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that the prohibited intent is present if the transferor was only in part motivated by fraudulent intent.[35]

Causation Requirement

There must be a causal connection between the fraudulent transaction challenged by the creditor and the debtor's failure to pay the creditor's claim. This requirement is not reflected in the statutory language of the UFCA, UFTA or US Bankruptcy Code, but case law clearly imposes the requirement that there be a causal connection. Proof of a chronological relation between the suspect transfer and the debtor's insolvency may be sufficient to prove causation. However, unforeseen intervening acts that cause or contribute to insolvency may break the causal connection between the allegedly fraudulent transfer and the debtor's subsequent insolvency. Examples of circumstances that may be considered unforeseen intervening acts are:

- unanticipated legal expenses
- loss of a major account
- labor problems or
- loss of a government contract or program

Fair Consideration

Consideration is legalese for the value paid for transferred property. If you purchased a truck for $3,000, the $3,000 is the consideration. Consideration must also be bargained for which means that the asset must be purchased or sold at arm's length to a person who is not an insider who negotiated the price in good faith. The adequacy of consideration or fair consideration is crucial in assessing the existence of all categories of constructive fraud. Adequacy generally refers to whether the price paid is a fair price based upon fair market value (FMV). For example, with respect to a vehicle, you could look up the value of a specific make and model of a vehicle based upon its condition and accessories. Kelley Blue Book Company, Inc. regularly surveys millions of vehicle transactions nationally and can provide accurate information about how much a used vehicle is worth in any given region. Thus, if you sold a car with a 'Blue Book' value of $10,000 for $7,000 to your nephew, you did not receive adequate consideration. A lack of fair consideration is indicated by a significant difference between the FMV of the property and its purchase price.[36]

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The presence or absence of adequate consideration is one of the most important badges of actual fraud. Some courts have held that a transfer made for fair consideration cannot constitute a fraudulent transfer.[37] In most cases, a transfer supported by fair consideration is not likely to be considered a fraudulent transfer even if an insider of the transferor is the purchaser.[38]

When determining whether consideration is valid, the value of the property at the time of transfer is used. Its value, before or after the transfer, is not taken into account. Therefore, an increase in the value of transferred property between the date that a transfer is made and the date when it is deemed effective can transform a transfer made for fair consideration into one made for inadequate consideration. Consequently, when dealing with an asset that may significantly fluctuate in value, it is important that the transfer be effective on the date of exchange.

Reasonable Equivalent Value

The US Supreme Court has held that the term reasonably equivalent value means fair market value or the price that one might expect to obtain if one had ample time to offer the property for sale in a fair market, not at a public auction by forced sale.[39]

Fraudulent Transfer Laws

There are four primary sources of legal authority with respect to fraudulent transfers: 1) the Statute of Elizabeth, 2) the Uniform Fraudulent Transfer Act (UFTA), 3) the Uniform Fraudulent Conveyance Act (UFCA) and 4) the US Bankruptcy Code. The UFTA is followed by the majority of the states; most of the remaining states follow the UFCA with a small minority still following the common law which finds its origins in the Statute of Elizabeth. The US Bankruptcy code pertains only to cases in bankruptcy proceedings.

Statute of Elizabeth

The Statute of Elizabeth originated in England in 1571. It is still followed in the United Kingdom and many jurisdictions around the world. The original Statute of Elizabeth was the first statute prohibiting fraudulent transfers. Under this statute, transfers made with the intent to hinder, delay, or defraud creditors of the transferor are voidable. The creditor has to establish actual fraudulent intent to obtain an order declaring the transfer *void ab initio* or from the beginning as though the transaction never happened.

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Since debtors with larceny in their hearts generally do not admit to fraudulent conduct, the courts over centuries of common law developed a list of factors that commonly accompanied fraudulent transfers, which were called the badges of fraud. The presence of such badges of fraud allows the courts to enter a finding of actual fraudulent intent. The statute of limitations in jurisdictions that follow the Statute of Elizabeth varies from state to state.

Uniform Fraudulent Conveyance Act (UFCA)

In 1918, the UFCA was approved by the National Conference of Commissioners on Uniform State Laws. The UFCA is currently law in seven states: Delaware, Maryland, Massachusetts, Michigan, New York, Tennessee, and Wyoming. The UFCA superseded the Statute of Elizabeth and represented a codification of the best judicial decisions applying the statute. However, it eliminated the need to prove actual fraudulent intent under certain circumstances and the need for a creditor to obtain an unsatisfied judgment in order to void a fraudulent transfer. The statute of limitations under the UFCA varies. In some jurisdictions, the fraudulent element may cause its running to be suspended pursuant to the doctrine of equitable tolling.

The US Bankruptcy code permits the bankruptcy trustee to void transfers made with the intent to hinder, delay, or defraud creditors. The US Bankruptcy code sections on fraudulent transfers are very similar to the non-bankruptcy fraudulent transfer statutes. A bankruptcy trustee may also proceed under applicable state law. If the trustee does, the trustee may be constrained by the limitations imposed under the state law. If the trustee elects to use state law, the trustee is bound by state law and federal bankruptcy law pertaining to fraudulent conveyances is moot. The statute of limitations to reach back concerning fraudulent transfers is two years under US Bankruptcy code § 548(a) and § 548(b). The bankruptcy trustee must bring the action within two years from the earlier of the date on which he is appointed or the time the case is closed or dismissed. With respect to self-settled trusts, which include most asset protection trusts, there is a ten year look back regarding fraudulent transfers.

Uniform Fraudulent Transfer Act (UFTA)

In 1984, the UFTA was approved by the National Conference of Commissioners on Uniform State Laws. It has been adopted the majority of the states. It is currently law in thirty-one states: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Maine, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico,

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North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Washington State, West Virginia, and Wisconsin. Although the UFTA modified the UFCA in a number of ways, the UFTA and UFCA are still substantially similar.

Generally under the UFTA, a claim for relief must be brought within four years after the transfer was made or the obligation was incurred. With regard to transfers made with actual fraudulent intent, this period may be extended to one year after the transfer or obligation was or could reasonably have been discovered by the claimant. Nevertheless, the statute of limitations will vary from state to state.

The Solvency of the Debtor

The fundamental indicator or measure of whether a transfer is fraudulent is the financial circumstances of the transferor or debtor at the time the transfer was made. If the debtor transferring property is insolvent, this is a factor that is considered one of the badges of fraud indicating actual fraud. It is one of many factors to be considered. With respect to constructive fraud, if a debtor is insolvent and the transfer is made absent adequate compensation, there is a presumption of constructive fraud.

Insolvency is the most important factor in determining whether a transaction is voidable as actual fraud. It is also an important factor in establishing a category of constructive fraud. Generally, the determination of solvency is made by an accountant. The determination of insolvency generally rests on whether a debtor's liabilities exceed the debtor's assets. To determine solvency, one creates a balance sheet of the party's assets and liabilities based upon their fair market value. This is referred to as the balance sheet test. This test focuses on the fair market value of the assets and liabilities within a reasonable time of the transfers.

Although under all fraudulent transfer laws the general concept of value is the same, the valuation of assets under the UFCA tends to be stricter than under the US Bankruptcy Code and the UFTA. The UFCA uses present salable value that

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does not allow time for marketing the asset. The UFCA may require an immediate single sale of all assets, and, under the UFCA, assets that are not immediately ready for sale are given no value. If an item cannot be sold, it will not be taken into account as an asset. The application of this UFCA standard results in a much lower total asset value, which in turn leads to a finding of insolvency more frequently.

Nevertheless, the most common view in most states is that fair valuation is the amount that can be realized within a reasonable time. This view excludes the diminished sale price resulting from a foreclosure sale, as well as current retail market value for a new product. Therefore, the best evidence of value is a price negotiated at arm's length between a willing buyer and a willing seller, or comparable sales of similar assets or businesses in the same area.

Determining Whether a Person is Solvent

It is important to review the financial status before beginning asset protection planning. If a court finds that you were insolvent when implementing asset protection planning, then it is likely that the court may deem any transfers to be fraudulent. A person's solvency must be evaluated by creating a balance sheet of assets and liabilities.

Solvency tests vary from jurisdiction to jurisdiction. Under jurisdictions subject to the UFCA the tests employed are likely to result in a finding of insolvency more often because it is a creditor-oriented law under which assets are narrowly defined and liabilities are broadly defined. Under the UFTA and the US Bankruptcy Code, the computation of assets is more debtor-favored as compared to the UFCA.

Computation of Assets

In computing assets, only assets that can be sold and are of value to creditors are taken into account. Property secreted and hidden in order to defraud creditors is not taken into account. Exempt assets, such as retirement plans and spendthrift trusts, are not counted. Assets that are transferred overseas or that are otherwise not subject to judicial process by a creditor are not counted. Only the discount value of partnership interests is taken into account. An operating company may be valued only if it is an ongoing concern. Otherwise only its liquidation value is given consideration. Any other reasonable sources of capital may be taken into account, including: capital contributions, loans, earnings,

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future business earnings and contingent assets, based upon the likelihood of the contingency.

Computation of Liabilities

The computation of liabilities depends on the jurisdiction. In jurisdiction following the UFCA, the test is draconian. It often results in insolvency. Contingent liabilities such as guarantees or pending lawsuits are often taken at face value even if they are subject to a defense of the statute of limitations. Under the UFTA and the US Bankruptcy code, the computation of liabilities is more realistic. The computation takes into account the probability of the outcome. For example, if there is a 20% chance of losing a $1,000,000 lawsuit, then the liability is $200,000. Ongoing future liabilities such as future rent, child support or alimony are not computed as liabilities. This is because they are paid from assets that are not yet earned and are not computed. Therefore, their inclusion would bankrupt virtually all debtors.

Circumstantial Presumptions and Inferences

It is important to note that a few specific situations can create certain inferences or presumptions regarding solvency:

- A business cannot be considered insolvent if a third party is willing to purchase it.[40]
- Under the UFTA the inability to pay your bills as they become due creates a rebuttable presumption of insolvency[41].
- In some states that do not follow the UFTA the ability to pay debts as they become due is in indicator that a debtor is solvent.[42]
- All three constructive fraud tests require that

Time Line	Gift	Transferred for Value
No Known Claims	Okay	Okay
Claim Suspected	Okay	Okay
Claim Received	Fraudulent Transfer	Okay
Lawsuit Initiated	Fraudulent Transfer	Okay
Litigation	Fraudulent Transfer	Okay
Trial Begins	Fraudulent Transfer	Okay
Judgment & Appeal	Fraudulent Transfer	Probably okay if transfer has economic justification.
Post-Judgment Collection	Fraudulent Transfer	Probably okay if transfer has economic justification.
Bankruptcy Filed	Bankruptcy Fraud	Court Approval Necessary

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the transfer must be made absent adequate consideration.

- A transfer made for adequate consideration will rarely be a fraudulent transfer.
- If the elements of constructive fraud are present, the transfer will generally be voidable regardless of the transferor's intent.

How to Avoid Fraudulent Transfers

When a transfer was made is critical to the analysis as to whether a particular transfer amounts to a fraudulent conveyance. It will be very difficult for a creditor to prove that any transfer made before any claims were known or reasonably suspected was a fraudulent transfer. On the other hand, any transfers made after bankruptcy is filed are fraudulent transfers. Between these two extremes is a gray area of law. Above is a guide that is useful for avoiding improper transfer liability.

The best way to avoid fraudulent transfers is to make certain that all transactions are made for value or close to value. Although for value transactions may still be set aside as a fraudulent conveyance, it is difficult for a creditor to prove. Post judgment transfers must have economic substance. A post judgment transfer that does not have economic substance will probably be considered a fraudulent transfer, whereas a transaction that makes good economic sense will be difficult to challenge.

Domestic business entities that offer limited liability and provide charging order protection should be used whenever possible if litigation has commenced, because transfers made to a Nevada limited liability limited partnership (LLLP) or Nevada limited liability company (LLC) are for value and have economic substance if the prospective members of the LLC have a good faith intention of doing business. If so, creditors will have significant difficulty proving a claim of fraudulent conveyance. Moreover, creditors will also have great difficulty in forcing an LP, LLLP or LLC to pay up.

Risk Management Check Lists

To insure that your asset protection program is accomplished absent any liability for actual or constructive fraud, apply the principles set forth in the following checklists.

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Active Fraud Risk Management Checklist

- ☐ Avoid making the transfer or obligation if you are subject to a judgment. If so, pay off the judgment first.
- ☐ If possible, avoid making the transfer or obligation to an insider. If it is necessary to do so, be sure the transfer is for value.
- ☐ Do not transfer property or incur an obligation if you are being sued or threatened with a lawsuit unless the transfer is for value and the debtor will remain solvent after the transfer.
- ☐ Except for irrevocable living trusts and family intervivos trusts, avoid any retention of possession or control of the property transferred by the debtor-transferor.
- ☐ Do not hide or conceal the transaction.
- ☐ Do not transfer substantially all of your assets.
- ☐ Except for estate planning transfers to family members, ensure that transfers are made for fair consideration.
- ☐ Avoid transfers or obligations that will render you insolvent or cause the debtor to become insolvent.
- ☐ Avoid making the transfer shortly before or shortly after a substantial debt was incurred.
- ☐ Avoid engaging in any criminal activity.
- ☐ Consider satisfying present claims to prevent creditors whose claims arise subsequent to the transfer from being able to void transfers on the grounds of fraud.

Constructive Fraud Risk Management Checklist

- ☐ It is not made at a time when the transferor is insolvent.
- ☐ It does not render the transferor insolvent.
- ☐ It does not leave the transferor with unreasonably small capital.
- ☐ It is not made when the transferor is about to incur debts beyond his ability to pay.
- ☐ What are the future plans, which may suggest constructive fraud:

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- The transferor is about to undertake a substantial expansion of his or her business?
- Is the transferor about to enter into a new and risky endeavor?
- Does the transferor expect to incur substantial personal expenses, such as college tuition or other significant expenses?

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CHAPTER 4: UNDERSTANDING WEALTH PRESERVATION

THE HISTORICAL DEVELOPMENT OF ASSET PROTECTION

Special interest groups and the media frequently attempt to taint the asset protection industry as a sleazy activity designed to defraud creditors. Nothing could be further from the truth. Most asset protection strategies are based upon the same techniques used by your creditors to protect their wealth. Who are your creditors? They are big corporations such as auto manufacturers, mortgage bankers, credit card companies, oil conglomerates, utility companies and telecom corporations. The asset protection techniques collection agents and attorneys call sleazy are the same techniques employed by the conglomerates they work for.

Asset protection is an activity that we consciously or unconsciously engage in almost every day. When you lock the door as you leave home, deposit your money in an FDIC insured bank or make payments on your home, auto or life insurance policies, you are engaged in asset protection. You are taking reasonable precautions to protect your wealth.

Asset protection also involves planning for the future to anticipate future problems. When building a home, you must structure the building to accommodate anticipated environmental hazards. For example, it is best to build above the flood plain and on a solid foundation. If your home is in a tornado area, you are going to want a basement or storm cellar for protection. You may need to store food, water and a backup generator. You may need additional insurance coverage if you anticipate possible flooding or earthquakes. Similarly, an asset protection strategy should be customized to meet your particular circumstances and needs.

If a business venture's assets are insufficient to satisfy the creditor's claims, then the creditors will go after the personal assets of the owners to satisfy the debt.

Civilized societies place limits on the rights of creditors. In ancient times, a citizen who could not pay a debt could be dismembered with body parts distributed to creditors or sold into slavery. In the dark ages you could be sent to debtor's prison to spend your life in a cage too small to stand up in. Prior to the American Revolution, you could be sent to the poor house or forced into indentured servitude. During the 19th and 20th

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centuries, various state legislatures in the US enacted homestead acts which exempted all or part from the claims of creditors against a family home. Statutes of limitation on how long creditors could attempt to collect debts, as well as the US Bankruptcy Act, were also enacted.

Over the course of time, certain types of business entities have developed that grant an owner protection from the claims of his or her business's creditors. Corporations arose from the corporate charters given by the Kings and Queens of Europe to companies traveling to the far corners of the world to trade. These charters would give the companies holding them exclusive rights to any and all tea, spices, gold, gems or other goods, minus the crown's cut, found in the new world and also would limit the liability for the failure of any venture to the company's assets. By limiting claims to the company's assets, the King's charters protected the personal assets of the members of the royal families and rich merchants who funded the expeditions.

Eventually, these charters developed into our modern day corporations that provide limited liability to the shareholders who own a corporation. The doctrine of limited liability prohibits creditors from holding the corporate shareholders personally liable for the debts of the corporation. Older forms of business such as associations, joint ventures and general partnerships allowed creditors to hold the partners and/or members of such entities personally liable for the debts of the entities.

Hence, if the business venture's assets were insufficient to satisfy the creditor's claims, then the creditors will go after the personal assets of the owners to satisfy the debt, often sending them to the poor house or debtor's prison. On the other hand, a corporate shareholder's personal creditors can force the sale of the debtor's share at public auction and place bids upon it based upon the debt owed. If the company is a closely held corporation, privately owned by a few shareholders, and you are the majority shareholder, your creditors may be able to take over the corporation by foreclosing on your shares. Holding the majority shares, they may be able to liquidate the corporation or operate it themselves to satisfy the debt owed.

During the last century, new entities were legislated into existence that provided debtors with charging order protection. A charging order allows a creditor to intercept any disbursement from a business to the debtor/owner, such as wages, draws, dividends or royalties, et cetera, but it prohibits the creditor from

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reaching the entity's assets to satisfy the debt. In some states, a creditor can foreclose on the debtor's share of the principal assets and sometimes force the liquidation of the entity if the creditor can prove to a judge's satisfaction that the creditor cannot satisfy the debt by means of the charging order. However, creditors often decline to foreclose because, if they step into the debtor's shoes, they can also be held liable for the debtor's share of the debts and obligations, including unpaid taxes. The types of business entities that provide such protection are Nevada LLLPs, LLCs and corporations.

THE DIMINISHING WINDOW OF OPPORTUNITY

One out of every three professionals or small business owners and/or professional persons will be sued this year. They are more likely to be sued than have an auto accident. Nevertheless, most businesses and self-employed professionals are operating without an asset protection program. A reasonable person does not drive an automobile without first acquiring auto insurance. Operating a business is no different. Running a business without asset protection is like high flying on a trapeze without a net or driving an auto without insurance. One risks losing everything.

The goal of asset protection is to make you and your family as impervious to future liabilities as possible, to deter litigation, and to encourage an early and reasonable settlement if litigation does occur. In order to avoid fraudulent transfer claims by future creditors, an asset protection strategy must be employed at a time when you are financially solvent, not involved in litigation and without any eminent financial or legal problems on the horizon.

It is well-settled law that a general purpose to secure the property from the hazards of future business and the claims of future creditors is not actionable.[43] Accordingly, any time before a claim arises is the best time for asset protection planning. Rainy day planning refers to a person's plans to secure assets against future misfortune at a time when one has no known threats or liabilities. The right to rainy day planning has been well established since the 19th century. In 1866, a Massachusetts state court held that a citizen has the right to structure his or her financial affairs so that your family property should not remain at the

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hazard of business or be subject to the risk of improvidence. In 1890, the US Supreme Court held that a businessman's transfer of his property to his wife that was executed prior to any subsequent creditor's claims was lawful. The Court held that any business man has a right to do, to provide against future misfortune when he is abundantly able to do so.[44]

After a claim arises, a debtor can transfer assets to third parties or convert assets into exempt assets, only if the debtor remains solvent after the transfer of funds. A reasonable amount of non-exempt assets sufficient to pay the debt must remain after the transfer. A fully secured creditor lacks standing to object although there may be a dispute as to whether the creditor is fully secured.

If a transfer or conversion of assets occurs after a claim arises and there remain insufficient reserve non-exempt assets to cover the debt, there can be numerous problems. For example, the creditor may allege fraudulent transfer, mail and wire fraud and/or bankruptcy fraud.

The Objectives of Asset Protection

The primary purpose of asset protection is wealth preservation. The objective of asset protection is to avoid liability when possible, move as many assets as you can out of harm's way and encourage reasonable settlement of litigation within your insurance policy limits.

The objective of wealth preservation requires that an asset protection strategy must pursue the following goals:

- Maximize financial privacy
- Anticipate potential liabilities
- Employ countermeasures to manage anticipated risks
- Deter litigation
- Encourage reasonable settlements
- Establish indirect control of assets
- Remove assets from litigious jurisdictions

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These goals can be achieved by implementing the Fundamental Principles of Asset Protection as follows:

1. Assets should only be held in your name if it is economically to your advantage or it is not possible to hold the asset anonymously or through an entity.
2. Assets held in your name should be equity stripped, encumbered and should take maximum advantage of any statutory exemptions that may be applicable.
3. Corporations and LLCs should be used to limit your business liability. LLCs and LLLPs should be used to obtain charging order protection from personal judgments.
4. Land Trusts, Personal Property Trusts are the most expedient and inexpensive entities that can be used for financial privacy.
5. Business entities should be used to minimize your tax liabilities. C corporations are used to lawfully minimize income taxes. S Corporations, LLCs, LLLPs and LPs are used to lawfully minimize self-employment taxes. Trusts are used to minimize estate taxes and probate.
6. An operating corporation's business assets should be held in a lease back company or encumbered by a 'lend back' company.
7. Offshore entities are used to obtain financial privacy and maximum asset protection.

This requires that one avoid risks, limit liability, and minimize the potential damages that may be caused by unforeseen future events. This process should occur at a time when you are financially solvent and do not have any financial problems.

In large part, this is accomplished by risk management, by obtaining the necessary insurance coverage, transferring assets into exempt property and by divesting yourself of as much of the direct ownership of as much of your assets as possible. As Rockefeller once said, the goal is to 'The secret to success is to own nothing but control everything'. Unfortunately, it is impossible to completely divest yourself of all your property. Therefore, do the best you can to protect any property left in your name through the use of exemptions, equity stripping & other asset protection techniques.

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In order to limit future liability and minimize potential damages, a reasonable and prudent person should:

- Exercise financial privacy techniques to keep a low financial profile
- Asset strip, lien and/or look for an exemption to protect any vulnerable equity held in your name or place in an irrevocable trust
- Isolate high risk ventures in limited liability business entities
- Segregate assets into multiple entities to minimize risk
- Transfer retirement funds into offshore business entities via self-directed tax-deferred retirement accounts
- Operate the family business through a C Corporation & leave minimal assets in operational corporate accounts
- Transfer business assets into entities with limited liability and/or charging order protection entities
- Makes use of statutory exemptions wherever possible
- Use offshore brokers and bankers
- Transfer investments into offshore entities in foreign jurisdictions that do not recognize US judgments.

The Common Denominators of Asset Protection: 'Principles of Efficiency'

An asset protection plan must be designed to meet your particular needs. Lifestyles, as well as business and personal affairs vary significantly and therefore, each person's asset protection plan will be different. Nevertheless, every asset protection strategy must address certain needs or concerns that people have in common that must be fulfilled for the design to be functional. These are the common denominators because they are efficiency factors that are common to all situations. They are important because a plan that is not efficient will not work. I refer to these common denominators as the 'Principles of Efficiency'. They are the principles of: containment, segregation, integration, economy, deterrence and flexibility.

The Principle of Containment

Asset protection often involves the use of business entities or combinations of business entities to contain liability. With respect to containing liabilities, there

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are two kinds of liabilities we must consider: personal liabilities or outside liabilities and business liabilities or inside liabilities. Personal liabilities are the debts or judgments incurred or obtained in the name of the owner individually. This could be voluntary debt such as credit cards, medical bills, and contracts or it can occur in the form of judgments for tort, breach of contract, malpractice or other claims that are obtained in the name of an individual, who may be a member, shareholder or partner in a business. Business liabilities pertain to debts, judgments or obligations incurred by a business during routine and regular operation of the business in the name of the business.

A business entity is a legally recognized form of ownership of a business. The basic entities recognized at law are sole proprietorships, associations, partnerships, trusts and corporations.

A sole proprietorship exists where you simply do business in your name, a trade name or a dba (doing business as). The sole proprietor is personally liable for all of the proprietorship's debts and the owner's creditors can reach the businesses assets to satisfy the owner's personal debts. A sole proprietorship has no containment value.

Another drawback of the sole proprietorship is that it cannot survive without you, meaning the business dies along with you. If you, as a sole proprietor, want to pass the business to your heirs, there are a number of estate planning and taxation issues that must be overcome. Indeed, there are several basic estate planning considerations that are particular to sole proprietorship status.

The US is the most litigious country in the world. We live in a place where someone who chooses to visit your home, invited or not, can sue you if he or she trips on a buckled rug. We live in a society where if you spill a cup of coffee on yourself, you can get millions out of the company that sold you the coffee. Think about it. Do you really think you are safe?

Beyond this risk, you are also likely to miss out on some tax advantages. Sole proprietorships have historically been limited in their ability to participate in such things, as federally qualified pension plans and medical reimbursement plans that are available to other business entities. And they may have trouble justifying full deductions for certain business expenses.

An association is a membership organization that elects Officers or trustees, such as an unincorporated church or ad hoc political or non-profit group. The

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members are all liable for the association's debts. Consequently, associations provide no liability protection and have no containment value.

A general partnership is collectively owned by Partners and governed by a partnership agreement. The Partners share the costs, profits and management of the partnership. The partnership agreement determines the rights and obligations of the Partners and regulates the operation of the partnership. A general partnership provides no liability protection. With respect to inside liability, the Partners are each individually liable for all of the partnership debt. With respect to outside liability, each partner's personal creditors can reach the partnership property to satisfy their personal debts. The general partnership also has no containment value.

A Nevada limited liability limited partnership (LLLP) provides limited liability for the Limited Partners. An LLLP has one or more managing partners who are General Partners and it also has Limited Partners who do not participate in the management of the partnership. Limited Partners are partners only because they have contributed capital or property to the partnership. They do not actively participate in managing the business. They are entitled to share profits, but have no control over the operation of the partnership. General Partners and Limited Partners are not liable for the debts of the partnership. This is a means of containing damages called limited liability. The inside creditors can only reach the assets of the LLLP and not the personal assets of the General Partners and Limited Partners. The partnership property is also protected from the outside liability of the General Partners and Limited Partners' personal creditors. This is called charging order protection (COP). Entities like LLLPs that have charging order protection are called COP Entities. An outside creditor cannot reach the assets of the partnership to satisfy the debts of the General Partners and Limited Partner. The creditors may be given a charging order entitling them to receive any disbursements from the partnership to the General Partners and Limited Partners such as wages or dividends.

After 40 years of being in real estate business, I saw many lawsuits. My attorney recommended a Trust. It was great for estate planning purposes but it didn't protect my assets.

A corporation is a legal 'person' created by the state that is owned by shareholders who own share. The corporation has Officers and a board of Directors accountable to the shareholders. A corporation operates pursuant to

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its articles of incorporation, corporate bylaws and state corporate regulations. It is managed on a day to day basis by the Officers and Directors, subject to the approval of the shareholders. A corporation provides the shareholders with limited liability. This means that they are not personally liable for the corporation's debts. With respect to inside liability, corporate creditors can only reach property owned by the corporation to satisfy the corporation's debts. With respect to outside liability, the shareholders' creditors can attach and acquire control of the shareholders' shares. Once the creditors control the shares, they can take action as a shareholder to reach corporate property to satisfy the debt. If the corporation is a closely held corporation where the debtor-shareholder has a controlling interest, the creditors can liquidate the company's assets or simply take over the business and run it for profit.

A trust is governed by a trust agreement. A trust fundamentally consists of a grantor, trustee and beneficiaries. The grantor donates property to the trust. The trustee usually holds legal and equitable title on behalf of the trust. The beneficiaries are entitled to beneficial use and enjoyment of the trust property pursuant to guidelines set forth in the trust agreement. The liability of the grantor, trustee and beneficiaries for the trust's debts depends upon the trust agreement. Likewise, the ability of their personal creditors to reach trust property also depends upon what kind of trust is involved, based upon the trust agreement. Special kinds of trusts such as spendthrift trusts, asset protection trusts, wealth protection trusts, charitable remainder trusts and dynasty trusts are useful for protecting the assets of the trusts from creditors.

Sole proprietorships, associations and general partnerships have no value for asset protection purposes. The owners' creditors can reach the property of the entities and the owners are individually responsible for the debts of the entities. Hence, there is absolutely no liability protection. Nevada LLLPs protect the Limited Partners from the partnership's debts and the partnership property is protected from the Limited Partners' creditors. Corporation shareholders are not personally responsible for corporate debts. This is referred to as limited liability. However, their personal creditors can legally acquire ownership of their shares and use their power as shareholders to reach their share of the corporate assets.

It doesn't matter how much you do to keep your clients happy. Sooner or later you will be sued. It's a fact of life. My Nevada entity protects my way of life.

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There also are several new hybrid entities, such as limited liability limited partnerships (LLLPs) and limited liability companies (LLCs) that are COP Entities that can limit the owner/member liabilities and protect the entity's property from the member's creditors.

THE PRINCIPLE OF SEGREGATION

The adage 'never put all your eggs in one basket' applies to asset protection. If you have a lot of 'eggs', use several baskets. Otherwise, if your basket is dropped you may lose all of your eggs. Segregation can be achieved by dividing your assets among several different business entities. This is similar to the manner in which World War II battleships were constructed. The bulk of a ship below the water line was divided into dozens of water tight compartments. This enabled a battleship hit by a torpedo to stay afloat because the water taken in would be limited to the compartment damaged by the torpedo. The ship would remain buoyant because the dozens of other compartments were still intact and would not take water.

A high risk asset prone to inside liability should be segregated in a separate entity. This will limit the maximum potential damages to the liquidation value of the high risk asset since other assets are contained in other entities. One 'bad apple' cannot spoil the other apples if it is not placed in the same barrel with the other apples. High risk assets should be segregated in limited liability entities. Corporations work well because shareholders are not liable for the debts of a corporation. By isolating high risk assets in separate limited liability entities, only the high risk asset itself is in jeopardy. Of course, the asset should be insured. Insurance will provide for legal fees which may be significant. The coverage may be sufficient to settle without the need to liquidate any of the corporation's assets. If not, the damages are limited to the assets of the high risk enterprise.

With respect to closely held corporations, creditors sometimes try to pierce the corporate veil in order to reach Directors and Officers personally accountable for the corporation's debt. Piercing the corporate veil pertains to penetrating the

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protection that corporations provide Directors and Officers from liability for corporate debts. In many states, the corporate veil can be pierced if it can be shown that the corporation is a sham and that it is the alter ego of the shareholder. Many factors can be presented as evidence to pierce the corporate veil such as insufficient capitalization, commingling funds, self-dealing and/or failing to follow corporate formalities. The burden of proof a creditor is required to achieve in order to pierce the corporate veil varies from state to state.

One of the best places to incorporate is Nevada. It is very difficult to pierce the corporate veil in Nevada because it is a corporate friendly state and Nevada's Supreme Court has adopted a legal standard that makes it extremely difficult to pierce the corporate veil.

If there is a need to protect your assets from outside liability your assets should be placed in COP Entities. A COP entity refers to a business entity that protects its assets from your personal creditor's claim. Nevada LLLPs and LLCs are COP Entities. A COP entity limits a creditor's ability to recover debts to a charging order and prohibits the creditors from reaching the entities' assets. The charging order will enable the creditor to intercept any distributions to the debtor such as wages, salary, dividends or reimbursements.

In some states, if a creditor is unable to satisfy the debt with a charging order, the creditor may seek a court order authorizing foreclosure on the debtor's share of the company assets. Creditors are often apprehensive about foreclosing on the debtor's membership interest in a COP entity because they are assuming the debtor's position in the COP entity and they may become liable for phantom taxes and financial obligations owed by the debtor as a member of the COP entity. In addition, a Nevada LLC or LLLP that has a well drafted operating agreement or partnership agreement will have provisions that remove the voting and management rights from anyone obtaining a member's interest by means of an involuntary transfer. The creditor will find it is a member that cannot vote, cannot manage and cannot even access company records, but they will inherit all of the member's debts and obligations.

Many COP Entities are 'pass through' tax entities like a partnership. At the end of the year, the partnership's profits are divided equally among the partners. At tax time every year, each partner is sent a K1 tax form assessing the partner tax liability for his or her share of the profits even if the profits were not distributed to the partner. Thus, if the partnership retains the debtor's profits, a creditor

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holding a charging order could be assessed a phantom tax for the debtor's share of the retained profits. The creditor may also be liable for unpaid employment taxes and required to pay capital contributions the debtor owes the IRS.

Nevada corporations now have COP status. No other state provides for the protection of corporation shares.

The Principle of Integration

The principal of integration requires that an asset protection strategy must merge as easily as possible into your existing business. For example, perhaps a business person (BP) operates a construction company as a sole proprietor. The BP owns the building and heavy equipment where the business is located. Nothing about the business needs to change other than the structure of the business. A LLC or Nevada corporation should be formed for tax purposes (operating company). Second, another LLC must be set up as a partnership for tax purposes. (leasing company). The BP will own both the operating company and the leasing company. He or she should set up the operating company in his or her own name and home state. The BP should control the leasing company anonymously by organizing it in Nevada. The titles and registration for the heavy equipment and the building should be transferred into the name of the leasing company which shall lease the equipment back to the operating company. Both companies would provide the BP with limited liability and charging order protection. Only the operating company will be exposed to any inside liability and it will have no significant assets other than the amount of operating capital required for the normal course of business. If anyone sues the operating company, the heavy equipment and building cannot be attached because they are not owned by the operating company.

The business will operate from the same building, using the same equipment, same employees and the same name. Nothing will change other than some legal documents filed with the Secretary of State and two new bank accounts that will be opened for the new LLCs. The operating company will lease the building and equipment from the leasing company. In this manner, the transition is smooth. Nobody will know anything changed except the BP. The business effortlessly maintains name recognition, reputation, clients and good will already established. Hence, the principle of integration is fulfilled.

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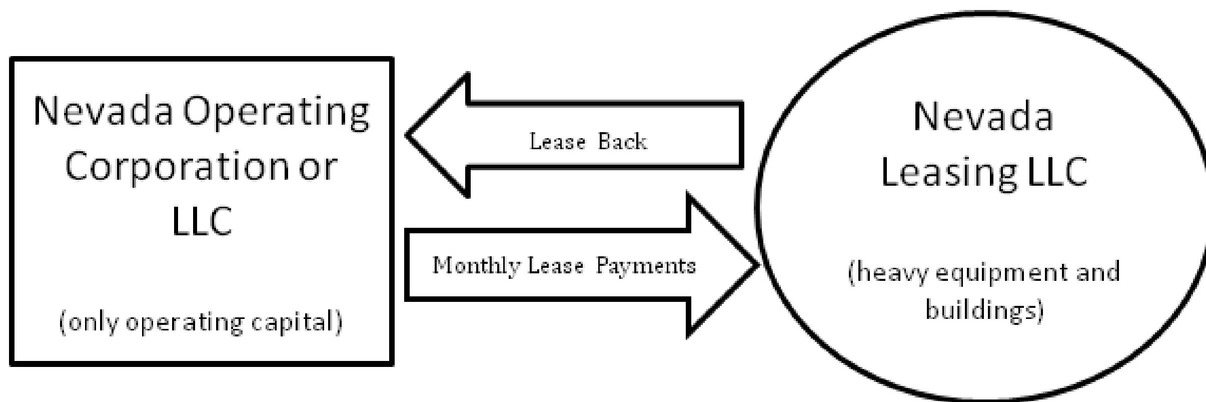

The Principle of Economy

Cost efficiency requires that an asset protection plan must not be economically burdensome. The initial costs and maintenance expenses must be comfortable based upon the scope and size of your situation. If you have large assets and significant profits, a more complex and expensive strategy may be required.

A self-employed engineer who has an income in six figures may not have any significant business assets but might be developing a large investment portfolio. It would be wise to place as many of the investments as possible in an IRA account and transfer the IRA into a Qualified Retirement Plan (QRP) to keep these funds protected from the reach of creditors. The engineer may have significant remaining long-term investments that are not part of the engineer's retirement plan. How to secure these investments would depend upon the principle of economy. The best place for these investments might be an offshore asset protection trust, but this is not economical unless the engineer has a portfolio worth at least a couple million dollars. Otherwise, I would suggest making the investments through an offshore corporation.

If the engineer has a home and the state homestead exemption is not sufficient to protect the engineer's equity, then the home could be placed in an irrevocable trust, reserving a life estate for the engineer. For some people irrevocable trusts are not favored because there are limitations on what one can do with the equity in the home and one is only entitled to a partial personal residence exemption when selling the house.

For almost every strategy there are economic advantages and disadvantages. Another option is to place the residence in a LLLP reserving a life estate for the engineer. In most states, you can file an affidavit that the LLLP is controlled by the previous owner or the owner's family and the transfer taxes are waived. In other states, the transfer fee cannot be waived and the transfer tax may be

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unreasonable. Another disadvantage is that by placing the house in an LLLP you will lose the personal residence exemption, but you may be entitled to a 1031 exchange to avoid capital gains taxation.

A wealthy real estate investor who owns numerous rental properties may need to transfer the investor's interests into several different land trusts in order to compartmentalize inside liabilities, lawsuits arising from operation of a rental property. One or more COP Entities such as an LLC or LLLPs should be used as beneficiaries of the trusts to protect the properties from outside liabilities. Equity stripping and/or hypothecation may be used to encumber the rental properties as collateral in order to provide redundant protection for the rental properties' assets. Pursuant to the doctrine of efficiency, the number of entities to be used will depend upon the size of the real estate portfolio and the cash flow. Business entities require start up and annual maintenance expenses. The number of entities should be sufficient to effectively limit liabilities without significantly affecting profits.

It is extremely important that you check state credits and homeowner benefits where your property resides. Transfers into a corporate entity or trust may cause you to lose valuable state entitlements.

The goal of the principle of economy is cost efficiency. The plan must fit well within your budget. If the plan is economically viable and blends in easily with the existing operation, it will be well maintained and prepared to survive the challenge of scrutiny if litigation occurs.

The Principle of Deterrence

An asset protection plan should not rely upon one line of deterrence. There should be redundant levels or layers of deterrence that will prevent any single attack by a creditor from reaching your assets. The first layer of deterrence is usually insurance. The second layer of deterrence may be a COP entity to prevent unforeseen future creditors from using the entity's assets to satisfy a partner's or member's personal debt. The third layer of deterrence may be achieved by placing draconian provisions in the COP entity's articles of organization that will deter a creditor from seeking a charging order and/or render a charging order ineffective. The fourth layer of deterrence might be achieved by placing friendly encumbrances, equity stripping, hypothecation or taking out a second mortgage on the COP entity's assets.

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Prelitigation Jurisdictional Planning (PJP) is another line of deterrence. PJP is a strategy whereby you place entities, managers, records, assets, trustees, trusts et cetera outside the jurisdictional reach of the courts where you anticipate that any frivolous future lawsuits or threats to your assets may be initiated.

1. Set up operating companies or corporations in Nevada because they have the toughest laws protecting shareholders, Officers and Directors from company liabilities.
2. Establish the businesses' bank accounts in Nevada and offshore.
3. Register the operating company as a foreign corporation in the home state, but keep the main office in Nevada.
4. Establish the website offshore and email services offshore.
5. Keep your sensitive company records offshore with a trustee and encrypted in an offshore data storage service.
6. With respect to COP Entities, have the manager be a business entity located in the state of Nevada or offshore.
7. Use wealth protection trusts (WPTs) to obtain financial privacy regarding the ownership of your entities and use a trustee in another state or offshore.

In case of unanticipated future risks of improvidence, PJP tactics will make litigation extremely difficult for unforeseen creditors because of the diversity of jurisdictions. This is why we coined the phrase pre-litigation jurisdictional planning. PJP makes it difficult for creditors to identify, subpoena and depose witnesses. Subpoenas will have to be obtained in other state courts or offshore to access records or witnesses. Depositions will have to be held in other states or countries. It will be difficult to get management to comply with discovery requests and court orders if the managers reside in another state or another country. Civil actions may have to be filed in multiple jurisdictions. For all the foregoing reasons, PJP tactics combined with adequate insurance coverage encourages quick and reasonable settlements of disputes and protects you from runaway jury verdicts and frivolous litigation.

You should always carry sufficient insurance to adequately compensate an injured party. You should always be reasonable and responsible. Remember the adage: 'bears get fed, bulls get fed, but pigs get slaughtered'. The goal of the

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principle of deterrence is to encourage early settlements within insurance policy limits.

The Principle of Flexibility

An asset protection plan must be able to deal with creditors from inside and outside a structure or business entity. The plan should be designed to last for a long time. Over time, the laws may change, new case law is created and your circumstances may change. You may marry or divorce, have children, start new businesses and close or sell old ventures. Consequently, an asset protection plan must be flexible. The plan must be able to adapt to changes in circumstances and in the legal environment. The plan should be flexible enough that it can be modified or even abandoned if necessary.

Beware of asset protection experts on the internet who have one plan that does it all. For example, Jane Doe bought an asset protection plan from an 'expert' on the internet who sold her an irrevocable trust called a common-law trust which she was told she could use to avoid paying income and FICA taxes. Jane placed her business's building, her home and her business's equipment into these common-law trusts. Unfortunately, the trusts are considered abusive trusts by the IRS and they are useless for tax purposes. However, Jane set up binding irrevocable trusts. In setting up the trusts, Jane gave away the equity in her property to her beneficiaries. While she is alive, she has control over the use of the assets but the equitable owners are the beneficiaries. Hence she cannot liquidate the assets for her own personal use. Jane cannot sell the property to take profits. She cannot sell the business and expend the proceeds as retirement income because the assets must be preserved and maintained for the benefit of the beneficiaries. Once an irrevocable trust has been declared to the IRS it is very difficult to revoke.

Most business entities such as corporations or limited liability companies are relatively easy to transfer assets into or out of. They offer reasonable flexibility.

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Land trusts provide privacy and can easily be used to transfer title or to remove assets from the land trust into another entity.

The Four Levels of Asset Protection

There are four levels of asset protection and these are based upon the size of and nature of your estate at any given time. The four steps are: 1) the formation of a Nevada tax savings corporation (NTSC); 2) the creation of COP Entities as needed; 3) the use of trusts to avoid probate and minimize estate taxes; and 4) the formation of offshore asset protection entities.

The First Level of Asset Protection: Formation of a Tax Saving Corporation

The first two objectives of everyone's wealth development and asset protection plan should be: a) to lawfully minimize your tax liability and b) to obtain limited liability protection for your business by forming a tax savings corporation, preferably in Nevada.

Less than 5-10% of the gross income of the super-rich goes to income and self-employment taxes; whereas, those who earn $100,000 or less usually pay 30 to 50% or more. The super-rich accomplish this by controlling their wealth through the use of corporations. A corporation can provide your business limited liability and it is the best vehicle you can use to lawfully minimize your tax liabilities.

Everyone who is serious about reaching M1+ status[45] must start out with a corporation as their first operating company. This may be accomplished by transferring an existing business that is a sole proprietorship into a corporation, starting a new business, turning a hobby into a serious business or converting the status of your current situation with your employer into an independent contractor relationship.

The Second Level of Asset Protection: Charging Order Protection Entities

On your way to M1+ status, you should be placing as much of your retained earnings as possible into retirement plans, investments and your business ventures. You will be acquiring a portfolio of passive investments, businesses and real estate. At a time when you are financially solvent and in good standing with your creditors, transfer all of the assets that you can out of your name into COP entities. COP Entities provide both front door and back door protection via limited liability and charging order protection. Thereafter, use your COP Entities to acquire future assets directly into their own names to avoid fraudulent

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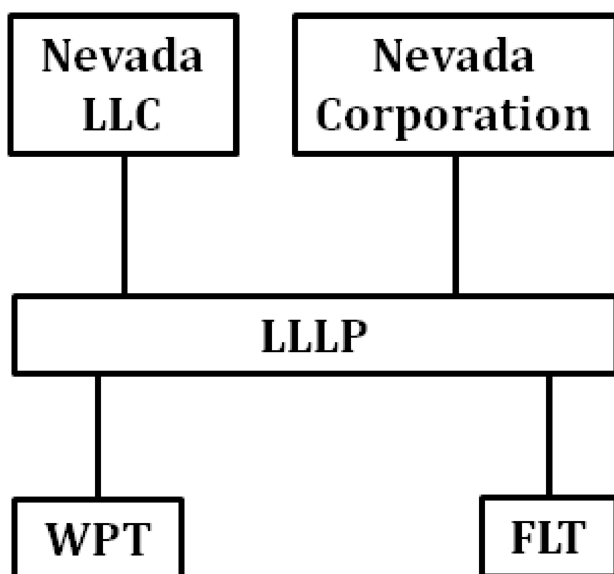

transfer claims. Assets should only remain in your name if they fall within a statutory exemption and you should create secondary lines of defense by equity stripping and encumbering them.

As your assets grow you will want to segregate them, by separating your investments and/or real estate into different COP entities so that you do not risk losing them all if you are sued. The general staff at Pearl Harbor made a big mistake by placing all the grounded aircraft close together in clusters. This made them vulnerable because a single bomb could possibly take out all of the planes because of their close proximity to one another. If they had been spread out or broken down into several smaller clusters, this vulnerability could have been avoided. A common metaphor for this principle is 'do not put all your eggs in one basket.'

As your wealth accumulates you may also want to employ complex multiple lines of deterrence. This can be accomplished by creating several layers of COP entities. This is done by have COP entity #1, which is in the state where your asset is located, owned by COP entity #2 which is a Nevada LLC that has an offshore manager. COP entity #2 is owned by COP #3 which is your LLLP. An interesting twist would be to use a nominee of a Management Privacy Trust (MPT) as the general manager of the LLLP in order to create financial privacy.

Since these are all pass through entities, the ultimate owner of COP entity #3, would be a Wealth Protection Trust (WPT). This strategy makes it difficult to hold the WPT liable for any judgment against COP entity #1 because it would require piercing the corporate veil several times in different jurisdictions and then getting a judge to hold the LLLP's limited partners liable for the debt. It is also difficult to identify the members, since non-managing members of LLCs are not disclosed and because the managers could be offshore and beyond the reach of subpoenas. The LLLP Limited Partners should be a Wealth Protection Trust (WPT) and Family Living Trust (FLT), see diagram below.

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The Third Level of Asset Protection: Family Protection Planning

If you have a family, you need to take steps to secure your family's financial future after your death. If you have life insurance, you will need an Irrevocable Life Insurance Trust (ILIT) to avoid estate taxes which can consume 50% or more of life insurance proceeds. You will also need a Family Living Trust (FLT) to avoid probate court, a pour over will and durable powers of attorney. If you have a large estate you will also require estate planning. Structures such as the LLLP, Charitable Remainder Trusts (CRT), Wealth Protection Trusts (WPT), Dynasty Trusts and Private Foundations are employed in the third level of asset protection.

The Fourth Level of Asset Protection: Moving Your Assets Offshore

The only way to obtain maximum asset protection is to move your assets offshore outside the jurisdiction of the US Courts. This insures that your assets cannot be taken from you without due process of law. This can be accomplished with an offshore International Business Company (IBC). This should occur in the context of rainy day financial planning and your assets should be transferred to your offshore entity at a time when you are financially solvent and you should have enough onshore assets remaining to remain solvent on shore after the transfer of assets offshore.

Uneven and Combined Development

How quickly you will progress and in what order will depend upon your circumstances. If you are a young person just getting started in life, the first stage will undoubtedly be establishing a Nevada tax savings corporation (NTSC). If you are already an M1+ without any asset protection, you will need an immediate asset protection plan encompassing all four levels of asset protection.

Unless you are already incorporated, the first step is the formation of a corporation. The next three levels will not necessarily be in order, but may arise in stages of uneven and combined development.

The second level will occur as soon as you need your first COP entity to hold portfolio investments, a MLM interest or real estate. On the other hand, your first COP entity may be a lease back company.

The third level will occur if, and when, you acquire term life insurance to protect your family. You will need an ILIT to purchase the life insurance in order to avoid estate taxes. You will also want to include a living trust to avoid probate.

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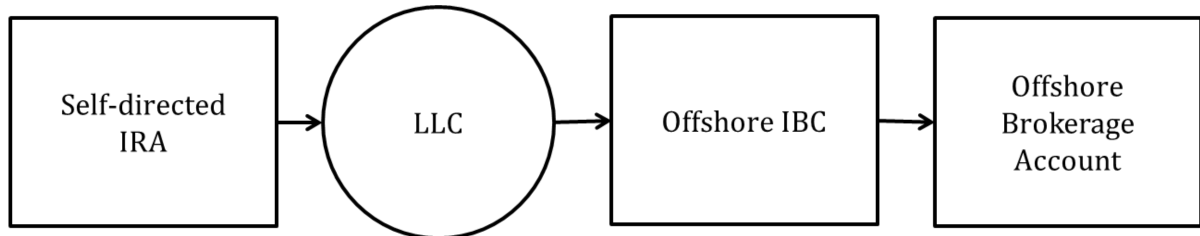
The fourth level usually occurs last because you will need an offshore corporation for maximum asset protection. However, some people reach level four sooner because they need an offshore IBC to protect their self-directed IRA, to participate in foreign markets or to engage in offshore real estate or other business ventures.



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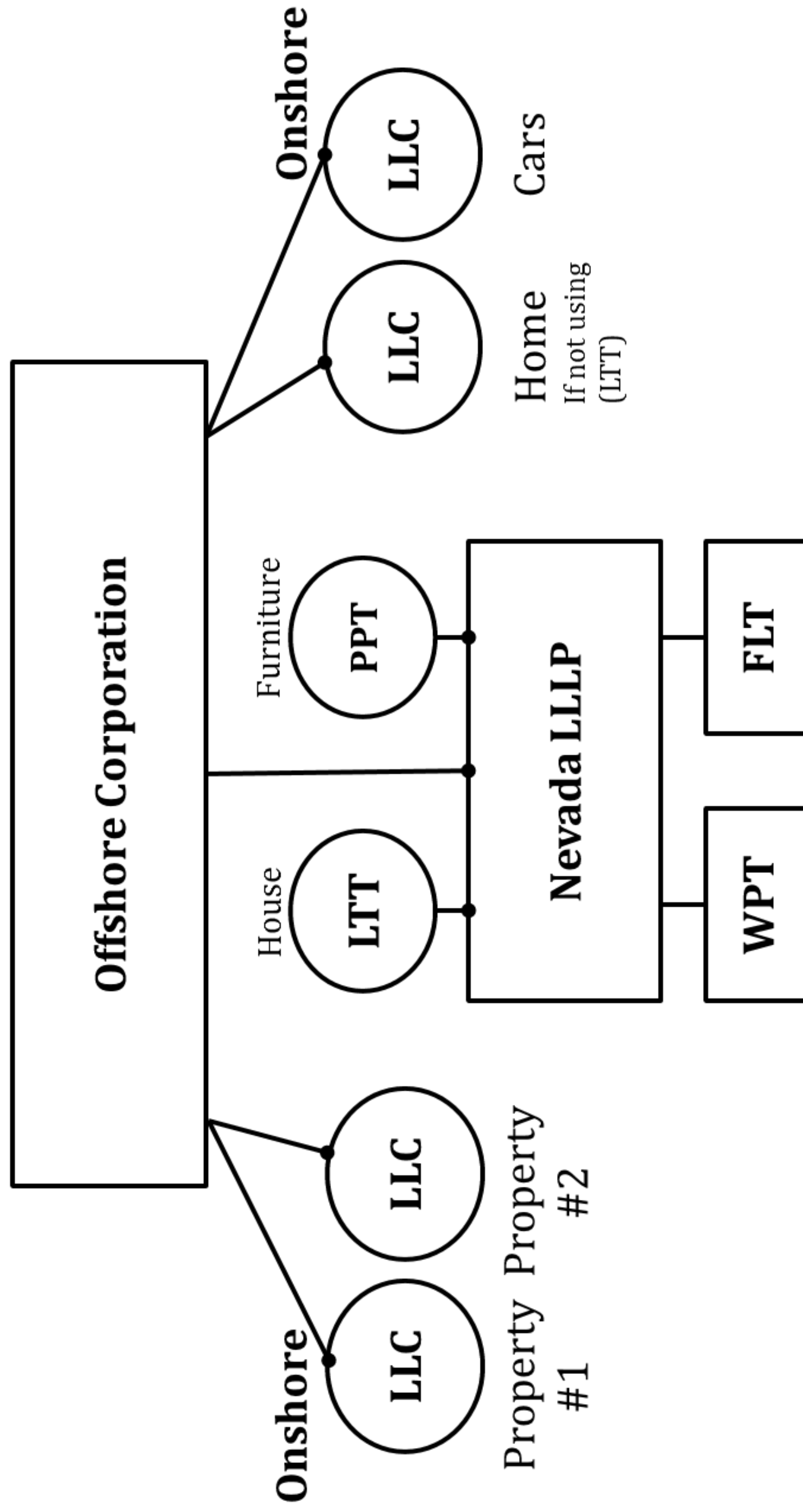

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Six Lines of Defense

There are six lines of defense in asset protection. A line of defense refers to a category or type of strategy that will provide significant assistance to protect and preserve your wealth.

The six lines of defense are as follows:

1. Avoid unnecessary risks and limit your liabilities
2. Obtain a reasonable amount of insurance coverage
3. Employ financial privacy countermeasures
4. Protect property held in your name with exemptions and encumbrances
5. Control your assets without owning them
6. Employ pre-litigation jurisdictional planning in your overall asset protection plan

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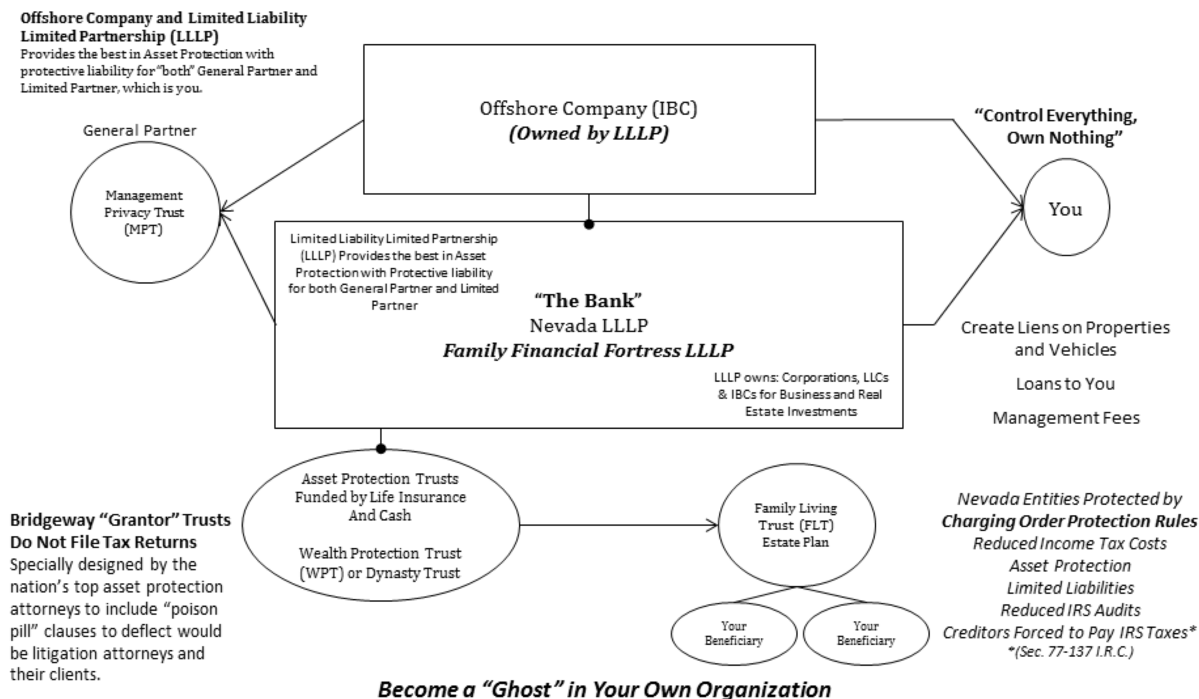

The following steps provide you with the best asset protection:

Step 1: List Assets (jewelry, art work, furniture, real estate, stocks, investment portfolios, et cetera)

Step 2: Limited Liability Limited Partnership (LLLP) – protects your investments. You and your family are kept private and protected by charging order protection and privacy rules.

Step 3: Management Privacy Trust (MPT) – gives you privacy because this trust is not on public record. When used as the General Partner, your personal name does not appear and allows you to control by directing the trustee.

Step 4: Wealth Protection Trust (WPT) or Dynasty Trust (DT) – Owns the family Limited Liability Limited Partnership (LLLP) units and its assets. Directs the wealth of the beneficiaries to the family living trust.

Step 5: Family Living Trusts (FLT) – contains a Living Will (medical) and Last Will & Testament, Guardianship, Durable Powers of Attorney, Letter of Wishes, Non-Contestability & Pour Over Will Provisions to finally secure your family's estate for your spouse, children and grandchildren.

Step6: Encumber (lien up) Assets through a Limited Liability Limited Partnership

Step 7: Life Tenancy Trust (LTT) & Personal Property Trust (PPT) – protect your right to permanent interest in your home and to your furnishings and personal assets.

Step 8: Nevada Limited Liability Company (LLC) – Allows you to protect cash and fixed assets and your real estate.

Step 9: International Business Corporation (IBC) – move your large nest-egg beyond the reach of US courts.

Step 10: Transfer your assets – and begin to sleep soundly, knowing that your family is protected.

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CHAPTER 5: THE FIRST LINE OF DEFENSE

THE FIRST LINE OF DEFENSE: AVOID UNNECESSARY RISK AND LIMIT YOUR LIABILITIES

The first line of defense involves many things you can do that are absolutely free. This involves carefully planning the activities you engage in to avoid unnecessary risks and otherwise limit your liabilities. This involves avoid high risk activities, the careful use of contracts, the employment of prudent business practices and marital planning. A prudent and cautious person is much less likely to be sued or swindled than an impulsive person that talks before he or she thinks and that makes business decisions on the spur of the moment without sufficient planning or preparation.

Asset protection demands a high level of discretion and financial privacy

AVOIDING UNNECESSARY RISKS

America has changed dramatically and many worthy activities that used to be harmless are now serious potential liabilities. Our brave new world has turned into a dangerous new world and we all have to adapt if we want ourselves and our families to prosper.

Volunteer, civic and charitable activities are a good thing. However, limit your activities to low risk participation such as contributions of cash, donations of goods, volunteer labor or other passive low risk activities. Do not become a manager, officer, director, leader, or assume any position that will incur liability for your conduct. Activities such as having fundraising meetings at your home, sponsoring a charitable event, or supervising the church youth group should be avoided. These types of activities could result in the loss of millions of dollars should someone be injured or killed. Even if you prevail in court, the legal fees could be enormous if they are not sufficiently covered by insurance.

Jurors may feel sorry for severely injured parties even if they are entirely at fault for their own injury. Jurors may enter a judgment against the defendants in order that the injured party can be made whole. Under the doctrine of joint and several liability, even if there are multiple defendants and a particular co-defendant is only 1-2% liable for the damages, that co-defendant can be held accountable for the entire debt or ordered to pay damages for life. Persons with accessible wealth are considered deep pockets by the legal system. Creditors

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and judges will invariably look to persons with deep pockets to collect the damages.

The laws in our judicial system even allow defendants to be held liable without any actual proof of injury by an alleged defendant. There are numerous cases involving children playing with dangerous products, asbestos cases, contaminated ground water and other situations where a person is injured, but it is unknown who is responsible for the damages. The law allows judges to make a list of the possible defendants that might have caused the damage. The court may then enter a judgment distributing proportional liability among all the defendants. For example, an employee 30 years ago may have been exposed to asbestos and developed lung problems. At the time, the company the plaintiff worked for required him or her to work with a product that caused asbestos exposure. It is unknown which manufacturer the employee's company purchased the asbestos product from, but it is known that there were only four companies that manufactured this kind of product 30 years ago. It is possible that all four companies could be assessed 25% liability even though it is never proven whose product was used.

Most judges are competent hard working public servants. Nevertheless, today the doctrine of judicial realism is taught in law school. The theory of judicial realism states that laws are only pieces of paper. The real law in any jurisdiction is based upon the predisposition and values of the judges who interpret the law. As a result, many courts have outcome-oriented judges.

Other factors such as politics and social engineering permeate the bench. In 1998, a West Virginia Supreme Court Justice frankly stated: "As long as I am allowed to redistribute wealth from out-of-state companies to injured in-state plaintiffs, I shall continue to do so. Not only is my sleep enhanced when I give somebody else's money away, but so is my job security, because the in-state plaintiffs, their families, and their friends will re-elect me."

Do not take any position on the board of Directors of a non-profit corporation or as an Officer or leader of any social action or reform groups. Do not take a management position on any newsletter or newspapers because you may find yourself a defendant in a defamation lawsuit. These days some papers, owners and staff are sued under the organized crime RICO laws. The plaintiffs' attorneys sometimes recover millions of dollars in damages.

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Think twice before joining with a friend or relative to buy a boat, house or a business. The risk may be much greater than the reward. Before you agree to get involved in any kind of a joint venture, carefully consider how capable and responsible your partners are going to be and what the potential liabilities will be. If you proceed, do so through a business entity that will provide you with limited liability such as a Nevada corporation, LLC or LLLP.

Limit Your Liabilities

Many kinds of liability may be avoided through the use of contracts. For example, if you are unwilling to give up driving and supervising your church youth group's events, then use a hold me harmless agreement to protect both the church and yourself from any litigation in relation to any accidental injuries that might result from the event. Hold-me-harmless agreements should be used for any kind of charitable event.

There is an old adage: 'If you don't have something good to say about someone, then don't say anything.' Be very careful about comments concerning third parties. You do not have to worry about being sued for defamation if nothing is said and one is generally tight lipped. In any case, it is better to listen to others and gather information than to provide information anyway.

How to Protect Your Business

How to Hold Your Business Assets

Attorneys or CPAs may advise you to simply set up an LLC, a corporation or a subchapter S Corporation. This will provide limited liability, but it is not sufficient because it does not provide asset protection for your businesses assets. It also provides no protection in case a judge allows the creditors to pierce the corporate veil and hold the corporate shareholder or LLC members liable for the debts and obligations of the business.

The business itself should operate as a C Corporation because this provides the best tax savings options for most businesses and it provides limited liability. The assets of the business such as computers, phones, office equipment, office furniture, vehicles and/or real estate, should be held in an LLC and leased to the C Corporation. The C Corporation is the operational corporation that does business. Your clients will sign contracts with the C Corporation. All services and products are provided through it. The main bank account will be in the name of the C Corporation. All income is deposited in the C Corporation and all the bills and employees are paid from the C Corporation.

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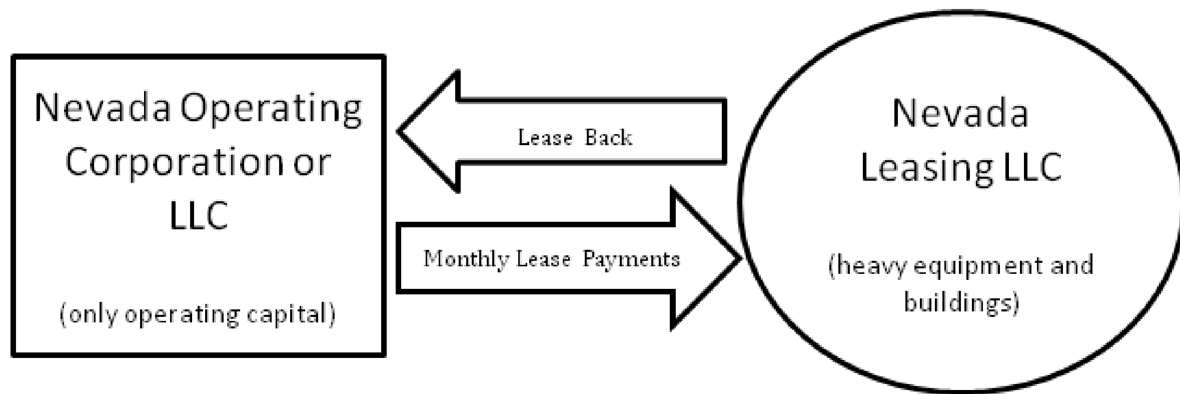

If any customers, clients, vendors or employees have a complaint, they will have to sue the C Corporation, because it is the C Corporation that is doing business. However, the C Corporation has minimal assets because it leases all its equipment from the LLC and the LLC is not liable for whatever the C Corporation does with the equipment it leases from the C Corporation.

The C Corporation's only assets will be the bank account used to receive your payments and pay operational expenses. A cash reserve should be maintained in savings to get the company by over slow periods. Any profits beyond those needed to maintain the operational reserve, should be distributed as salary, wages, commissions or dividends.

One caveat to the C Corporation is that net profits are capped at $50,000 at a fixed tax rate of 15% net income. We recommend that a second corporation or LLC be created to invoice the C Corporation for management's wages thereby allowing for the $50,000 to build up at the low income tax rate of 15%.

The second option is to form a sub-chapter S Corporation or LLC and invoice the C Corporation so as to take advantage of the $50,000 left inside the C Corporation and having the S Corporation earn just enough to keep earnings at their most efficient level. This is getting the best of both worlds.

The third option is to file election form 2553 and convert the C Corporation into an S Corporation allowing for the free flowing of income to the owners. By using the sub-chapter S Corporation a mixture of wages in the operating company can be paid to the owners. Dividends are not subject to the 15% social security (self-employment) tax.

By combining a Nevada leasing LLC to soak up profits at a rate of 108% of the fair market value of the equipment; owners can effectively reduce the net income

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thereby lowering wages and dividends to a minimum thus achieving significant tax savings.

If you are married, the business should be placed in the name of only one spouse in case a judge allows creditors to pierce the corporate veil. This should be the spouse that is most active in operating the company because he or she may also be individually named as a co-defendant. The other spouse should not be active or exposed to liability in relation to any activities with the business.

If a creditor obtains a judgment, the only assets available will be insurance coverage and the cash reserve of the C Corporation. If the creditor is allowed to pierce the corporate veil and the business is the name of only one spouse. The family assets should be held in the name of the other spouse through a living trust. All the significant marital property should be held by the other spouse as his or her separate property. This will place the family assets beyond the reach of the creditors because they will only have a judgment against the spouse that owns the C Corporation.

Of course, if the couple divorces there is a significant danger that the spouse holding the family assets through the living trust will get to keep them in the divorce because they are designated as his or her separate property, but the other spouse will have control of the family business.

A better strategy is to equity strip the family home and use other techniques described in later chapters to make the family assets immune to unforeseen future creditors.

Avoid Oral Agreements

Many business persons are used to doing business based upon an oral agreement and a handshake. This only works if you obtain all of the money up front. Even so it may still be necessary to protect oneself from claims of failure to perform or failure to complete services as agreed upon. When I was young, I was production manager for a tree service that removed trees, trimmed trees and removed stumps. I learned very quickly the importance of requiring our salesman to write down in advance everything that was to be done at the time the bid

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was made. Otherwise, customers would refuse to pay, claiming we did not complete the work, and they would try to get additional work for free or use their claim to avoid payment. We had language in the contract that required all work agreed to be performed had to be specifically described in writing and that there were no oral agreements outside the contract regarding any work to be performed. The contract also clearly stated that payment was due in full upon completion of the work.

Without a contract, in many states the statute of limitations for an oral contract is only one year. In any case, it is always much shorter than for a written agreement. It is often impossible to prove the terms and conditions of the agreement because everyone's recollection of the agreement will be different due to selective perception.

It is much easier to collect on a well written contract that specifically states how when and what shall be done. If you are in the service business, in many states you can place a lien on the domicile or other titled property for unpaid services. In Washington State, this can be done by anyone providing services or equipment. You may file a lien, but if you do not collect, you must take the other party to court within eight months, otherwise the lien expires.

Use Mediation & Arbitration Clauses in Contracts

Mediation is generally good to try to resolve disputes, but that does not always work. You should use binding arbitration clauses in your business contracts whenever possible. This is a clause that states the parties agree that any disputes shall be decided by a professional arbitrator rather than a judge or jury. Arbitration is faster and more direct that the regular courts, which are slow and drag your case out for many years. Arbitrators will review the case more carefully than a judge and less likely to be swayed by emotional arguments or professional witnesses that might taint a jury. Binding arbitration also means that both parties agree to be bound by the arbitrator's decision.

Use Your Business Contracts to Forum Shop

Jurisdiction Clauses: A jurisdictional clause is one that determines where any litigation between the parties can be filed. This is often very important for several reasons. First, if you are dealing with clients from out of state you will want to litigate in your home state. Second, sometimes a particular state will be a more favorable forum for litigation to occur because of the state's laws,

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regulations, case law or ordinances. Use jurisdictional clauses in your contracts to insure that litigation will occur in a friendly jurisdiction.

Choice of Law Clause: Even though you have a jurisdiction clause, sometimes for unforeseen reasons a case cannot be litigated in the chosen jurisdiction due to venue, personal jurisdiction or other problems. A choice of law clauses in this situation can be very useful because courts will generally honor them as they were contractually agreed to by the parties in advance. What this accomplishes is that if a lawsuit must be litigated in a state other than your preferred jurisdiction, you can require that the laws of your preferred state jurisdiction be applied in the jurisdiction where the case is litigated.

For example, suppose your corporation is formed in Nevada which is famous for its higher threshold of liability for corporate Officers and its tough laws regarding piercing the corporate veil. You should put a choice of law clause in all of your contracts requiring the parties to agree that: if any party should seek to pierce the corporate veil or otherwise hold the other party personally liable for the debts of their business entity, that the laws of the state of incorporation, organization or formation of said entity shall be used to determine whether said shareholders, members or partners may be held liable for the debts of said entity. As a result, if a client sues your Nevada Corporation in another state where it is easy to pierce the corporate veil, the court in that state will be required to apply the laws of Nevada in making its determination as to whether it can pierce the corporate veil.

Avoid Employee Lawsuits

Employment Contracts: If you have employees, you should have them sign an employment contract. The contract should clearly identify the rights and obligations of employees. There should be a policy statement in the contract that the company forbids discrimination, sexual harassment and other illegal activities. It should require employees to report any offenses observed to the employer immediately so that action can be taken to halt the illegal activity or unfair labor practice. The contract should have a mandatory arbitration clause. Arbitration protects employers from runaway jury verdicts and protracted costly litigation. Title VII litigation can go on for decades and the legal fees could put you out of business if the employee prevails. The US Supreme Court has ruled that claims under the Age Discrimination in Employment Act could be made subject to binding arbitration. The reasoning in this case shall probably be followed with respect to Title VII cases also.

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Independent Contractors**:** Outsource your work and use independent contractors as often as possible. Generally speaking, you are liable for any damages to third parties caused by your employees. However, you are generally not responsible for any damages cause by an independent contractor, or the contractor's employees. You can also avoid employee lawsuits, since the employees are employed by the contractor, not you. In addition, you can save on payroll taxes, et cetera.

How to Avoid Liability for Wrongful or Unlawful Acts by Your Children

As our society has become more litigious, it has also become more judgmental and unforgiving. We now have laws holding parents and grandparents accountable for the acts of their children or grandchildren. For example, you can be held liable for damage to a vehicle and its occupants that are caused by your child's throwing snowballs at traffic. You may be held liable for accidents your child causes while driving a snow mobile, boat or automobile. Grandparents have been sued by their children for injuries incurred by their grandchildren while under their supervision.

If your child or grandchild sells marijuana to a friend on your back porch, your house could be subject to civil forfeiture because your residence was used to facilitate a drug transaction. If you are subject to a traffic stop and an officer finds marijuana your teenager left in the ash tray, you could be charged with possession of a controlled substance. If this occurred at the US border, your vehicle may be confiscated.

Many states have enacted statues that make parents liable in varying degrees for damage caused by the misconduct of their children. Not all states have enacted such statutes, but there is a national trend toward increasing parental liability for the acts of their children. Most of these statutes have reasonable limits on maximum of amount of damages that parents may be held liable, but there are many exceptions to the rules whereby the parents may be held liable for amounts far in excess of the limitations. Typically, these are situations where the child is acting as an employee, agent or otherwise acting pursuant to the directions of the parent.

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Factors Indicating Liability

There are several circumstantial factors that are usually present when parents are held liable for the misconduct of their children:

- The parents have observed the child's misconduct, attempted misconduct or behavior indicating a tendency or inclination to commit the same type of misconduct that damaged the injured party.
- The child's misconduct has been habitual and/or the child has previously demonstrated inclinations towards the commission of the same type of misconduct that damaged the injured party.
- The parent failed to adequately supervise the child or exercise reasonable judgment in controlling the child.
- If the child's harm to another person was reasonably foreseeable based upon the parent's observation of the child's prior behavior.
- If the parent allows the child to use dangerous instruments such guns, knives, explosives, incendiaries or any kinds of weapon or dangerous object such as a power tool, nail gun, et cetera.
- If the parent allows the child to drive without a license, without adequate training, without adequate supervision or, if the based upon the child's past driving behavior, the parent should know that the child is not a safe driver.
- If the parent consents, directs or initiates, encourages or ratifies the child's misconduct that results in harm to a third party.

In addition, a parent can be liable for any damage caused to a third party, even an act of negligence, if the child is acting as an employee of the parent. In many states the parents may be held liable for any kind of auto accident the child incurs in a vehicle owned by the family under the family vehicle doctrine. Other states will hold a parent liable if the teenager is driving the vehicle with the parent's consent. Another theory of liability is negligent entrustment if the child has a poor driving history.

For example, some states make parents liable for negligent supervision if their child commits a felony. Others require parents to liable to pay child support for any teenage pregnancy their son is responsible for. Several states are passing legislation holding parents responsible for any rowdy house parties their teenage children may hold while they are on vacation without the kids. Criminal and civil sanctions are being legislated for the failure to supervise regarding

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such. Many states already provide criminal sanctions for the acts of your children where the parent directs or consents to the misconduct. This usually pertains to situations where the parents buy liquor for their kids or have knowledge of their child's drinking under age and fail to stop it.

- If there have been no similar past, prior or habitual acts of inappropriate behavior or misconduct by the child.
- If the child was not under the direct or indirect control of the parents, when the child's misconduct occurred.
- If the parent had no knowledge or any similar past misconduct or tendencies that child might engage in the type of misconduct that damaged the injured party.
- If the misconduct occurs at a time when the child is not supervised, and it is a situation where a reasonable person would not have believed supervision was necessary.
- If the child's inappropriate behavior or misconduct was not reasonably foreseeable by the parents.

What Can Be Done to Avoid Liability?

There are a few things that can be done to protect your assets from your liability for any tortuous or harmful actions by your children. The following is a list of things you can do to protect yourself and your family:

- Teach your children about the possible consequences of inappropriate behavior such as pranks, hazing, hazardous and reckless behavior.
- Teach them about the hazards of using controlled substances and the consequences of driving while intoxicated.
- From an early age, teach them to address the person's objectionable actions without personality attacks.
- Teach your children that fighting solves nothing and only makes things worse. Make them understand that violence is not an appropriate method of resolving problems.
- Do not keep firearms or fireworks in your home. If you do, keep them in a gun safe and make certain that the key to the safe cannot be accessed by the children.
- Never cosign or act as guarantor or surety for your children's loans.

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- Do not assist your teenager in acquiring their first vehicle until you are certain he or she is are truly mature responsible enough to have their own vehicle.
- When you teenager gets his or her own first vehicle, if they are over the age of majority put the vehicle in their name.
- Never allow your children to consume alcohol or controlled substances at your home. Never purchase alcohol for your children. Do not allow them to drink until they are old enough to do so legally.
- Make you children understand the importance of complying with all laws, even laws they don't agree with, and the consequences that can result from the failure to comply.
- Review your homeowners and auto insurance policies to be certain that they cover the negligent acts of your children. Also make sure that the policies cover the negligent driving of other drivers as well.
- Make certain that the policy limits on your homeowners and auto insurance are high enough to protect you and your assets. Do not make the mistake of obtaining minimum coverage. The larger the size of your estate, the higher your policy limits should be. In addition, always remember that if you get hit by an uninsured or underinsured motorist, those policy limits may be all that is available to you and/or your loved if seriously injured.
- If you have significant assets, see if you can obtain an umbrella policy that will cover any negligent or reckless acts by your children that may harm others.
- If you have significant assets, move as much of your IRA retirement funds as possible into a Qualified Retirement Plan (QRP). Move your other investments and surplus profits into offshore entities. If you have more than $2 million in wealth to protect consider moving it into an offshore asset protection trust.

How to Protect Your Assets in Divorce

Marital and Premarital Agreements

A premarital agreement is a contract signed before marriage which spells out what will happen in the event of divorce or death of the parties. A marital agreement is one that is signed during the course of marriage. By signing such agreements, you can protect against catastrophic divorce judgments or lawsuits regarding your estate. If you do not have a premarital agreement that covers the

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disposition of property in the event of a death or divorce, you will be subject to the divorce and probate laws of your home state.

Not all premarital agreements hold up in court. The language of such an agreement should not indicate that the document is written in anticipation of divorce, which is disfavored by the courts. Since the concern of most is to preserve an unequal distribution of wealth, the goal should be for the parties to maintain separate property. In such situations, the parties should maintain separate accounts in addition to a community financial account. The integrity of separate accounts and separate property should be arduously preserved and there should be no commingling of funds. Mortgage payments on separate property must come from separate financial accounts and never from a community account. Any separate funds going into a community account will be presumed a gift unless secured by a promissory note and loan agreement.

Premarital agreements require full disclosure of all assets and both parties must have attorneys. The less wealthy party should also be given adequate time to consider the document and should not be pressured to sign. Otherwise, the premarital agreement will be set aside.

Community Property Agreements

A community property agreement drafted by a marital community residing in a community property state is always a good idea. It should clearly identify each spouse's separate property and identify what is community property. If this document is drafted at a time when the marriage is harmonious, it can save a lot of time and litigation should the couple later separate, because it will quickly resolve most of the separate versus community property issues that otherwise might be contested.

Dynasty Trusts and Wealth Protection Trusts (WPT)

An Asset Protection trust is set up to provide funds to a specific beneficiary for specific purposes such as education, medical or living expenses et cetera. Sometimes the trustee shall pay bills directly to a service provider such as a hospital, auto dealer, landlord, et cetera on behalf of the beneficiary. If you do not live in a state that allows spendthrift trusts, you can establish one in Nevada and use it to hold your passive investments. Before marriage, a trust can be set up to exclude future spouses from access to and claims against the assets placed in the trust. Disbursements from a dynasty trust are payable only to the beneficiary or on behalf of the beneficiary. Moreover, when you die you can

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designate your successor beneficiary as your children and/or your spouse. You can define spouse as being only the spouse you are married to at the time of death unless you are separated or a petition for dissolution is pending at the time of death. This will prevent any former spouses from making a claim, and only a spouse that is in good standing at the time of death may inherit your wealth.

A similar result can be obtained using an offshore asset protection trust (OAPT) set up prior to marriage designating you as sole beneficiary and using similar language as described above to designate the successor beneficiaries. OAPTs are generally not cost effective unless you have at least two million dollars in assets to place in the trust. However, they provide superior asset protection than a domestic trust.

The Nevada Limited Liability Limited Partnership (LLLP)

You can set up an LLLP so that you may control the community property you want to keep in the event of a divorce. Allegedly, for estate planning and asset protection purposes, you can transfer all of the marital property that you want to keep into the LLLP. Your management privacy trust (MPT) should be the sole General Partner. The LLLP should have a partnership agreement that requires unanimous consent to remove the General Partner. It also needs a clause that will allow the General Partner to retain income for the reasonable needs of the partnership rather than pay it all out. Partnership agreements often contain a duress clause that requires the General Partner to be removed if the General Partner becomes a party to litigation. This clause can be modified to make an exception for a divorce; if you want to maintain control of the LLLP during the course of divorce litigation.

In the event of a divorce, the courts will not want to unwind and dissolve the LLLP and most likely will only want to adjust the percentages of the husband's and wife's percentage interests in the family living trust (FLT). The LLLP should be owned 80% by the wealth protection trust (WPT) and 18% by the FLT and 2% by the Management Privacy Trust (MPT) as the LLLPs General Partner.

Regardless as to how the percentages are adjusted, the LLLP will be under your indirect control. You will have the ability to retain earnings and can divert funds to yourself as wages, salary, benefits and/or commissions. Your spouse will be limited to receiving income whenever you decide to make a distribution.

Always remember that 'bears get fed, bulls get fed, but hogs get slaughtered'. If you position most or all of the marital property so that you will be in control of

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everything, the judge may decide that the alleged asset and estate planning was just really legal ploy to get an unfair advantage in anticipation of divorce. Therefore, the judge may simply set aside the LLLP or attempt to dissolve it.

How to Sell Your Property without Getting Sued

One of the biggest dangers in selling property is undisclosed defects. This is not a problem limited to real estate. It pertains to the sale of personal property as well. Automobiles, boats, RVs, trailers and aircraft are expensive items that result in significant damages that you may be liable for if you do not handle the sale of your property properly.

The liability for the failure to disclose defects with respect to real estate is legendary. I recall reading about a home that was sold that had toxic mold which was undisclosed. After deliberation, a runaway jury came back with a verdict against the Seller/Defendant for thirty two million dollars.

If you are in the business of selling real estate or high risk items such as large boats, vehicles or airplanes, you should do business through an entity that provides limited liability protection such as a Nevada corporation or LLC. If you have numerous properties, they should also be compartmentalized using several entities to segregate your liabilities in order to contain any potential litigation from consuming all of your business assets.

Because large sums of money are involved in real estate transactions, it is worthwhile to hire a real estate attorney to draft or review your real estate contract and lease agreements. A good real estate attorney's fees will be money well invested in putting together a real estate deal. While most deals go through smoothly, if you have a problem and you do not take the proper measures, you could lose an enormous amount of money. You can read books which explain real estate contracts and leases, but the laws change constantly, and literature on the

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subject is not able to keep pace with the most recent changes. That is why you need an attorney who specializes in real estate law.

Today the courts are expanding the liabilities of persons involved in real estate transactions. In some states the seller has an obligation to disclose all known defects. There are also laws requiring the disclosure of lead paint on the walls or radon gas in the ground. If you cannot prove that the proper disclosures were made, you may be sued for thousands of dollars. You must also be wary of environmental laws, zoning ordinances and building codes. This is another reason why a good real estate attorney should always be used when closing real estate transactions.

Here is a checklist of steps you should take to protect yourself when selling real estate, high risk or personal property of significant value:

- Retain an expert to inspect the property to discover any defects.
- Make a full written disclosure of all known defects in the sales contract. Always disclose a defect.
- Include a provision in the sales contract that the buyer has been advised of all known defects and has inspected the property or that the buyer has been given the opportunity to inspect, or have an expert inspect, the property.
- Place a caveat emptor 'As Is' clause in the sales contract indicating that all known defects have been disclosed and that seller assumes no responsibility for known or hidden defects.
- Insert a clause in the contract that there are no implied warranties included in the sale of the property and that buyer has waived his/her right to any implied warranty with respect to the sale of property.
- Always sell real estate, high risk and any property of substantial value through an entity that provides limited liability protection.
- Always use an attorney to close real estate transactions.

How to Hold and Control Your Property

Forms of Ownership to Avoid

Joint Ownership: This is a lethal way to hold property because instead of obtaining asset protection you have doubled your exposure to liabilities. Under joint ownership your property becomes vulnerable to your significant other's

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creditors, as well as your own. In addition, you may be giving away a 50% interest in your property to a significant other that someday may become a disgruntled adversary in a future divorce or palimony proceeding.

Tenancy by the Entireties: Almost half of the states recognize this form of joint ownership between a husband and wife. Under this form of title, the property is protected from claims by a spouse's creditors because the property is owned by the marital community. However, the property can be attached for debts of the marital community or if both spouses are sued.

Transferring Title to Third Parties: An irrevocable transferal of property to a third party, such as a spouse, a child or significant other will protect the property from your creditors so long as the property is transferred when you are financially solvent and absent knowledge of a claim. Even so, the property will be vulnerable to the creditors of the third party. The property may also be vulnerable to claims by creditors of the third party's spouse and marital creditors. Bear in mind that the transfer will give your loved one complete control over your property and that your property may depart with your spouse in a divorce proceeding.

Acceptable Forms of Holding Title or Controlling Property

Holding Title to Property in Your name: Title should be held in your name if you can: a) protect the property with a statutory exemption; and/or b) you can strip or encumber the equity from the property. It is useful to keep the personal residence in your name to be certain that you can claim the mortgage interest deduction, the personal residence exemption and the homestead exemption. It is extremely important that you check state credits and homeowner benefits where your property resides. Transfers into a corporate entity or trust may cause you to lose valuable state entitlements. A first mortgage, HELOC loan and/or

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a hypothecation agreement can be also be used to protect the family homestead if you keep title in your name.

Transferring Property into a Trust or Entity: Property that cannot be protected by exemptions, equity stripping or encumbrances should be transferred into an irrevocable residential trust (IRT) or an entity with charging order protection. The Nevada Corporation, LLC and LLLP provide charging order protection. However, a principle residence should be equity stripped using your LLC or LLLP and transferred into a qualified principal residence trust (QPRT) or irrevocable residence trust (IRT).

An *Irrevocable Trust* is a trust that cannot be reversed. Once you transfer property it is no longer yours. In order to be effective in most states, the grantor cannot be the trustee or the beneficiary. Some experts advise that you use your children as beneficiaries and include an anti-alienation clause and a spendthrift clause. I beg to differ. You should use your LLLP, owned by your wealth protection trust (WPT), as beneficiary. This will protect the property from the beneficiaries' creditor at the time of distribution from the LLLP. An anti-alienation clause is useful to prohibit the trustee from transferring assets to anyone other than the beneficiary. However, rather than use a spendthrift clause to restrict distributions of funds to the beneficiaries, I would suggest that, it is better to provide money in the form of loans rather than distributions. This provides the strongest protection from unanticipated future creditors and will prevent the trust's assets from depleting.

LLLPs and LLCs: The Nevada LLLP, corporation and LLC are COP entities. This is because they are subject to charging orders which prevent creditors from seizing the assets. If a Nevada LLLP, corporation or LLC is properly organized and operated, it is difficult for creditor's to reach the entities assets to satisfy the personal debt of a Member or Partner.

How to Handle Dangerous Assets

Automobiles, boats and aircraft are properties that come with high risk and it is not possible to obtain adequate insurance to cover these risks. High risk assets such as these should be held in a Corporation or an LLC. Which particular entity is best suited for the asset will depend upon the nature of the asset, the use of the asset, the equity in the asset and other surrounding circumstances. These entities are necessary because they all provide limited liability. However, this will not protect you from personal liability when you are operating your vehicle,

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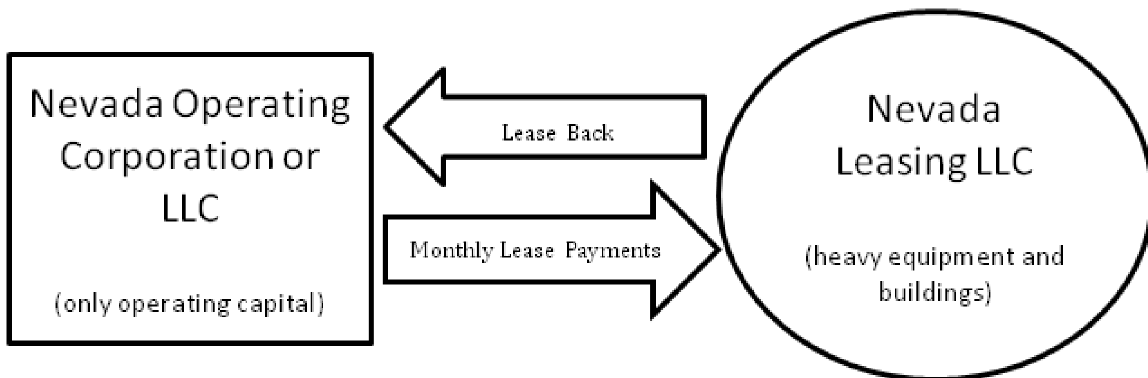
boat or plane. It may protect you when you allow others to use your boat or plane, absent negligent entrustment,[46] or if you use the assets as a lease back and employ a captain, pilot or chauffeur.



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CHAPTER 6: THE SECOND LINE OF DEFENSE

THE SECOND LINE OF DEFENSE: INSURANCE COVERAGE

You should obtain as much insurance coverage as is economically reasonable in the areas of highest risk. What types of insurance and how much coverage is necessary will depend upon each individual's particular circumstances. A low income person does not need as much coverage as a wealthy person. A real estate speculator will not need malpractice insurance. The following information covers a spectrum of the types of insurance available that are generally useful to business owners and professionals.

HOMEOWNER'S INSURANCE

A homeowner's insurance policy is designed to protect homeowners against certain perils. The insured should read his or her policy carefully because your coverage is determined by the perils and exclusions contained in the policy. There generally are more exclusions than perils. Persons who reside in areas prone to hurricanes, floods, tornados, forest fires or earthquakes usually will discover that these perils are not included in their policies. Additional coverage is usually required. If so, do it unless the rates are ridiculous. Don't risk losing everything at the whim of Mother Nature. Persons who live in hurricane areas should also obtain flood coverage. Persons caught in Katrina thought they were covered because of clauses regarding wind damage. However, the wind caused the flooding and the flooding did more damage than the hurricane high winds. Many insurance companies are refusing to pay for Katrina damages because they are claiming it is flood damage and their client's policies did not cover flood damages.

The typical home insurance policy is divided into 2 parts: a) home insurance property protection and b) home insurance liability protection. The home insurance declarations page, which is usually the first page in a homeowner's insurance policy, usually contains property protection. This protection is usually broken down into four additional sections:

1. *Dwelling* coverage typically covers your house, attached structures, fixtures in the house such as built-in appliances, heating, plumbing, permanently installed air conditioning systems, and electrical wiring.
2. *Other structures* coverage typically covers detached structures such as garages, storage sheds, and fixtures attached to the land including fences,

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driveways, sidewalks, patios, and retaining walls. Detached structures used for business purposes are not covered under a personal homeowner's insurance policy.

3. *Personal property* coverage typically covers personal property including the contents of your home and other personal items owned by you or family members who live with you. This protection can be based on actual cash value or replacement cost. Always obtain replacement cost coverage. If your insurance agent tries to talk you out of this, it is time to get another insurance agent and/or company. Actual cash value means generally whatever you could have expected to get for your property if you sold it used. With replacement cost coverage your property must be replaced at fair market value. Some items may have coverage limits such as firearms, artwork, business property, electronic data, jewelry, and money. Extra coverage is usually available by adding endorsements to your policy.

4. *Loss of use* coverage typically covers living expenses over and above your normal living expenses if you cannot live in your home while repairs are being made or if you are denied access by government order.

Additional property coverage usually covers things such as the removal of debris along with damaged trees and shrubs, fire department service charges, property removal, theft or illegal use of credit or transfer cards, collapse of buildings, and glass breakage if caused by a covered peril. Endorsements can also be added to your homeowner insurance policy for an additional cost to provide extra protection. The cost is usually reasonable. Examples of endorsements include:

- Credit card forgery and depositor's forgery coverage provides protection against loss, theft or unauthorized use of credit cards. It also covers forgery of any check, draft, or promissory note. No deductible applies to this endorsement.

- Guaranteed replacement cost coverage will pay the cost to rebuild your home as long as you have met the requirements of your home insurance policy. This coverage is highly recommended if you want to be fully compensated for the loss of your structure.

- Expanded theft coverage protection may be necessary if your theft coverage is not broad enough to include personal contents in additional property such as your vehicle, recreational vehicle, trailer or watercraft to be covered without proof of forcible entry.

- Expanded schedule personal property: protects articles such as jewelry, furs, stamps, coins, guns, computers, antiques, and other items. Make sure

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that your property does not exceed the normal policy limits in your regular homeowner's insurance policy. Most companies often can modify their policies to provide extended coverage that is broader than normal limits in the policy. Always obtain replacement cost coverage. This may cost a little extra, but personal property protection is useless without it.

If you have dogs or other pets, make certain that you have liability coverage for any damages your pets may cause. Even a small dog can cause a multi-million dollar liability. For example, small dogs sometimes bark and intimidate elderly persons who, driven by fright, have walked backwards into the street and were hit by traffic. Be sure that your policy does not exclude your breed of dog. Some companies will not insure some breeds of dogs with reputations for being aggressive. In fact, some companies will cancel your policy or refuse coverage to persons who have a dog that is on their banned list. So if you are going to have a dog, first check with your insurance company to make sure the breed is covered.

AUTO INSURANCE

There are certain types of insurance policies that you should obtain if you can. First, one should always obtain auto insurance. These policies will be listed as 100/25, 300/100, 500/100, 500/250, et cetera. I often talk with clients who do not understand their limits or how auto insurance works. For example, one client told me she had $300,000 in coverage. The policy was for $300,000 maximum with a limit of $100,000 per person. (300/100). This is not good, because if one seriously injures a third party and that person's injuries are greater than $100,000 my client would be liable for everything over $100,000 even though it was a $300,000 policy. What she needed was a 300/300 policy. In this fashion, one person could recover the policy limit or three injured persons could split the coverage according to their needs, up to the limit.

How much is enough? That depends upon several factors:

1. How much you can afford to pay
2. How much wealth you have at risk
3. How important is it for you to protect yourself.

As a general rule, the more you make and the wealthier you are, the more coverage you need. In addition, uninsured motorist (UIM) limits are usually set at the same coverage as your general coverage limits. If you want to protect yourself from uninsured motorists, then you will need to set your general

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coverage high enough to provide adequate UIM coverage. If you want to make sure that there are sufficient funds to enable a full recovery if you are seriously injured, then you should carry serious coverage in the area of $500,000 to $1,000,000 or more. Wealthier people may want $7 million or more in coverage.

Uninsured/Underinsured Motorist (UIM) Coverage

If you get hit by an uninsured or an underinsured driver, your UIM policy is required to make them whole. The driver's own insurance company is required to provide compensation pursuant to the UIM clause in the policy.

Here's how it works: Our hypothetical Jim Smith gets hit by an UIM driver who has no assets. His vehicle is totaled and he suffers a head injury and a broken arm. Jim is unconscious for several hours and spends several days in the hospital intensive care unit. Jim misses several months work. He incurs about $22,000 in lost wages and $95,000 in medical expenses. If Jim does not have UIM coverage, he will not be compensated for his losses. He may have to file bankruptcy. If the driver is under insured and has a policy limit of $25,000. $25,000 is all Jim will be able to receive. If he had a UIM policy with a 300/100 policy limit of $300,000 with a $100,000 limit per person, all he would receive would be $100,000. If he was wise and followed my advice, he would have a 300/300 policy and would recover up to $300,000. A case like Jim's could easily be worth $300,000 or more depending upon the extent of his recovery and other factors.

UIM coverage is very important because bad drivers often are uninsured. Irresponsible and/or dysfunctional individuals drive without coverage, and they usually do not have any assets or financial resources to compensate an injured party either. In other instances, bad drivers are underinsured with policies that have a maximum coverage of $25,000 or less, depending upon state requirements.

Personal Injury Protection (PIP) Coverage

In order to save on the cost of insurance, many people also waive personal injury protection (PIP) coverage. This is big mistake. In at fault states, even if you are an innocently injured defendant, the other driver's insurance (called the third party insurer) is usually not required to pay for your medical expenses if they are contesting liability at trial. That is why PIP

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coverage is important. You should always apply for the maximum available. Many states require that when a person refuses PIP coverage, the insurance agent must provide him or her with a form to read that explains how important PIP coverage is, and the form requires persons rejecting PIP coverage to sign it at the bottom indicating that they knowingly and voluntarily refused PIP coverage.[47] PIP coverage pays for your medical expenses and for your passengers' medical expenses. Your insurance company is required to pay for your medical expenses from the PIP fund regardless of whether you were at fault or the third party carrier was ultimately responsible. Third party insurance companies are notorious for refusing to provide compensation for injuries and lost wages in order to force an unjust settlement.

Personal Umbrella Coverage

Drive safely and be legal. You should avoid any vehicle accident to the best of your ability; this includes protecting yourself by avoiding texting or talking on your cell-phone while driving, even if it may currently be allowed by your state law. If you do talk while driving, employ a hands-free device if legal in your state. Always follow the speed limit and pay attention as you drive; you may not be aware that most new vehicles come pre-equipped with 'black-box' systems (event data recorders) similar to ones used in airplanes which record dozens of data points before, during, and after any accident including your speed, seat belt use, braking and driving control. This data can brought out during discovery, by subpoena or by court order and used against you by insurance companies or prosecutors to establish your fault.

But even the best drivers make mistakes. Anyone can sneeze while making a left turn. Competent professionals are also occasionally negligent. Hence, every successful or upwardly mobile person should carry additional insurance in case you have an excessive judgment or lapse in coverage. Umbrella insurance provides added liability protection above and beyond the limits on homeowner, auto, and watercraft personal insurance policies. With an umbrella policy, you can add an additional $1-5 million in liability protection that is designed to kick-in when the liability on other current policies has been exhausted. However, it does not cover business related to your business.

Liability insurance is the portion of a homeowner or auto policy that pays for expenses such as the injured person's medical bills, rehabilitative therapy, and lost wages due to the negligence of the driver at fault. The liability portion of an

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insurance policy also covers a legal defense representative if the negligence would happen to land the at fault person in the courtroom. After adding up all of the medical expenses for the injured and the legal fees of the negligent person, the standard liability in your homeowners or auto policy is often not enough. Almost every state has financial responsibility laws that will hold drivers accountable for bodily injury and property damage resulting from car accidents and the at-fault driver could be sued for the damage. Your personal assets could be seized, resulting from a lawsuit. Similar laws are also in force for home and watercraft owners.

A personal liability umbrella insurance policy can give you added liability protection without a large added cost. Additional liability insurance is often inexpensive, especially compared to the added coverage you gain. Furthermore, liability insurance covers your non-business activities anywhere in the world. Having the added protection of a liability umbrella policy is coverage no one should go without.

Business Insurance

The search for the right types of insurance for a small business begins when making a business plan. Sometimes it may be challenging to get a good insurance plan if it is the first time dealing with business and brokers. One must have the right types of insurance based upon the nature of the business and the level of risk.

Commercial business insurance is designed to help protect many of the risks your business can face, including:

- Loss of income in case you have to close up shop temporarily
- Certain business related liability exposures, such as wrongful entry or search, libel, slander and even certain offenses arising out of the business's advertising
- Damage or destruction to business vehicles
- Damage or destruction to office equipment or inventory
- Risks to your cargo while in transit or storage
- Theft or loss of tools and equipment
- Crime coverage including robbery, burglary and employee dishonesty

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- Certain liability exposures resulting from the operation of business vehicles

Generally, most businesses need:

- General liability protection including bodily injury liability, property damage liability, personal injury liability, and advertising liability coverage. Construction companies may require special policies or endorsement.
- Business property protection that helps protect your building and its contents in case of direct physical loss.
- If the company has company vehicles, commercial automobile protection including auto liability, collision, comprehensive and rental reimbursement coverage.

The ability to protect business assets is the reason many doctors, professional business people and owners of small businesses have discovered Nevada and offshore entities as an effective way to lower liability insurance coverage.

Another type of coverage worth considering is umbrella excess liability insurance that provides higher liability limits, over primary liability insurance held by your business.

Employer practices liability insurance (EPLI) insures against liability arising from employment practices. General liability protection (GLP) policies, unlike EPLI policies, provide only general liability coverage, insuring against claims for bodily injury and property damage. Moreover, intentional acts as commonly claimed in employment suits and bodily injury to employees arising out of and in the course of employment or out of performing duties related to an employer's business, typically are excluded under GLP policies.

Errors and Omissions Insurance

Error and omission (E&O) insurance provides insurance coverage for lawsuits that are a result of the rendering of professional services. Depending upon the industry, state, size and history of the insured, any number of professional liability options may be required. The following is a partial listing of professions that require E&O insurance:

- Real Estate Brokers
- Residential Real Estate Agents

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- Property Managers
- Attorneys
- Chiropractors
- Physicians and Medical Groups
- Preferred Provider Organizations
- Third Party Administrators
- Accountants

Perhaps the biggest omission owners make when buying a commercial policy is business interruption insurance. Business interruption insurance covers profits that are lost and expenses that continue to be incurred when a company is forced to shut down by a disaster. Policies typically have a 48-hour waiting period before coverage starts, but, depending on how much coverage a business buys, interruptions up to 360 days can be covered. Among the expenses that business interruption insurance covers are: salaries, rent, electricity and other costs that you still need to pay even though you cannot operate.

How much business interruption insurance a company should buy is of course an individual decision, but it should be considered along with a disaster recovery plan. If you are certain you could quickly relocate your business to another site and keep working, you might not want to buy the maximum amount available. But disasters like Sept. 11, 2001 and Hurricane Katrina have shown that the unthinkable can happen. Companies can be uprooted and put out of commission for months, without business interruption insurance, many have failed.

Employer practices liability insurance (EPLI): More than 42,000 lawsuits were filed in federal court in 1998 alleging civil rights violations, according to Justice Department statistics. More than 24,000 were employment discrimination lawsuits against private employers. These numbers are expected to be even higher in the future. Many companies are obtaining EPLI to manage this risk.

EPLI insures against liability arising from employment practices. Comprehensive General Liability (CGL) policies only cover claims for bodily injury and property damage. Intentional acts commonly claimed in employment suits and bodily injuries to employees that occur during the course of employment generally are excluded under CGL policies, as well as the kinds of damages incurred. CGL does not cover any kind of employee versus employer

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litigation pertaining to unfair labor practices, wrongful discharge or disconcerting because workplace statistics indicate that one of out of every three employees will file a civil or administrative complaint against their employers.

CGL policies cover occurrences that cause damage during the period of coverage. For example, a claim made today regarding damage to property that occurred years ago will be covered under the CGL policy in effect at the time, even though the claim might not be brought until several years later. EPLI policies cover only claims that the employer knew about or should have known about and that the employer reported to the carrier during the coverage period.

EPLI policies cover claims against the company and its Directors, Officers and employees. EPLI policies usually cover civil judicial proceedings, arbitration and administrative proceedings. Some policies also cover claims before litigation or the filing of a grievance or charge. EPLI policies generally cover claims of wrongful termination of employment, workplace harassment and discrimination. Many EPLI policies offer a more comprehensive list of covered acts, which may include negligent hiring, negligent supervision, and invasion of privacy, defamation and intentional infliction of emotional distress. Business owners should compare EPLI policies for the most comprehensive policy in terms of the wrongful acts covered.

Most EPLI policies provide duty to defend coverage that requires the carrier to defend against claims brought under the policy. The insurance company's duty to defend typically arises regardless of whether or not the insured's deductible has been met. The insurance company usually reserves the right to choose defense counsel who will defend the company against the claim.

Most EPLI policies also contain a hammer clause giving the insurance carrier the right to recommend settlement. If an employer does not follow the recommendation, the carrier's liability is limited to the amount recommended. A hammer clause may be used by the carrier to force the employer's case into arbitration, mediation or other alternative dispute resolution mechanisms despite the employer's objections regarding such.

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How Much Insurance Is Necessary?

You should obtain as much insurance coverage as is economically practical in the areas of highest risk. Your insurance company will usually provide protection from frivolous lawsuits. You need enough coverage high enough to encourage claimants with serious claims to settle out of court. This can be accomplished by maintaining adequate insurance and employing effective asset protection techniques that will render assets that one controls invisible to asset protection searches.

As we shall discuss in the following chapters, the fourth line of defense is finding exemptions and protections for property held in your name. The fifth line of defense is transferring property into entities that enable one to control property without owning the property. The combined effect of these strategies is to encourage settlement of any unforeseen future litigation that may arise within your insurance policy limits.

Insurance is Not Enough!

Insurance coverage alone cannot provide sufficient protection to safely secure your assets. There are many reasons why insurance alone is no longer enough. The insurance company may deny your claim. The insurance company may become insolvent. A judgment may be entered in excess of insurance coverage. The incident at issue may occur during a lapse in coverage. You may not be able to obtain or afford adequate coverage. Insurance does not cover intentional torts and many other potential liabilities. The type of damage incurred or person injured may be excluded by your policy. Review the numerous exclusions and exceptions' listed in your insurance policy as well as the definitions of persons covered by the policy.

Many insurance policies will not cover subsidiary companies. Some policies exclude coverage for claims filed by part-time, temporary and/or seasonal employees and cover only claims against full-time employees. Some policies do not provide coverage for claims filed on behalf of employees by administrative agencies such as the EEOC. Many policies exclude claims filed by independent contractors from coverage.

Due to the increasing number of claims brought by employees against their employers, most Employment Practices Liability Insurance (EPLI) policies do not cover a wide area of potential complaints, such as claims pertaining to:

- The Fair Labor Standards Act;

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- The National Labor Relations Act;
- The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA);
- The Employee Retirement Income Security Act (ERISA);
- The Occupational Safety and Health Act (OSHA);
- The Worker Adjustment and Retraining Notification Act (WARN);
- Claims arising out of layoffs, workforce restructurings, plant closures or strikes;
- Costs associated with providing reasonable accommodation under the Americans with Disabilities Act (ADA) to disabled employees or costs associated with modifying facilities to make them accessible to the disabled.

Most insurance policies also contain exclusions for criminal acts, purposeful violations of law, fraud, illegal profit or advantage, wrongful acts committed with actual knowledge of their wrongful nature or with intent to cause damage and other egregious conduct. Insurance will not protect you from IRS Collections and many claims by government agencies. Insurance cannot protect you from civil forfeiture or provide compensation for damages from civil forfeiture actions. The bottom line is that there is no way to secure your financial future through insurance. Asset protection planning is necessary to privately and discreetly segregate one assets and place as much of your wealth outside of harm's way long before you incur financial or legal hardships. A well designed asset protection strategy used in conjunction with adequate insurance will encourage quick and reasonable settlements within the policy limits of one's insurance coverage. The alternative? Without asset protection you could lose everything.

The ability to protect business assets is the reason many doctors, professional business people and owners of small businesses have discovered Nevada and offshore entities as an effective way to lower liability insurance coverage.

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CHAPTER 7: THE THIRD LINE OF DEFENSE

THE THIRD LINE OF DEFENSE: FINANCIAL PRIVACY COUNTERMEASURES

THE LOSS OF FINANCIAL PRIVACY IN AMERICA

Prior to World War II, there was no significant state or federal tax and real estate taxes were minimal. The US income taxes were driven up dramatically to support the war effort. The old dream of '40 acres and a mule' still lived on. Hard work, industry and living within your means were the American way of life. Everyone aspired to pay off their home and all their debts. The goal was to accumulate enough savings and live off the land in your golden years. An American could still be proud, financially independent and self-sustaining. Filing for bankruptcy or the acceptance of public welfare was considered shameful and a sign of abject failure and loss of dignity.

The US also had a significant cash economy. The use of savings accounts and checking accounts was just being accepted by the middle class. A large portion of the general public neither liked nor trusted banks. The papers would often report about persons with modest lifestyles who passed on leaving huge sums of dollars stashed in their mattresses or n the attic. Prior to World War II, there still was a cash economy and it was not unusual for businesses to pay employees in cash.

In the middle of the twentieth century cash was King, and it was not unusual for citizens to pay cash for clothing, musical equipment, furniture, groceries, autos or even real estate. It was a common practice when bartering to stick cash in the face of the seller to stimulate a cash discount. Everybody knew that car dealers asked for more than they wanted for vehicles. If a salesman asked $2700, a buyer would show up and barter the price as low as the salesperson was willing to go. If the auto salesman said $2400 was the bottom price, the buyer would place $2200 in the salesperson's hand and say take it or leave it, most salespersons would grab the cash. If they didn't take it, the closing trick was to start walking off the lot with the money in hand. That usually inspired a change of heart that closed the deal.

In order to popularize the use of personal checking and savings accounts, the bankers had to convince the public that banks were safe and private. By the 1960s, most Americans had checking accounts. The standard perception became that it was safer to keep your money in the bank than to keep large sums of

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money in your home. Bank managers and their staffs were trained to be discreet and respect their clients' financial privacy. However, the perception of financial privacy was greater than the reality. Prior to the 1970s, US bankers were discreet and provided some privacy, but the US banks never provided bank secrecy like they did in Europe.

Bank secrecy is a legal principle where banks are expected to protect personal information about their customers, through the use of numbered bank accounts or otherwise. Effective bank secrecy can be obtained in countries such as Switzerland, Austria and Liechtenstein or in tax havens where offshore banks adhere to statutory levels of privacy. The Swiss Banking Act of 1934 made the principle of bank secrecy one of the main aspects of Swiss private banking. For a long time, the Swiss bankers even offered anonymous numbered accounts. Although these accounts are generally no longer available, many countries in Europe, the Caribbean and Central America have statutes that enforce bank secrecy and that provide criminal, as well as civil penalties for violations of the bank secrecy laws.

Bank secrecy has its pros and cons. As the government contends, bank secrecy can be used for bad purposes such as:

- To store embezzled money.
- To hide money from spouses in divorce proceedings
- To launder money obtained through drug dealing and other crimes
- To prevent confiscation of money in bankruptcy cases
- To hide money for the purpose of tax evasion
- To convey money to terrorists

There are also a lot of good reasons for bank secrecy, such as:

- To attain financial privacy in your personal affairs
- For protection from overbearing or corrupt local government agencies
- To maintain a low profile to avoid litigation
- To encourage reasonable settlements of financial disputes
- For protection from criminals

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- To avoid unwanted solicitation from friends, neighbors, charities, venture capitalists seeking seed money, family members, beggars, or investment salesmen
- To be able to negotiate prices for goods and services reasonably, which may be difficult if it is known that one is wealthy
- To protect oneself from identity theft
- To protect oneself from unwanted solicitations from vendors
- Simply for privacy**.** The possession of liquid wealth attracts publicity, which is not always welcome.

THE TRANSPARENCY OF US BANKS

Unlike France, the US government is opposed to financial privacy and Congress seeks 100% transparency with respect to a citizen's financial transactions. Carl Levin, Chairman of the Senate Permanent Subcommittee on Investigations, proclaimed that "The purpose of corporation's originally was to provide limited liability, not anonymity … Now they're providing both limited liability and anonymity, and the law enforcement folks … are very upset. They want to know who it is that's behind these corporations."

The IRS has described corporate camouflage as one of the top dirty dozen tax scams in 2007. The IRS said anonymous entities are facilitating underreporting of income, non-filing of tax returns, money laundering, financial crimes and possibly terrorist financing.

> ***The means of defense against foreign danger historically have become the instruments of tyranny at home.***
> ***~James Madison***

Nevada and Wyoming officials said their laws encourage legitimate businesses with reasonable registration requirements. "The law isn't unscrupulous. It's the individuals that use it in an improper manner," said Tom Cowan, head of the securities division in the Wyoming Secretary of State's office.

The US Departments of Justice, Treasury and Homeland Security joined together to release their 2007 National Money Laundering Strategy, a report detailing continued efforts to dismantle money laundering and terrorist financing networks. Goal #5 of this strategy is to 'promote transparency in the ownership of legal entities'. Transparency means full disclosure and no privacy. FinCEN claims that the minimal public disclosure of personal information by all states in registration of business entities is enabling criminals and terrorists to launder

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money. The report states: "The current lack of financial transparency prevents financial institutions from identifying suspicious transactions and hinders law enforcement investigations and prosecutions."

These allegations are ludicrous because there is complete transparency with respect to US bank accounts. Moreover, corporations are assigned EIN numbers and they are required to file tax returns. A corporation cannot open a bank account without an EIN number and the social security number of the corporate officer fiscally responsible for the account. The corporation's legal name and EIN number are contained on corporate tax returns. The owners of corporations receive dividends and they can be identified by accessing the corporation's tax returns or accessing the corporation's bank records.

The identity of the shareholders is of no consequence to detecting suspicious transactions. The vast majority of anonymous shareholders only seek financial privacy and asset protection. They are not engaged in criminal activity. The government should be focusing on identifying suspicious transactions. Bankers can readily observe the telltale signs of laundering, such as the receipt of large cash deposits followed by immediate withdrawals. They also have security specialists who are trained to observe and identify the types of transactions related to money laundering and there are software programs designed to spot money laundering patterns in transactions.

They that give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.
~ Benjamin Franklin

The advocates of total transparency overlook the fact that anonymity is protected by the First Amendment. We the people have freedom of association and that includes the right to write, speak and associate with anonymity. The use of nom de plumes by authors is a time honored practice. Persecuted groups and sects throughout history have always criticized oppressive practices and laws anonymously. Even the Federalist Papers, written in favor of the adoption of our Constitution, were published under fictitious names. During the civil rights movement the NAACP refused to disclose its membership list to local authorities based upon their right to privacy under the First, Fourth and Fourteenth Amendments, and they prevailed. Anonymity has historically been used for constructive purposes. It is a part of our American heritage.

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THE BANK SECRECY ACT OF 1970

There has been absolutely no financial privacy in the US since enactment of the Bank Secrecy Act of 1970. Unlike our European friends in France, the US government detests financial privacy and seeks total transparency in financial matters. Using the War on Drugs and the War on Organized Crime as a moral justification, Congress took away our right to financial privacy. Later in response to the aftermath of 911, using the War on Terrorism as an excuse, the Patriot Act was enacted which has placed further limitations on our right to privacy.

I believe there are more instances of the abridgement of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations.
~ James Madison

The Bank Secrecy Act (BSA) of 1970[48] has turned every teller in every financial institution in America into a spy for the US government. All of your bank transactions, such as deposits and payments by check, are recorded and maintained for 5-7 years. The BSA also requires the generation of numerous mandatory reports and filing requirements regarding money transfers. In the year 2000, over 12 million transaction reports were filed with the US Treasury Department. The BSA is codified in the code of federal regulations at Title 31 section 103 et. seq. (31 CFR 103).

<u>31 CFR 103.18: Suspicious Activity Reports</u>

"Every bank shall file with the US Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation."[49] A suspicious transaction is a financial exchange, or a contemporaneous series of financial exchanges that in the aggregate total at least $5,000. Section 18 goes on to list several examples of suspicious activity:

- If the bank suspects that the funds were derived from illegal activities or are intended to hide the ownership, nature, source, location, or control of such funds.
- If the bank suspects that the funds were part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation.

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- If the transaction appears to be designed to evade any regulations promulgated under the BSA.
- If the transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

Last year, depository banks filed 567,080 Suspicious Activity Reports (SARs) and other financial institutions filed another 496,400. These reports must be filed with FinCEN within 30 days after the initial detection of a suspicious transaction. FinCEN shares this information with the IRS and other federal agencies.

31 CFR 103.24: Reporting of Foreign Financial Accounts

Any person subject to the jurisdiction of the US having a financial interest in, or signature or other authority over, a bank, securities or other financial account in a foreign country shall report such relationship to the Commissioner of the Internal Revenue Service for each year in which such relationship exists, and shall provide such information as shall be specified in a reporting form prescribed by the Secretary to be filed by such persons.[50] The Secretary of the Treasury created a form to be used for reporting interests in foreign financial accounts. This form is referred to as form TD F 90-22.1. Interests in foreign accounts are also required to be reported annually on the IRS 1040 tax return on Schedule B.[51]

Treasury Administrative Ruling 88-2: Reporting Requirements Concerning Transactions Offshore of more than $10,000

Any person, including a financial institution who physically transports, mails, or ships currency or monetary instruments in excess of $10,000 at one time out of or into the US and each person who causes such transportation, mailing, or shipment must file a Report of International Transportation of Currency or Monetary Instruments (CMIR). See the Financial Crime Enforcement Network (FinCEN) Form 105 for more details.

A CMIR must be filed with the Bureau

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of Customs at the time of entry into or departure from the US. When a person receives currency or monetary instruments in an amount exceeding $10,000 at one time that has been shipped from any place outside the US, a CMIR must be filed with the Bureau of Customs within 15 days of receipt of the instruments. The report is to be completed by or on behalf of the person requesting transfer of the currency or monetary instruments.

31 CFR 103.27: Reporting Requirements Concerning Cash Transactions of more than $10,000

A bank must file a Currency Transaction Report (CTR) for any transaction in currency, such as a deposit, withdrawal, exchange, or other payment or transfer of more than $10,000 by, through, or to a financial institution. Multiple currency transactions totaling more than $10,000 during in any one business day, or contemporaneously, are treated as a single transaction if the financial institution has knowledge that they are by or on behalf of the same person. A completed CTR must be filed with the FinCEN within 15 days after the date of the transaction. The bank must retain copies of CTRs for five years.

31 CFR 103.29: Reporting Requirements Concerning Cash Transactions of $3000 to $10,000

"No financial institution may issue or sell a bank check or draft, cashier's check, money order or traveler's check for $3,000 or more in currency unless it maintains records of the following information":

- The name of the purchaser
- The date of purchase
- The type(s) of instrument(s) purchased
- The serial number(s) of each of the instrument(s) purchased; and
- The amount in dollars of each of the instrument(s) purchased.

If the person seeking to make the cash transaction is not a client known to the financial institution, then they must provide the following additional information:

- The name and address of the purchaser
- The social security number or alien identification number of the purchaser; and

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- The date of birth of the purchaser

"Contemporaneous purchases of the same or different types of instruments totaling $3,000 or more shall be treated as one purchase. Multiple purchases during one business day totaling $3,000 or more shall be treated as one purchase if an individual employee, director, officer, or partner of the financial institution has knowledge that these purchases have occurred."

31 CFR 103.33: The 'Travel Rule' Regarding Domestic and International Wire Transfers over $3000

Funds transfer systems enable the almost instantaneous transfer of funds domestically or internationally. Because these systems can be used to disguise the source of funds derived from illegal activity, the Bank Secrecy Act of 1970 was amended by the Annunzio–Wylie Anti-Money Laundering Act of 1992 to authorize regulation of both domestic and international funds transfers.

31 CFR 103.33 requires each bank involved in funds transfers to collect and retain certain information in connection with funds transfers of $3,000 or more. The requirements may vary depending on whether the transmitter or recipient of a transfer is an established customer of a bank and whether a payment order is made in person or otherwise.

In 1995, the US Treasury Department issued a final rule that requires all financial institutions to include certain information in transmittal orders for funds transfers of $3,000 or more. This is referred to as the travel rule.

For each payment order in the amount of $3,000 received by a transmitter's bank, the bank must obtain and retain the following records[52]

- Name and address of the transmitter
- Amount of the payment order
- Date of the payment order
- Any payment instructions
- Identity of the recipient's institution
- As many of the following items as are received with the payment order:
- Name and address of the recipient
- Account number of the recipient.

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- Any other specific identifier of the recipient.

The foregoing information is sufficient if the transmitter is a known customer of the financial institution placing the fund transfer.

If the person is not a customer, then the following additional information must be acquired:

- Name and address of the person placing the order.
- Type of identification reviewed.
- Number of the identification document
- The person's taxpayer identification number (TIN), social security number (SSN) or employer identification number (EIN). If the person is a foreign nation, then the person's alien identification number or passport number must be obtained.

The foregoing information must be retained for five years and be retrievable by means of a search using the transmitter's name or account number.

For funds transmittals of $3,000 or more, the transmittal must convey the following information to the recipient's financial institution:

- Name of the transmitter, and, if the payment is ordered from an account, the account number of the transmitter.
- Address of the transmitter.
- Amount of the transmittal order.
- Date of the transmittal order.
- Identity of the recipient's financial institution.

As many of the following items as are received with the transmittal order:

- Name and address of the recipient.
- Account number of the recipient.
- Any other specific identifier of the recipient.
- Either the name and address or the numerical identifier of the transmitter's financial institution.

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For each payment order of $3,000 or more that a recipient's bank accepts, the bank must retain a record of the payment order. If the recipient is not a customer of the financial institution, the recipient's institution must retain the following information regarding the recipient:

- Name and address.
- The type of document reviewed.
- The number of the identification document.
- The person's TIN, or, if none, the alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof.
- If the institution has knowledge that the person receiving the proceeds is not the beneficiary, the institution must obtain and retain a record of the beneficiary's name and address, as well as the beneficiary's identification.

The information must be retrievable by the recipient's name or account number for five years.

31 CFR 103.140: Anti-money laundering programs for Dealers in precious metals, precious stones or jewels

The Bank Secrecy Act includes dealers in precious metals, stones or jewels in the definition of a financial institution. Dealers in precious metals, stones or jewels are required to report cash transactions over $10,000. They are also supposed to file Suspicious Activity Reports. FinCEN has recommended the following factors to be given consideration regarding the filing of SARs:

- Unusual payment methods, such as the use of large amounts of cash, sequentially numbered money orders, cashier's checks, or payment from unknown third parties
- Inquiries about record keeping or requests that normal business records not be kept regarding the customer's transactions
- Any attempt by a customer to provide incomplete or inaccurate contact information, financial references or business affiliations.
- Unusual purchases or sales by a particular customer or supplier; and
- Transactions that are not in conformity with standard industry practice

Bank Secrecy Act Records Linked Governor Spitzer to Prostitution Ring

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According to unnamed federal sources, New York Governor Spitzer's sexual indiscretions with a prostitution ring in Washington DC were uncovered by an IRS investigation initiated in response to an SAR report filed by the Governor's bank. Apparently, Spitzer made several separate cash withdrawals and then sent three wire transfers totaling roughly $10,000 to a corporation used to launder money for a very sophisticated prostitution business that exclusively serviced VIPs and wealthy individuals.

As a former attorney general, Spitzer should have been aware of the reporting requirements of the BSA. He apparently made multiple withdrawals to avoid the BSA rule requiring banks to report all transactions involving $10,000 or more in cash. He then used the cash to send three wire transmissions of funds to the prostitution ring to two different front companies used to launder the money for the prostitution ring. The governor made arrangements to meet a prostitute from New York at a hotel in Washington State while he was speaking at a conference while in DC. In fact, he allegedly volunteered as a speaker as a cover for his meeting with the prostitute.

The governor's bank considered the cash withdrawals unusual and noticed that the aggregate amount of the contemporaneous withdrawals was about $10,000, so they filed an SAR. The bank or banks involved in both the sending and receiving of the wire transmissions of funds had to follow the travel rule and keep records concerning identity of the sender of the wire transmission because the wires were for more than $3,000.[53]

In August of 2007, HSBC bank performed due diligence on two of their new corporate clients who sent a lot of wire transactions to a known prostitution business in New York City. The prostitution was under observation and the money laundering transactions were further investigated. The investigators proceeded to follow the money trails to identify the clients of the prostitution ring. The travel rule records maintained for the wire transfers led the investigators back to Spitzer. These records linked Spitzer to the prostitution ring. Once Spitzer was identified as a suspect, a background check also uncovered the SAR that was stored at FinCEN indexed under Spitzer name and social security number.

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Bank Officials are Being Criminally Prosecuted for Noncompliance with the Bank Secrecy Act.

Pursuant to provisions within the Patriot Act and the Bank Secrecy Act, law enforcement agencies' attorneys have found deep pockets they can exploit to generate big profits for law enforcement funds. The failure to maintain an effective anti-money laundering program is now a crime for a financial institution. The Bank Secrecy Act has established a four-pronged standard for financial institutions: 1) internal policies, procedures and controls designed to guard against money laundering; 2) the coordination and monitoring of day-to-day compliance with the Bank Secrecy Act; 3) an ongoing employee training program; and 4) independent testing for compliance conducted by bank personnel or an outside party. Financial institutions are also required to have systems in place that enable them to report suspicious financial activity to the FinCEN.

In August of 2007, American Express Bank International was criminally charged by the US Attorney for the failure to maintain an effective anti-money laundering program. In order to protect bank officials from criminal prosecution a deferred prosecution agreement was bargained for. As part of this agreement, American Express agreed to forfeit $55 million dollars to the US government. In exchange for the $55 million, the US agreed to defer prosecution. After 12 months, the US Attorney will recommend dismissal of the charge, provided that American Express Bank International establishes and maintains an effective anti-money laundering system.

In September of 2007, criminal information was filed at the US District Court in San Diego charging Union Bank of California with one count of failing to maintain an effective anti-money laundering program. Union Bank of California waived indictment and acknowledged responsibility for its conduct as alleged in the information as part of a deferred prosecution agreement. The company will pay $21.6 million to the US to settle forfeiture claims held by the government. In light of the bank's immediate and significant remedial actions, the government will recommend the dismissal with prejudice of the charge in 12 months, provided the bank fully implements the anti-money laundering measures required by the agreement. The FinCEN and the Office of the Comptroller of the Currency (OCC) assessed an additional $10 million civil penalty against the bank for violations of the Bank Secrecy Act, resulting in total payments of $31.6

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million by Union Bank of California under the deferred prosecution settlement agreement.

The Patriot Act's Negative Impact Upon Financial Privacy and The BAS

Due to the political impact of 911 and the Patriot Act, the scope of individuals falling within the jurisdiction of the Bank Secrecy Act has expanded. In addition to banks, many other kinds of businesses are required to monitor their clients' financial transactions and report suspicious activity to FinCEN: casinos, savings associations, credit unions, securities brokers-dealers, futures merchants and brokers, money exchange services, money loan services, mutual funds, credit card companies and insurance companies.

Several key reporting provisions of the Patriot Act amended the Bank Secrecy Act such that it now applies to all other persons in addition to US financial institutions. Every business person, citizen and resident alien in the US now has a duty to report the following:

- Any person involved in the transporting of more than $10,000 in currency, negotiable instruments or monetary instruments across a US border must file a customs form 4790. Failure to do so may result in the seizure and civil forfeiture of the cash.
- Anyone involved in a trade or business transaction in which the other party makes a payment or series of payments in cash, cashier's checks, money orders and/or travelers' checks collectively exceeding $10,000 must file reports on IRS Forms 4768 and 8300 and a FinCEN Form 104.
- Anyone with signature power or control, direct or indirect over a foreign bank, securities or other financial accounts with a cumulative balance exceeding $10,000 annually must disclose the existence of said accounts on Schedule B of IRS form 1040 and on Treasury Form TD F 90-22.1.

Any time you pay an attorney or accountant in cash over $10,000, they have an obligation to report you the FinCEN. This same obligation is imposed upon private persons as well. Suppose you sold your car to a young man for $11,000 and he pays cash. Under the amended BSA Act, you have an obligation to report the transaction to FinCEN.

Under the Bank Secrecy Act as amended by the Patriot Act, BSA expanded reporting requirements to include:

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- Authorizes the US Treasury Department to demand the identification of the foreign beneficial owners of any financial accounts located in US financial institutions.
- Gives the US Treasury Department the authority to ban all US businesses from engaging in transactions with a foreign bank or foreign government.
- Prohibits money laundering in any foreign bank. Thereby, proclaiming extraterritorial US jurisdiction to proclaim world policy.
- Permits a US judge to order a defendant in a civil forfeiture action to return any assets or property located outside the US to the custody of the court before the trial.
- Bans offshore shell banks from interaction with US financial institutions.
- Permits US judges to take any action necessary to ensure that a bank account or other assets of a defendant are available to satisfy a forfeiture order.

Section 319 of the Patriot Act gives federal authorities the power to seize money from a foreign bank's correspondent account based upon an allegation that the money deposited overseas was obtained unlawfully. The US government claims it has the power to seize and forfeit funds in a correspondent account even if the funds are not traceable to the proceeds deposited in an account held by the foreign bank. The forfeiture also does not have to be related to a terrorist or terrorist activity.

Section 213 of the Patriot Act Authorizes Sneak and Peek Warrants

The Fourth Amendment of the US Constitution states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Hence, historically a US citizen had a reasonable expectation of privacy with respect to financial records stored at home. This was because a federal investigator could not enter your home absent the issuance of a warrant based upon a sworn statement sufficient to support a finding of probable cause that the fruits or evidence of a crime would be located in the premises to be searched.

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Probable cause to make an arrest exists when the facts and circumstances within your knowledge, based upon reasonably trustworthy information, would lead a prudent person to believe that the person under observation has committed or is committing a crime. Probable cause to arrest must exist before the arrest is made. Evidence discovered after the arrest may not be retroactively used to justify the arrest.

> ***Sinclair Lewis predicted that fascism would be brought to America wrapped in a flag bearing a cross. Apparently, he had a premonition about the Patriot Act.***
> ***~ Thomas Adams, ESQ, JD***

Section 213 of the Patriot Act, contains the first express statutory authorization in American history for the issuance of sneak and peek search warrants. Moreover, Section 213 is not restricted to terrorists or terrorism offenses; it may be used in connection with any federal crime, including misdemeanors.

Section 213 amends 18 USC. § 3103a, relating to warrants for the search and seizure of evidence of federal crimes, by adding the following:

> With respect to the issuance of any warrant or court order under this section, or any other rule of law, to search for and seize any property or material that constitutes evidence of a criminal offense in violation of the laws of the US, any notice required, or that may be required, to be given may be delayed if ... 1) the court finds reasonable cause to believe that providing immediate notification of the execution of the warrant may have an adverse result (as defined in section 2705); 2) the warrant prohibits the seizure of any tangible property ...except where the court finds reasonable necessity for the seizure; and 3) the warrant provides for the giving of such notice within a reasonable period of its execution, which period may thereafter be extended by the court for good cause shown.

These restrictions on issuing sneak and peek search warrants are meaningless. The somber reality is that search warrants are issued secretly. They are routinely issued on the basis of boilerplate allegations, and the judicial officials who issue them are rubber stamps for law enforcement. At least the Fourth Amendment standards required some minimal scrutiny, whereas, the criteria set forth in the Patriot Act are so nebulous and the legal threshold so low that I do not understand why the Patriot Act even bothers with setting forth any warrant requirement at all.

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Before the Patriot Act, secret search and seizure orders, as well as wiretaps, could be issued under the Foreign Intelligence Surveillance Act (FISA) for foreign intelligence and terrorism. The FISA court granted these orders routinely and never turned down a request for such a warrant. Historically, there was no federal statutory authority for sneak and peak warrants.

Giving notice to targets of ordinary search warrants enables the person whose property is to be searched to assert his or her Fourth Amendment rights. Secret warrants give a citizen no opportunity to challenge the search or seizure before the fact. Section 213 has established a secret warrant for any federal crime even misdemeanors. The government need only raise a bare allegation that notice could jeopardize an investigation or unduly delay a trial to extend the secrecy indefinitely.

These sneak and peak warrants give law enforcement agents unlimited license to rifle a citizen's residence without knowledge or consent. There is no check on agents' actions because law enforcement officers have qualified immunity.

Could You Be Labeled a Terrorist?

Title 18 of the US code, section 2331, defines terrorism as premeditated, politically motivated violence against non-combatant targets by sub-national groups, typically with the goal to influence the public or a government. The US Department of Defense defines terrorism as the use of violence or the threat of violence to inculcate fear; intended to coerce or to intimidate governments or societies for goals that are political, religious or ideological. Under Section 802 of the Patriot Act domestic terrorism is defined as an activity that is dangerous to human life and a violation of criminal law that appear to be intended to a) intimidate or coerce a civilian population for the purpose of influencing government policy or b) to influence government policy by intimidation or coercion or c) to affect government conduct by mass destruction, assassination or kidnapping.

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Activities such as labor protests, strikes, civil disobedience, and anti-abortion protests all fall within this definition.

We have already seen the following problems:

- If your name is the same or similar to the name of a person on a no fly list or a terrorist watch list, you may no longer be able to leave the country or fly anywhere.
- If you try to open a new bank or brokers account, and you changed your address recently, you may be denied an account due to suspicious circumstances if the banker or broker does not know you personally.
- If your name is similar to a foreign name that is on a government watch list sent to financial institutions, you may never receive any funds that are wired to you.
- Your home, office and/or your computer may be subject to a warrantless search without your knowledge or consent.
- If you leave the country without your passport, you may not be able to get back into the US.
- It is extremely difficult to open a bank account for your own closely held corporation in a state where you do not reside. Persons who own Nevada corporations are often unable to open bank accounts in Nevada.
- If you are stopped by the authorities and Officers observe a large amount of cash, they have the right to seize the funds even if they do not charge you with a crime. You may have to hire an attorney to recover the funds.
- If you receive a large inheritance from offshore, at the time of disbursement of funds, the check or wire transfer may trigger a suspicious activity report and your funds may be seized and held while the source of the funds is investigated by the authorities.

Is the Patriot Act Being Used to Suppress Dissent?

In large part, the US Patriot Act and the Son of Patriot Act are a serious encroachment upon our freedom of speech, association and the right to privacy. Any group that advocates a position in opposition to the status quo can be labeled a potential threat to national security. The US labor movement is placed in extreme jeopardy because a strike could be considered an act of domestic terrorism. The same goes for civil disobedience groups, the right to life movement, groups defending the right to bear arms, tax protestors, militant

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environmentalists and unconventional religious groups. Foreign nationals may be barred from entry into the US based upon their political pedigree and domestic radicals may be placed on the no fly lists.

The Reverend Raymond Payne, a United Methodist Minister from Russell, Kentucky, was stopped by Canadian border officials who interrogated him for more than an hour as he attempted to enter Canada for a vacation with his wife. According to Reverend Payne, the officials informed him that the interrogation was triggered because he is the subject of an FBI file. Reverend Payne has never been arrested, been charged with a crime, or even participated in a protest.

The ACLU has alleged that the FBI is using the Patriot Act to investigate activists that oppose the war, that oppose the Patriot Act and that oppose government policies. The ACLU has filed freedom of information actions to document the allegation. The FBI has admitted classifying a pacifist group called Food Not Bombs as a domestic terrorist organization. This group provides vegetarian meals to the homeless. The FBI has also admitted that it views militant animal rights and militant environmental activists as threats to national security.

In April of 2005, *The Seattle Times* reported that the city of Portland, Oregon withdrew its police officers from the FBI's counterterrorism force after the FBI refused to raise the Portland mayor's security clearance, which he said, was necessary for him to provide full oversight of city Officers on the task force. Oregon also has a law that says police Officers cannot spy on anyone engaged in legitimate political activity.

Defending the Right to Privacy

Privacy Countermeasures 101

Here are a few useful countermeasure tactics:

1. Set up an offshore LLC or IBC with an offshore bank account in a jurisdiction that does not honor US judgments and that has bank secrecy laws. Report the accounts as required on your 1040 Schedule B and on Treasury form TD F 90-22.1. This will protect your assets from seizure absent due process of law. Although the existence of the accounts will be known by the IRS, they will be unknown by your ex-spouse, credit bureaus, state agencies and/or local attorneys. Your funds will be beyond the jurisdiction and subpoena power of the US Courts. It is also beyond the subpoena power of the US Courts. The only way to attain financial privacy with respect to your bank account is to move it offshore.

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2. Get a debit card or a credit card for your offshore bank account. Only use it to pay for the offshore company's bills, investments and acquisitions. Keep the card number, expiration date and CSI number in an encrypted file so you can use the card to pay your offshore bills.

3. Obtain an anonymous debit card (domestically) to use to pay for anything you desire to be confidential. Pay for the card with cash and never place more than $2500 on the debit card at one time.

4. Use anonymous prepaid phone cards for confidential phone calls. Pay for the card with cash.

5. Retirement and pension funds should be rolled into a self-directed Qualified Retirement Plan (QRP). Another strategy is to turn your IRA into a self-directed IRA, and then use the self-directed IRA to acquire a Nevada LLC and make your investments through the LLC via a brokerage firm.

6. If you have investments in your name, transfer them to an offshore entity, such as an IBC or a Nevis LLC and set up a bank and/or offshore brokerage account for the offshore entity.

7. Do not store confidential materials in a safety deposit box. The contents of these boxes automatically go into probate court proceedings when you die. Obtain one in a foreign country that has bank secrecy laws or set up a corporation and open the box in the corporation's name.

8. Have a friend open a private mail box through a local mail forwarding service. These services are required to keep USPS disclosure forms on file that disclose ownership of these boxes to the government. Have a trusted friend open the box in his or her name for you and then have them give you the key. Receive confidential mail at this box using a nom de plume.

9. Investments in life insurance and annuities are not considered financial accounts. Hence, you can make investments with offshore companies that offer lucrative life insurance investment plans or annuities without any obligation to disclose these investments to the US government since they are not financial accounts.

10. Investments in real estate can be held anonymously. The techniques are discussed below. In addition, investments in real estate actively managed offshore through an IBC can be tax deferred since real estate transactions are not Subpart F income. If an IBC is in a tax haven jurisdiction, the IBC has no income tax. However, IBC profits from Subpart F income[54] is imputed as personal income to a US Person that is an IBC member.

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11. Precious metals, diamonds, gems, rare coins and other collectables can be acquired and stored offshore. If they are acquired offshore and are not held in financial accounts you have no reporting requirement. Since the merchants selling precious metals, rare coins and precious gems and stones are offshore, they do not have to comply with the Bank Secrecy Act. If you make your purchase through your offshore account the transaction is not transparent and the money trail is difficult to follow. If you purchase with cash withdrawn from an offshore account, there is no money trail whatsoever.

12. The government of Western Australia sells precious metals (gold, silver and platinum) through the Perth Mint Certificate Program (PMCP). This program enables you to invest in precious metal without the inconvenience and risk of personal storage. The Perth Mint will issue you a Certificate confirming your purchase that is stored at the Perth Mint on your behalf. This Perth Mint Certificate gives you legal title to precious metals held by The Perth Mint on either a segregated or unsegregated basis. The certificate is in your name and is identified by a certificate number.

    The PMC is also the only US government guaranteed certificate program in the world, making it one of the safest ways to own precious metals.

    The program offers investors a unique range of precious metal storage options on attractive terms:

    a. The opening account minimum is low. ($10,000 US)

    b. Minimum subsequent purchases are $5,000

    c. Products include Perth Mint allocated coins and bars and unallocated bullion.

    d. Certificates are transferable, non-negotiable, have no fixed size and can be purchased through an international network of approved dealers.

    e. Certificates are transferable, non-negotiable, and have no fixed size.

    The PMCP is perfect for investors seeking confidentiality, flexibility and low cost secure storage for their precious metal assets. You should set up an allocated account in order to avoid having to report a financial account under the Bank Secrecy Act. No sales tax is levied on purchases and sales of precious metals in Australia and there are no restrictions on the movement of precious metal in and out of Australia.

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13. Vehicles, RVs, planes and boats can be acquired and held anonymously using personal property trusts and/or business entities.

14. Use a shredder to destroy confidential documents or burn them. Do not place anything confidential in the garbage.

PRIVACY STRATEGIES USING PRIVACY TRUSTS

Business entities and trusts can be used to control a business or hold assets without actually holding legal title to the asset or business. The trusts that are generally used for this purpose are land trusts and personal property trusts. Corporations, LLCs and LLLPs may also be used to control property without disclosing your ownership interest. For further privacy, trusts can be owned by Nevada corporations, LLCs and LLLPs.

The Land Trust (LT)

Legal ownership of all real estate is listed with the county recorder's office in all counties. Since deeds are public records, your ownership information contained on the deed is available to anyone who wants it. It is only a matter of time until this information will be available online in every state. This is obviously useful to collection agencies and plaintiff attorneys.

Encumbrances on your property such as mortgages and liens are also listed in the public record. Listing services can determine the value of your home by recent assessments on the property. They can call your mortgage lender to determine the balance owed on the property and deduct that from your assessed value to determine ball park equity. Properties that appear to have substantial equity are placed on lists that are sold to mortgage brokers. The owners of these properties are considered qualified prospects and are solicited as preapproved for second mortgages, refinancing or debt consolidation by mortgage lending companies via mail, email and telemarketing campaigns.

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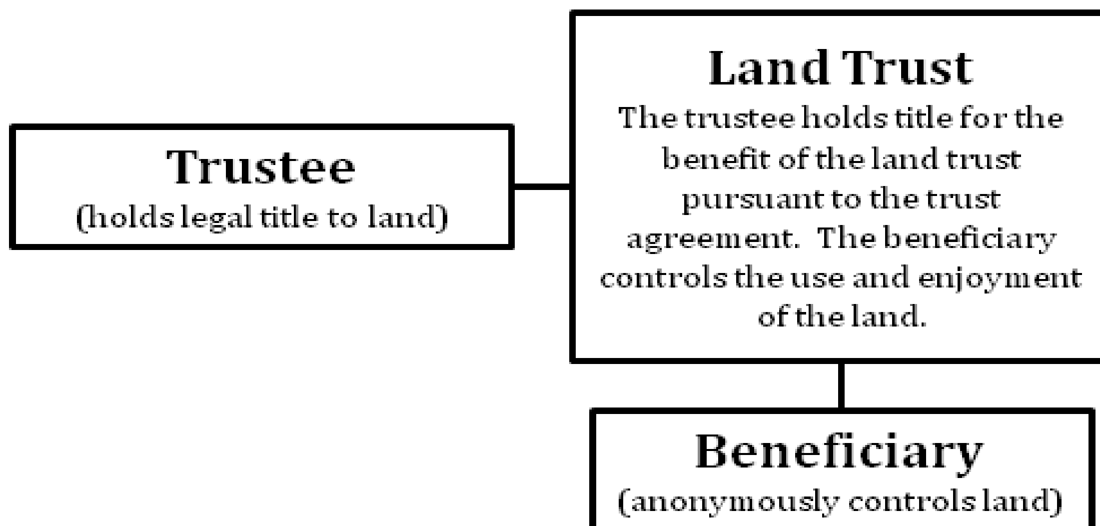
In a similar fashion, plaintiff attorneys can also identify all the real estate you own and your real estate's equity. This is done to determine if you are a potential defendant with deep pockets.

You can prevent this invasion of privacy by using a land trust. When you form a land trust, your interest in the property remains confidential because the trust's and the trustee's names appear on the deed.

Real estate may be placed in a land trust. The trustee holds legal title and usually is responsible for filing any necessary tax returns. The trustee's powers are identified in the land trust agreement. The grantor is the person who placed the real estate into the land trust. The trustee holds legal title and is a caretaker of the trust. The beneficiary or beneficiaries are entitled to occupy, control and use the property as they so desire. The beneficiary may instruct the trustee to sell the property, but the beneficiary cannot transfer title. Only the trustee can transfer title. Title is held in the trustee's name because trusts are not persons at law. The trustee holds title fbo the trust and the trust holds the property fbo the beneficiary pursuant to the trust agreement. The trust agreement also identifies



the rights and duties of the beneficiaries, as well as all other administrative matters pertaining to any real estate placed in the land trust.

The trustee is prohibited from disclosing the identity of the beneficiary by the land trust agreement. The trustee can only disclose such information if the trustee is served with a subpoena and/or deposed. A land trust is not an entity. An entity is considered to be a legal person that can hold property in its own name. Since trusts are not entities, natural persons designated trustees hold title for the benefit of the trust.

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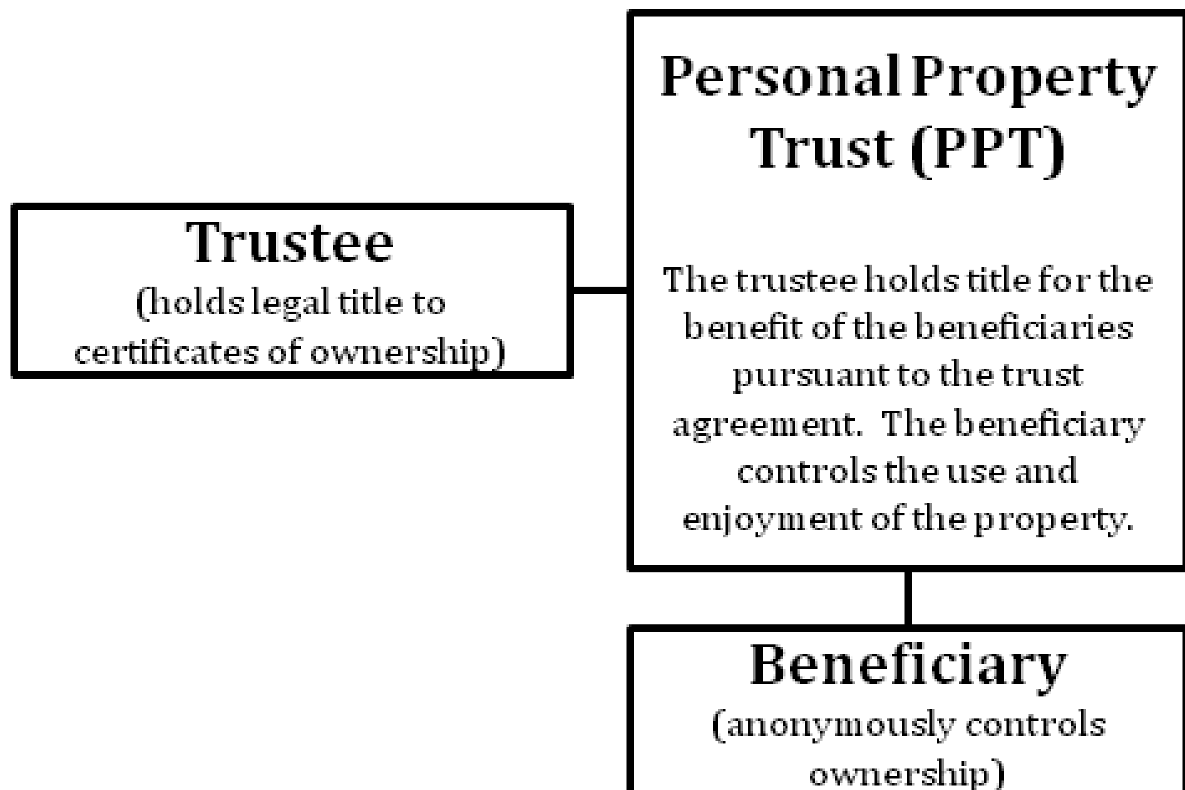
A land trust does not provide limited liability or charging order protection. The primary purpose for using a land trust is financial privacy. Although title is held by the trustee, the beneficiary owns a beneficial interest in the trust. This beneficial interest can be given to the beneficiary's creditors in a judgment. Most trusts only provide you with a cloak of anonymity. They do not provide asset protection.

The Personal Property Trust (PPT)

A personal property trust is a trust designed to hold personal property for the benefit of a beneficiary that allows the beneficiary to possess, control, use, rent, improve, encumber, maintain or repair the property.

Beneficial ownership essentially entails complete control of the property. The trustee holds legal title for the benefit of the trust and is responsible for the payment of any tax reporting and payment of tax liabilities. Although the trustee holds title, the trustee cannot transfer title or anything else without written instructions from the beneficiary.



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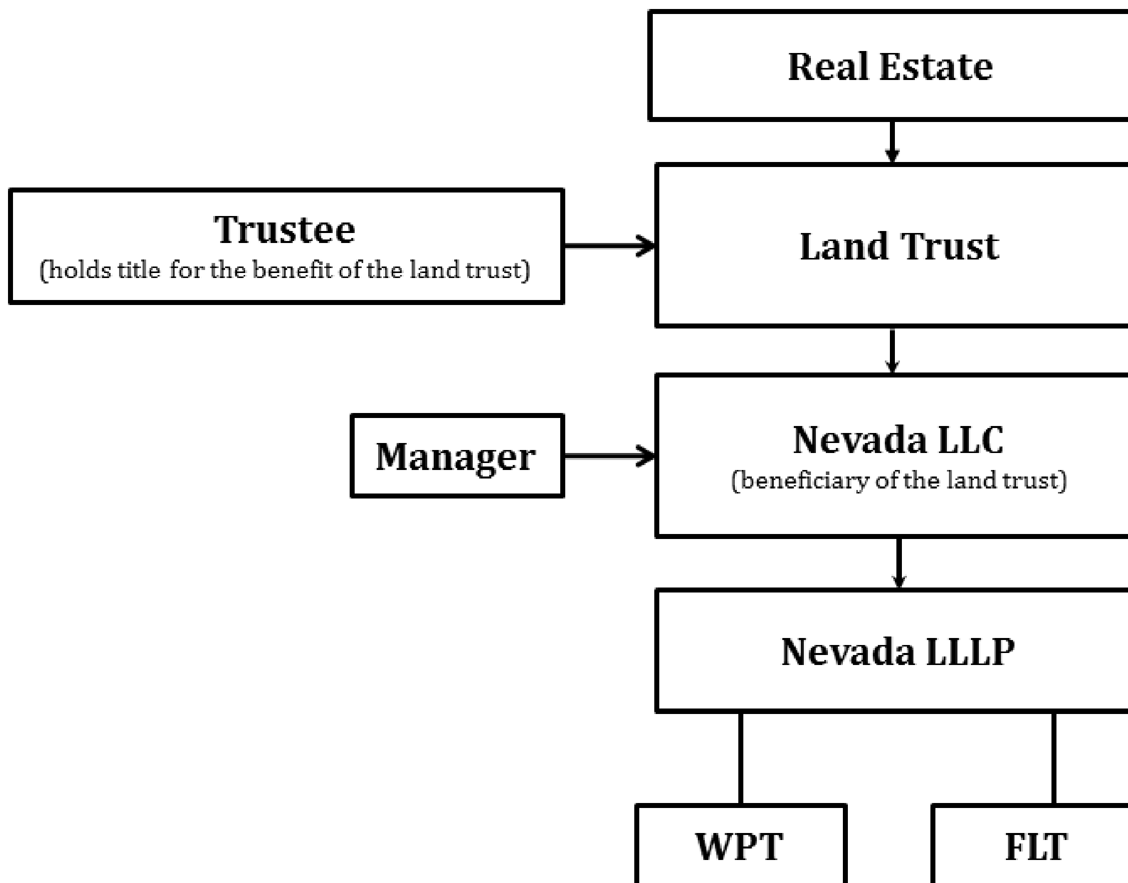
PRIVACY STRATEGIES USING BUSINESS ENTITIES

Domestic Business Entities

A business can be anonymously owned by using a Nevada corporation. Although Nevada no longer has bearer shares, you can still own a Nevada corporation with significant, although not absolute, anonymity. An LLC or LLLP in some states can be controlled anonymously. For example, in Nevada the Secretary of State only requires the identification of the managers of an LLC. Disclosure of members that are not managers is not required even if the member holds a controlling interest in the LLC. Nevada also does not require disclosure of the Limited Partners of a partnership even if a Limited Partner controls a majority of the certificates of partnership. It only requires disclosure of the General Partner, which can be a management privacy trust (MPT).

Anonymity can also be achieved by placing ownership into a wealth protection trust (WPT) or by using offshore corporations or offshore persons as the General Manager of Nevada LLCs and as the General Partner of Nevada LLLPs.



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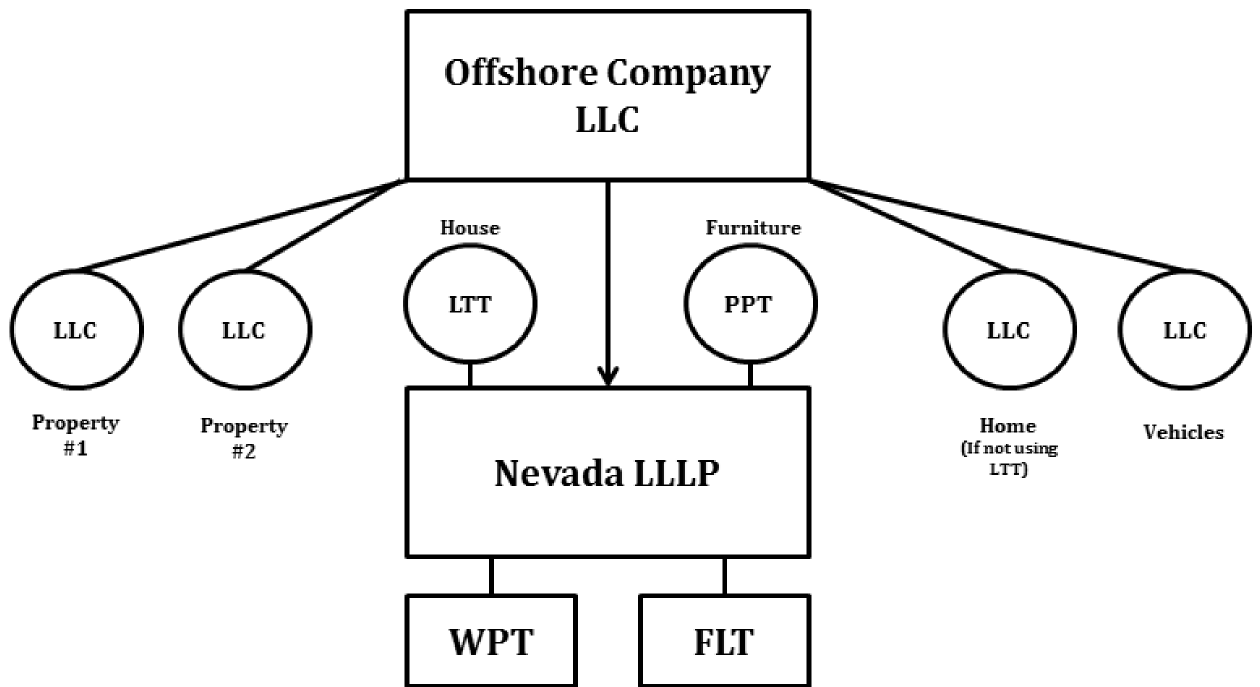
Offshore Business Entities

You can transfer liquid assets into an offshore entity, but you can obtain complete anonymity. Because of any IRS and US Treasury Department forms that you may be required to file you will have to disclose your interest in your offshore entity and its financial accounts to the government. Nevertheless, this information is not available to the general public and a plaintiff's attorney will probably be unable to access this information until a post judgment discovery proceeding. Although you will not have absolute privacy, holding property in an offshore entity will give you considerable privacy and excellent asset protection because your property will be beyond the jurisdiction of US courts and agencies. This privacy issue can be handled using a trustee/nominee service on all entities.

Example of Offshore/Onshore Planning



Nevada Holding Companies

A Nevada privacy company (Nevada LLC filed as a "C" election) is useful for anonymously holding investments made through bankers, brokers and/or trading accounts. An effective privacy company will require a nominee manager

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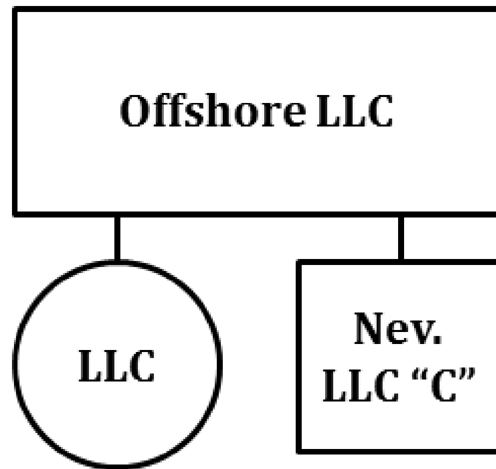
and a nominee signatory for the bank account. A Nevada privacy company can provide an excellent level of financial privacy, but it does not provide as much asset protection as an offshore entity.

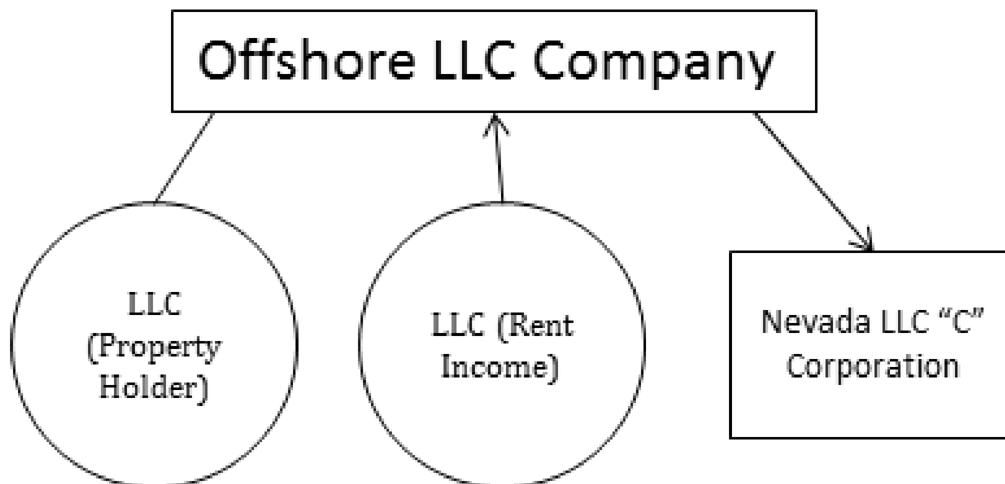


Each LLC is managed by the offshore LLC as the manager of the U.S. LLC's. The offshore LLC would be best managed by a New Mexico LLC or the property LLC.

Use of Business Entities for Anonymous Ownership

Real estate is routinely held in land trusts to obtain privacy, but the land trust does not provide limited liability or charging order protection. An LLC can provide limited liability and charging order protection in addition to privacy. An LLC is also useful to receive capital gains because members of an LLC do not have to pay self-employment tax on passive income to the LLC. Most LLCs are managed by a member and the managers are listed in the public record. If you want anonymous ownership, this problem can be resolved by using an MPT. This is great for long term investments, such as duplexes or apartments, and for short term flipping property. You can use a nominee manager to retain a property management service.

Taxable Income Flow



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An LLC can be the beneficiary of a land trust. The beneficiary is unknown and one cannot seek the identity of the manager. This type of structure is very popular with real estate professionals that are just getting started and have yet to attain millions in assets.

Because the property and rent income LLCs are single ownership they are considered "dis-regarded" by the I.R.S. and file no tax return. The offshore company is considered "flow-through" and is acknowledged on the Nevada LLC. Income, expenses, depreciation are declared in the Nevada Company for taxable purposes. Rent deposits do not have to go offshore but can be paid to the "rent LLC" over to the Nevada Company. For better privacy, rent profits could go to an offshore investment firm in the Caymans.

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CHAPTER 8: THE FOURTH LINE OF DEFENSE

THE FOURTH LINE OF DEFENSE: PROTECTING ASSETS HELD IN YOUR NAME

There are two fundamental guidelines that pertain to whether you should hold an asset in your name:

1. An asset should only be held in your name if it is economically to your advantage or it is not possible to hold the asset anonymously or through an entity.

2. Assets held in your name should be equity stripped, encumbered and should take maximum advantage of any statutory exemptions that may be applicable.

The fourth line of defense deals with the protection of assets held in your name. This chapter discusses the types of property commonly held in your name. We shall also discuss how to defend the different types of property commonly held in your name.

THE PERSONAL RESIDENCE

How to protect the family residence and vacation home is of primary concern to most US citizens. The average home today in an urban area costs between $200,000 and $400,000 and the nicer homes cost a lot more. In days gone by, million dollar homes were usually exotic mansions and estates. In many urban neighborhoods today, a million dollars just buys a nice house.

The first step in setting up an asset protection plan for the family residence is to obtain a professional appraisal of the fair market value of your family residence. The second step is to call the mortgage holder to find out how much principal is still owed to the lender. Many real estate agents will provide an appraisal for free. They can do so easily by looking up on their computer the recent sales prices of similar homes in your area. Once this information is obtained, you can determine

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your equity by subtracting the remaining mortgage debt from the fair market value of the residence.

The Homestead Exemption

The first line of defense will be your state and federal homestead exemptions. In most states the state's statutory homestead exemption will be effective against creditors in post judgment collections action. Consequently, if the homestead exemption is equal to or greater than your equity, creditors will not be able to foreclose on the homestead to satisfy their debt. In US Bankruptcy Court the debtors may elect to use either the state or federal exemption unless their state has opted out. If the matter is heard outside US Bankruptcy Court, in a US District Court civil action, the federal exemption shall prevail due to the Supremacy Clause of the US Constitution.

It is extremely important that you check state credits and homeowner benefits where your property resides. Transfers into a corporate entity or trust may cause you to lose valuable state entitlements.

Equity Stripping

Equity stripping refers to encumbering the residential property by using it as collateral for legitimate debt to lower the owner's equity in the residence. This can be accomplished by obtaining a loan from a commercial lender such as a second mortgage. The owner receives cash that is spent or protected and the lender places a lien on the owner's residence. Creditors will be unable to overcome the lender's secured interest, which is a priority interest.

For example, perhaps the state homestead exemption is $80,000 and the owner has $150,000 equity in a residence with a fair market value of $300,000. If the owner takes out a loan for $70,000 using the house as collateral, the remaining equity will be $80,000 that is covered by the homestead exemption.

The problem with using a commercial lender is that you do not have any control over the terms and conditions of the loan. You may have to pay back the loan at a rate that is not comfortable for the owner. A commercial lender will demand regular loan payments. Some overcome this obstacle by using a private lender that is usually a corporation owned by a close trusted friend. Another alternative is to obtain a long term loan with low payments and place the funds in an investment that has a high enough rate of return to make the loan payments.

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Another option is to obtain a HELOC – Home Equity Line of Credit. This is a secured line of credit against the property value of the home usually 80% of the fair market value – FMV. The HELOC is recorded against the property providing excellent equity and such loans have low interest rates with variable options. These loans act as a type of credit card with checks available for just about any purchase.

It is important that the HELOC is assigned (hypothecated) and notarized to a Nevada company in the event of trouble. If the home value was to drop, damaged or destroyed, or if the recipient were sued, you would simply exercise the assigned loan proceeds to the Nevada bank account and wire the funds offshore. This would allow you the means of cash in order to pay for some legal defense or simply strip out the equity proceeds beyond the reach of creditors.

Example:

Value of home @ F.M.V.	$300,00
Less: HELOC by 80%	-240,000
Exposed Equity	$60,000
Friendly Lien held by privacy LLC or Nevada Company	-60,000
Home successfully stripped of its equity	$0

Third party creditors, if successful, would hold a third or last, position and if the home was sold would be knocked off and the creditor would be unsuccessful in receiving any renumeration.

Using Your Personal Residence as Collateral

Hypothecation is the posting of collateral to secure an obligation for a third party. A hypothecation usually refers to a situation where one allows a third party to use their property as collateral via a contract called a hypothecation agreement. For example, a parent might allow their child to use the equity in their home for collateral to obtain a loan.

When you use your own property to secure a loan for yourself, this may constitute a hypothecation, but is generally not referred to as such. It is simply referred to as secured interest and the property securing the loan is called

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collateral. The deal is usually closed by a promissory note with a secured interest agreement.

If you are posting your property as collateral for a third party, you will need to authorize a hypothecation agreement authorizing the third party to use your property as collateral and giving authority to the lender to pursue the equity in your property to secure the debt. The lender will perfect its secured interest by placing an encumbrance such as a mortgage, deed of trust or lien against your real estate.

You can equity strip your home by using it as collateral to obtain an ownership interest in a business entity. An offshore company owned by a LLLP is often used to hold investments and other corporate entities. To protect the investments, investments can be further held in LLCs and businesses that are held in C corporations owned by an offshore company, owned by a LLLP to provide limited liability and privacy. You can hold a board meeting and pass a resolution to establish an LLC owned by an offshore company which in turn is owned by the LLLP as an investment company. The LLLP should pledge capital to capitalize the investment over the next 10-30 years. These funds are used as the capital contribution to the LLC which shall in turn invest the contributions.

The homeowner would sign a notarized promissory note to make a contribution to the LLLP within a specific time frame. No specific payment schedule is required, but before the end of the period a balloon payment shall be required to pay off the contribution promised in the note. The promissory note shall be secured by using the equity in your residence as collateral. The collateral is secured by placing a deed of trust on your residence. The grantee on the deed of trust would be the LLLP and the deed will specify the contribution pledged as the dollar amount encumbered against the residence by the deed of trust.

When funds are disbursed to creditors, this is done by priorities. Secured creditors are paid first in the order of time their debts were secured. Thereafter, the unsecured creditors are paid pursuant to their position based upon the first in time concept. For example, judgment creditors shall stand in line based upon the order of their judgments were obtain. Thus, the oldest judgment shall be paid first and the newest last.

The deed of trust will generally have second priority and will be in second position behind the original mortgage or third position if you have a second mortgage. However, deed of trust will be in front of any claims by future

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creditors that may arise. This means that if the house were liquidated and sold at an auction, the mortgage company would be paid first and the LLLP would be paid second. No third party creditors that have claims arising after the deed of trust is recorded, including secured creditors, can take a priority in front of the deed of trust. Accordingly, if the deed of trust equals or is greater than your equity, there is nothing for any future creditors to take.

Furthermore, your homestead exemption would stand in the way of any future unsecured creditors. Your homestead exemption can also act as a buffer to keep your residence secure as the value of the property appreciates and/or payments on the promissory note reduce the principal owed on the note. It is extremely important that you check state credits and homeowner benefits where your property resides. Transfers into a corporate entity or trust may cause you to lose valuable state entitlements.

This strategy will not work unless you periodically make payments on the promissory note to the LLLP and use them for investment purposes. Otherwise, a court will disregard the deed of trust and promissory note due to the failure to make payments on the note. The failure to make any payments on the promissory note will be seen as an indication of bad faith and intent to hinder or delay creditors. The documents will be considered a sham.

The beauty of this strategy is that you can use the funds contributed to the LLLP to make investments or start a business which will be beneficial for the following reasons:

- By making payments into the LLLP and using them to develop an investment portfolio or initiate a business venture, you validate that the integrity of the promissory note and deed of trust and affirm that they were made in good faith absent any intent to hinder creditors.
- The contributions to the LLLP validate its authenticity as a business which is needed to make the LLLP viable for estate planning purposes. If an LLLP is not used for business purposes, the IRS will disregard it with respect to estate taxes.
- The LLLP is the ideal place to make portfolio investments because it is a pass through entity and it will lawfully avoid self-employment taxes on passive income.
- The LLLP is an ideal place to hold assets because it provides them with charging order protection.

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If you desire to invest in real estate or any kind of venture other than portfolio investments, the LLLP should set up an offshore company which in turn sets up a LLC or corporation to hold its real estate or business venture so that the LLLP has limited liability protection from any inside liabilities that may arise. Even though an LLLP provides limited liability for the Limited Partners, the LLLP's assets can be liquidated. Holding a business or real estate through an LLC and C Corporation provides secondary limited liability. The LLLP as a shareholder or member cannot be held liable for the company unless the creditor can pierce the corporate veil; which is near impossible to do.

The Home Equity Line of Credit (HELOC)

The HELOC can be a useful tool and can be an excellent means of equity stripping the family home. You may get as large a line of credit as possible and then pledge it through a notarized assignment and promissory note to the LLLP. The assignment agreement should state 1) that the homeowner shall assign their interest in the line of credit for the exclusive use of the LLLP, 2) that the LLLP shall use the funds for investment purposes, 3) that the LLLP shall pay the money back with a considerable interest rate as compensation to the homeowner for the use of the HELOC funds for investment purposes.

Creating an effective lien on the property can be accomplished by "circulating" checks from the LLLP to the home or property owner's personal bank account. The home owner then prepares a personal check and deposits this secondary check to a third party for investment or an LLC owned by the offshore company, which has bank privileges or to the offshore company itself.

If you are using a trustee/nominee service, it is the job of the trustee/nominee to issue the check to the homeowner. The homeowner in turn, issues a personal check to the LLC wherein the trustee/nominee is the bank account signer of the LLC. From there, the trustee/nominee writes a check to the offshore company or Nevada LLLP which in turn pays back the HELOC loan or is invested offshore. The LLC is shortly closed up afterward as it has fulfilled its purpose.

The purpose is to record a paper trail in the event the creditor's accountant demands or the court requires proof that the LLLP in fact gave a cash loan to the homeowner to justify the promissory note.

Some firms simply issue a promissory note (friendly lien) to the homeowner, they record the lien on the property at the court records house to strip out the equity, but no cash renumeration is shown. If the lien is challenged in court, the

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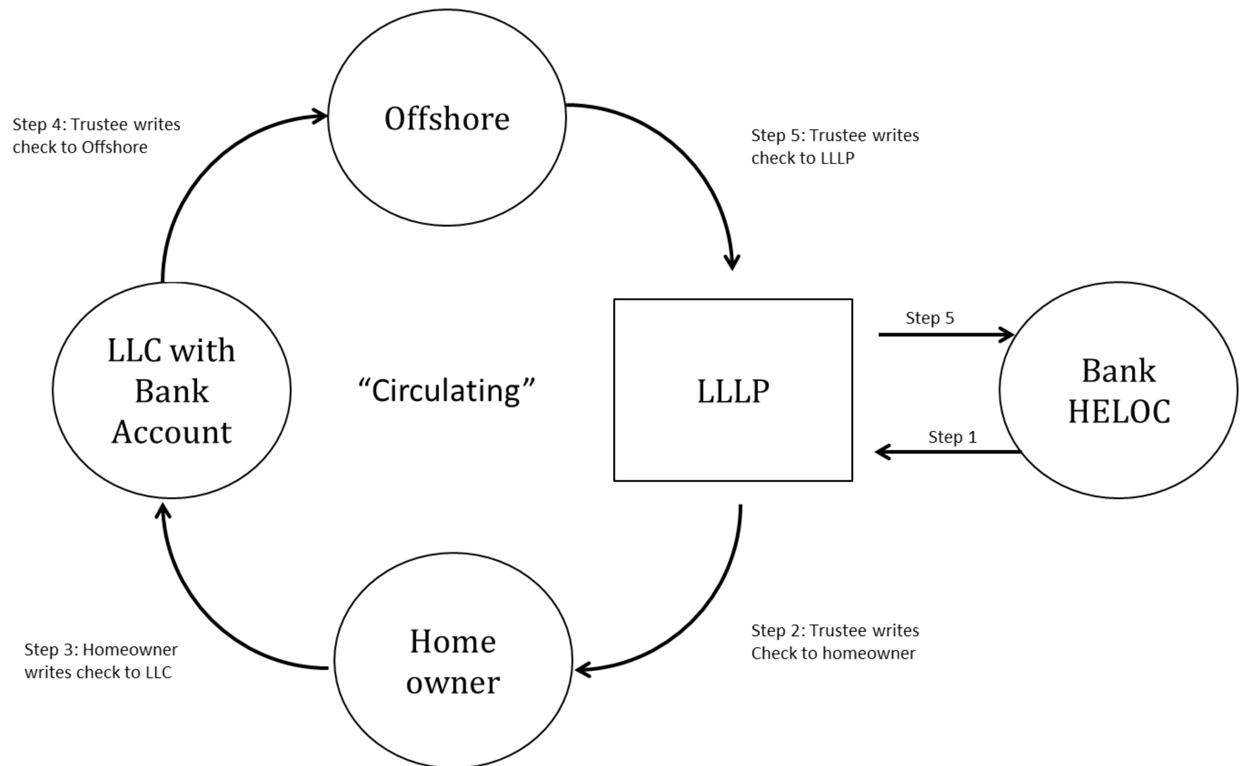
judge may set it aside as invalid, thereby exposing the equity in the property once again to the creditor.



Corporate Liens

Some asset protection 'experts' advocate the use of 'friendly liens'. They advise their client to place a lien on the family home from a corporation you own for consultation fees. There are several problems with this. First, you could get prosecuted for constructive fraud and/or criminal fraud if no consulting service is actually being provided. Second, in many states liens for services have a short duration. In Washington State an attorney, accountant, mechanic, contractor or other party who is not paid their fees can file a prejudgment lien on property the debtor has titled or registered in his or her name, but the lien expires after eight months if the person filing the lien does not initiate legal action on the claim. Many states have similar provisions and the only way to get a permanent lien is to obtain a civil judgment.

A more effective way is to encumber or equity strip real estate is to use your home as collateral for to secure a capital contribution made via a promissory note is lawful so long as the documents are executed and honored in good faith as discussed above.

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THE IRREVOCABLE RESIDENTIAL TRUST (IRT)

An IRT is a trust that cannot be set aside or revoked by the grantor. Once a residence is donated to an irrevocable residential trust, the grantor permanently relinquishes any and all claim to the property. Real estate can be transferred out of your name into an entity, but in doing so one risks possibly losing the ability to claim the homeowner's principal residence exemption that can be used when a taxpayer sells their personal residence to avoid capital gains tax.

Nevertheless, the entity holding title may be able to qualify for a Starker 1031 exchange. A Starker exchange enables an owner to avoid capital gains taxes when buying same or similar property of equal or greater value for replacement purposes.

If the mortgage remains in the name of the grantor, the grantor may still be able to deduct the mortgage interest paid on the residence on his or her 1040 tax return after transferring the deed to the IRT so long as he or she remains the person responsible for the mortgage.

There are several other disadvantages to the irrevocable trust. An irrevocable trust is a permanent commitment. It cannot be set aside by the grantor. It is vulnerable to the creditors of the beneficiaries. The property is no longer under your control so you are at the mercy of the beneficiaries and the trustee. They may dispose you of your property or evict you if they so choose at any time. The grantor cannot squander, borrow or spend away the assets of the trust. Since you no longer own the residence, you cannot sell it and use the proceeds because they belong to the beneficiaries. You cannot even use it for collateral without the beneficiaries consent. Furthermore, it will be necessary for you to rent the property from the trust. Otherwise, the IRS can challenge the trust as a fraud or impute the fair market rental value of the residence as income on your tax return. Hence, we generally do not recommend the use of IRTs to protect the family residence.

THE LIFE ESTATE DEED (LED)

An LED is a real estate warranty deed that transfers property to your heirs, but allows you to retain the right to continue the use of the property for the rest of your life. After death, the property goes immediately to the person in the deed. With a life estate deed there are two separate owners of the property: the Life Tenant Owner and the Remainder Owner. The life tenant owner has absolute and exclusive right to use of the property during their lifetime, which expires

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automatically upon the death of the surviving life tenant. The remainder owner receives control of the property after death of the life tenant, but has no right to use the property or income from the property during the lifetime of the life tenant.

THE ADVANTAGES OF THE LED

- It is easy and inexpensive to obtain and record the deed.
- Use of the LED avoids the time and expense of probate.
- A LED makes it easy to clear title to real estate after the death of the life tenant.
- The life tenant's right to occupancy is protected from the life tenant's creditors as well as the remainder owner's creditors.
- After the surviving life tenant dies, the remainder owners get the real estate with a stepped up tax basis for capital gains purposes.
- Medicaid Planning: A property owned in life estate form of ownership is, in most cases, protected from Medicaid claims once more than sixty months passes after the date of transfer to the life estate ownership form.

THE DISADVANTAGES OF THE LED

- The transfer of real estate is an irrevocable transfer.
- If a life tenancy owner becomes ill and needs the use of Medicaid during the first sixty months after obtaining the life estate deed, he or she could be disqualified from access to Medicaid.
- All life tenant and remainder owners must unanimously consent to sell or mortgage the property.
- If the property is sold prior to the death of the last surviving life estate owner, the remainder owners will be entitled to their pro rata share of the proceeds from the sale of the property. The value of the life estate and remainder estate are determined by IRS guidelines.
- If the property is sold during the life tenant's lifetime, the life tenant will only get a partial exemption based upon the value of the life estate. The remainder owner will get no exemption from the sale of the personal residence unless they have resided in residence with the Life Tenants'.
- The creditor(s) of a remainder owner may place a lien on the residence to secure payment from the remainder owner's share of any proceeds derived from any sale of the residence prior to termination of the life

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estate. A remainder owner's creditor may also be prepared to attach the residence at the time of death of the surviving life tenancy owner. We avoid these problems by using an LP or LLC that is controlled by your heirs as the remainder owner. This gives the heirs charging order protection and places the residence beyond the reach of unforeseen future creditors.

AUTOMOBILES & FAMILY VEHICLES

FRONT DOOR LIABILITY

With respect to vehicles, we refer to liabilities pertaining to the operation and ownership of the vehicle as front door liability. It is inescapable that one will be held personally liable for any negligent or unlawful operation of a motor vehicle when driving oneself. However, liability may also extend to the owner of the vehicle or third parties given permission to drive the owner's vehicle. Multiple deaths and serious injuries may result from the operation of a motor vehicle. Serious accidents may easily result in multi-million dollar jury verdicts. These factors necessitate the hypothetical examination of different scenarios of liability.

PERSONAL LIABILITIES

The driver of a motor vehicle will be liable for the failure to exercise due care and caution when driving. The driver will be liable for negligence or recklessness and the failure to follow the mandates of the state motor vehicle code. When driving yourself, the best way to limit your liability is to drive defensively and carry as much insurance as economically reasonable. A personal umbrella insurance policy would also be a good idea. Be sure to add a "under insured" motorist policy so in the event the "other guy" has no insurance. Your insurance will cover you for damages and medical costs.

Drive safely and be legal. You should avoid any vehicle accident to the best of your ability; this includes protecting yourself by avoiding texting or talking on your cell-phone while driving, even if it may currently be allowed by your state law. If you do talk while driving, employ a hands-free device if legal in your state. Always follow the speed limit and pay attention as you drive; you may not be

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aware that most new vehicles come pre-equipped with 'black-box' systems (event data recorders) similar to ones used in airplanes which record dozens of data points before, during, and after any accident including your speed, seat belt use, braking and driving control. This data can brought out during discovery, by subpoena or by court order and used against you by insurance companies or prosecutors to establish your fault.

Liability for Third Parties Driving Your Vehicle

The owner of a vehicle generally is not held liable for damages caused by a third party driver who has taken the vehicle without permission. In many states the owner is not liable for damages caused by a friend or relative who is driving the vehicle with permission (permissive driver.) Nevertheless, an owner may be held liable for damages incurred by permissive drivers under the theories of negligent entrustment, the law of agency or the family car doctrine.

In order to prevail on a negligent entrustment claim, the plaintiff must show that a person entrusting a vehicle to another knew, or should have known in the exercise of ordinary care, that the person to whom the vehicle was entrusted was a reckless, heedless, or incompetent driver.[55] In order to prevail on a family car doctrine claim, you must prove that a family member was driving a family vehicle for a family purpose.[56] With respect to the law of agency, you must prove that the driver was the agent of the owner such that the driver was consensually acting on behalf of the owner and was subject to the control of the owner. If the driver is in fact the agent of the owner, then the owner may be liable for the negligence of the agent.

There are ways to limit your liability with respect to a family member's negligence. If each spouse in your marital community has his or her own vehicle, have each spouse register and title their vehicle in their own name. The driver shall be liable for negligence in any case. By placing the title in the driver's name it will make it difficult for a plaintiff in an auto accident case to hold the marital community or the other spouse liable for damages. Since the vehicle is registered and titled as the driver's separate property, the driver's spouse cannot be held personally liable for the accident. Separate titles will also protect each spouse's vehicle from the other spouse's personal creditors in most jurisdictions.

If you are going to provide your teenager with a vehicle, do not retain the title or registration in your name. Place the title and registration in the child's name if possible. On the vehicle's registration have your son or daughter list him or

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herself as the legal and registered owner. Teenagers are inexperienced drivers. Why take on such tremendous jeopardy by retaining the title in your name?

Never lend a vehicle to a friend who has been drinking or has a suspended driver's license or a bad driving record. If you have teenagers, frequently check the floor and ashtrays for marijuana, and never voluntarily allow a police officer to search your vehicle.

BACK DOOR LIABILITY

With respect to a vehicle, we use the term back door liability in reference to liabilities arising from your own personal debts. Back door liability is also referred to as outside liability. This specifically refers to judgments for your personal unpaid debts for such things as torts, credit cards, auto loans, utility bills or mortgages, et cetera.

If you have a valuable vehicle, creditors may pursue any equity in your vehicle greater than the state or federal exemptions for vehicles. If you retain a vehicle in your name, the equity in the vehicle should never be much higher than the applicable state or federal exemption for automobiles. If payments are being made on a vehicle, plan them so that the equity is not greater than your statutory auto exemption.

Beware of setting vehicle payments as low as possible. When it comes time to trade in on a newer vehicle there may be no equity for a down payment. Sometimes, those low payment plans may even result in a negative balance when the vehicle is worn out. This may force you to purchase a used vehicle on a shorter loan term, with higher interest and high payments with the balance due for the old vehicle carried over to the second vehicle. Avoid this type of situation. Do not wind up making Mercedes sized payments in order to drive a used Ford.

Any vehicle that has substantial equity is vulnerable to attachment and levy by creditors if held in the owner's name. The only way to protect the equity is to add on to the title of the vehicle a LLC or Nevada Corporation or equity strip it. A vehicle with substantial equity may be used as collateral for a loan, for a line of credit or hypothecated to the family business. Any funds acquired should be transferred into a safe harbor such as the bank or brokerage account of an offshore LLC. Placing a new vehicle into any corporate entity will void the warranty and will cost more to insure.

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Independent Contractors

Historically, the best defense for the wealthy with respect to front door liability is to retain a driver as an independent contractor. The best solution for back door liability is to lease the vehicle or transfer it to an entity with COP, like an LLC or Nevada Corporation.

An independent contractor is a person who renders a service for compensation to accomplish a task specified by the principal. Although, the result must be under the control of the principal, the means of accomplishing the result are under the control of the independent contractor.[57] The common law rule in most states is that the principal is not responsible for the negligence of the independent contractor. One who engages an independent contractor is not liable for injuries to employees of the independent contractor resulting from the contractor's work.[58]

Individuals with sufficient resources may insulate themselves from liability for auto accidents by using an independent company they contract with to provide them with drivers and limousine services. Liability stops with the driver and the limousine service. The only way to reach the passenger's pockets is if there was contributory negligence. For example, if the driver got high smoking marijuana with the passengers or the passengers saw him drinking but did nothing to stop him from driving, there may be a case against the passengers for contributory negligence or negligent entrustment.

Real Estate Held in One's Name

We already discussed the family residence, but we did not address the issue of vacation homes or real estate investments. Many choose to keep the family home in their own names so they may deduct mortgage interest from their income tax liability and so they can use the personal exemption to avoid capital gains when they eventually sell the home. This is not possible with anything other than the family residence. Therefore, it may be advisable to transfer the property out of your name.

Generally, speaking it is not advisable to keep real estate in your name unless it can be equity stripped and the equity can be placed in a safe harbor or if you can reserve a life estate using an irrevocable trust. Otherwise, real estate should be transferred out of your name into an entity or trust which is outside the scope of this section.

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LIFE INSURANCE

There are two types of life insurance: term life and whole life. A term life policy only provides for a death benefit. A whole life policy requires additional payments that build up as savings in addition to the death benefit.

Life insurance provides exemptions that are useful for asset protection planning purposes. For example, the US Bankruptcy Code exempts any unmatured life insurance policies and any policy with a cash value of less than $9870. State exemptions vary significantly from state to state with respect to the size and scope of the exemptions. In most states, the death benefit proceeds may pass to your designated beneficiaries free from any claims of the decedent's creditors. The exemption may extend only to the spouse and dependants of the insured depending upon jurisdiction. In some states, property purchased with life insurance proceeds is exempt.

In Washington State, life insurance proceeds are exempt if the insured is not the beneficiary. In Florida the entire cash value of a life insurance policy is exempt from claims of the policy owner's creditors and the entire death benefit is exempt from claims of the insured's creditors. The range of protection varies from state to state. Some states provide little or no protection for the cash value, whereas other states provide significant protection. If you reside in a state that provides unlimited or significant protection to life insurance cash value and proceeds, you should consider life insurance as a safe harbor to place vulnerable liquid assets.

Life insurance is useful in tax planning with respect to both estate and income taxation. A corporate executive can place up to $200,000 tax deferred into a 419 life insurance benefits plan. Profits that accrue as the policy grows are exempt from capital gains tax. After four years, one can borrow up 80% of the funds originally invested. For estate planning, life insurance can be used to avoid estate taxes or it can be used to provide funds to pay estate taxes.

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Dangers to Avoid

First, some bankers place clauses in their loan documents whereby the borrower assigns his or her life insurance policies to the bank. Always have an attorney review your loan documents to be certain that the lender is not attempting to use the fine print in the contract to acquire your life insurance benefits. Second, if you obtain a life insurance policy at a time when you are financially insolvent, then your creditors may be able to seize the policy benefits on the grounds that it was a fraudulent conveyance. In addition, even after the policy is established, depending upon the circumstances an improper diversion of non-exempt funds to make policy payments could be considered constructive fraud as well. Third, in some states the life insurance policy is exempt from creditors' claims only if the beneficiaries are your spouse and/or children. In others, the exemption may be lost if you retain the right to change beneficiaries. Have an attorney carefully check your state code when setting up a policy to avoid losing the exemption.

Mortgage Life Insurance (MLI)

If you have a mortgage on your home, it is advisable to carry a mortgage life insurance policy. Nothing is more devastating than to have the "bread winner" of the family passes away and pass on to the surviving spouse the debt and monthly mortgage of the family home.

For a small amount of money, life insurance may be available and can be built into the monthly payment of the principle home.

I have seen many people who did not have the foresight to do this only to leave the family distraught and wondering why this was never done when this type of insurance is relatively inexpensive.

Irrevocable Life Insurance Trusts (ILIT)

For small estates where estate taxes are not a factor, life insurance benefits pass to the beneficiary estate tax free. However, for large estates, a life insurance trust can be a great advantage. One of the primary sources of income for the IRS is large estates with life insurance policies that are held in the name of the insured. Because the title to the policy is held in the insured's name, the policy becomes a part of his or her estate at the time of death. This makes it subject to estate tax.

An ILIT is nothing more than an irrevocable trust that owns life insurance. The primary goal of this trust is to remove the policy's death benefit from the owner's

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taxable estate. By timely transferring ownership of the policy to an ILIT or by having an irrevocable trust purchase a new policy, the death benefit will not be included in the estate of the insured. Since title is no longer held in the insured's name, the insurance policy will not be a part of the insured's estate at the time of death, thereby enabling the insured to avoid subjecting the policy to probate and estate taxes.

An additional benefit of the ILIT is that the death benefits of an insurance policy can provide for the support and comfort of a surviving spouse and the support and education of the grantor's descendants without being considered part of either spouse's estate. The assets are generally safe from judgment creditors and estate taxes, and they avoid probate.

An ILIT has a grantor, beneficiary and trustee. The grantor is the person who creates or sets up the trust. The beneficiary is the person who will receive distributions or benefit from the trust. The trustee is the person responsible for managing the assets of the trust. The trustee has a fiduciary responsibility to invest the trust assets and to follow the written instructions of the grantor.

Almost any life insurance policy can be placed within an ILIT. A policy can be purchased to insure the continuing lifestyle of a surviving spouse and then later provide for the support of the children. All benefits could be received tax free through the proper use of an ILIT.

Filing an annual tax return for the trust is usually not required under federal tax law, but is often recommended as a good way to show continued existence of the trust. After the insured's death, the trustee is required to furnish annually to each person entitled to income from the trust a statement of the trust's holdings, receipts, and disbursements.

Annuities

Annuities are flexible insurance contracts designed to provide income and help you achieve long term savings goals. In 2005, annuity sales topped $200 billion

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in the US Much like a CD is a financial product offered by a bank, an annuity is a long-term product offered by an insurance company.

UNDERSTANDING ANNUITIES

An annuity is an investment agreement whereby one receives sums of money in regular payments over a period of years. A fixed annuity provides regular payments in a predetermined amount. A variable annuity makes payments that shift up or down based upon the return received on investment.

After making a single lump sum premium payment, or a series of periodic payments, individuals can then receive regular annuity payments from the insurance company. These payments can be made over a definite period of time, or they can last a lifetime. Payments can be tailored to begin after the contract has been established for a number of years, or they can begin immediately after the first premium payment is made.

Annuities have two stages: the accumulation phase and the payout phase. During the accumulation phase, you can make purchase payments to the annuity, either in one lump sum or on an ongoing basis. Depending on what type of annuity you own, during the accumulation phase, the annuity's value will grow based on an interest rate set by the insurance company (fixed annuity) or fluctuate depending on the value of the sub-accounts (variable annuity).

In either case, an annuity grows tax-deferred during the accumulation phase. Tax-deferred is not the same as tax-free. Tax-free investments, such as most municipal bonds, incur no income taxes on gains. Annuities are taxed on their gains, but only when you choose to withdraw those gains from the annuity.

Scope of Tax Exemption

Annuities are exempt from creditor’s claims in several states. Therefore, in those states where they are exempt they are an excellent method of asset protection. If you reside in a state that does not exempt annuities, you may elect to invest in offshore annuities in a foreign jurisdiction that will provide asset protection for annuities.

The scope of protection afforded annuities varies from state to state. In Washington State, an annuity contract proceeds up to $2500 per month are exempt. In Idaho, Vermont, Nevada and Montana, annuity contract proceeds are only exempt for up to $350 per month and things get even worse in Alabama where only up to $250 per month is exempt. On the other hand, in Florida, South

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Carolina and Texas annuity proceeds are exempt regardless of the amount. In some states annuity proceeds are only protected if they are unmatured, payments have not started yet. In Alaska and Illinois, only annuities payable to your spouse, children or dependents are exempt. In Pennsylvania annuity proceeds are exempt only if the insured is the beneficiary. In New York, an annuity is exempt to the extent that it is needed for the reasonable requirements of the debtor and his or her dependents.

In US Bankruptcy Court, the assets invested in an annuity cannot be reached by creditors.[59] However, the proceeds can be reached to the extent that the funds are not needed for support of the debtor and his or her family.

Offshore Annuities

Swiss annuities offer excellent asset protection. Swiss law prohibits creditors from reaching annuity proceeds if the beneficiary is your spouse or children or if the beneficiary is made irrevocable. Swiss law will disregard US Court orders regarding such and will not divert payments from the beneficiaries even if the person who purchased the annuity requests such pursuant to a US Court order.

With respect to IRS reporting requirements concerning foreign accounts, a Swiss annuity is considered to be an insurance policy. It is not a bank or financial account. Therefore, it does not have to be reported on the annual IRS Form 1040 Schedule B.

Swiss annuities can be held in several different currencies of choice such as the Swiss Franc, British Pound or the Euro. The Swiss banks are very secure. The Swiss bank is one of the few banks still backed by gold and the Swiss insurance industry is among the most secure in the world, with huge capital reserves and assets.

Installment Sales

An installment sale is the sale of real or personal property in exchange for a promise to pay a fixed amount plus interest over a fixed period of time. Unlike an annuity that is unsecured, an installment sale usually has a promissory note secured by the asset sold. If the buyer defaults on the payments, the seller can take back the asset to recover for unmade payments. Upon the death of the seller, the unpaid balance is included in the seller's estate and the asset itself is outside the estate, including the appreciated value of the asset. An installment

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sale can be made to a close friend or family member so long as the sale is made for equivalent value.

The installment sale will have the same problem as the private annuity because the asset exchanged will be vulnerable to the buyer's creditors. This can be resolved in the same fashion by selling the asset to a COP entity the buyer controls or a Wealth Preservation Trust (WPT) which designates the buyer as the beneficiary.

JOINT TENANCY AND TENANCY BY THE ENTIRETIES

Joint tenancy is a form of ownership that allows two or more people to share ownership of real estate or other property. When a joint tenant dies, the other joint tenants automatically own the deceased owner's share. For example, if a parent and child own a house as joint tenants and the parent dies, the child automatically becomes full owner. Because of this right of survivorship, a will is not required to transfer the property; it goes directly to the surviving joint tenant without the delay and costs of probate.

There is a pervasive myth that property held jointly with your spouse or another party is safe from creditors. This is simply not true. In most states a debtor's interest in joint property may be seized by creditors. If both parties are debtors, the entire property can be seized by the creditor.

In many of the states a form of ownership known as tenancy by the entireties is recognized as law. In these states property owned by married couples is presumed to be owned by the couple as a marital community and not as individuals. Therefore, the property cannot be sold without the approval of both spouses. The property is considered to be owned by the couple as a marital unit and not as individuals. Accordingly, in many of the states that recognize the concept of tenancy by the entireties, creditors of your spouse cannot reach property that is held as a tenancy by the entireties.

For example, suppose a married couple owns a

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vacation condominium that they rent on a regular basis and reserve for their own use four weeks a year. If the property is held as joint property, the creditor probably could not get the court to order the liquidation of the vacation condominium. But the creditor could get the court to order the husband to assign his 50% income interest in the property over to the creditor. The creditor would be entitled to 50% of the rental profits and be allowed to use or rent the vacation place during the husband's allocated time for personal use. However, if the property was held as joint tenants by the entirety, the creditor would not be able to reach the debtor's income interest in the vacation condo. However, a debtor may have a problem proving that his or her property is a tenancy by the entireties. In some states marital property is presumed to be a tenancy by the entireties, but in many others it is assumed not to be unless it is clearly designated as such in the purchase paperwork or title to the property.

If you reside in a state where you must prove ownership by joint tenancy of the entireties, you must be prepared to prove that the legal requirements for a tenancy by the entireties have been complied with. A tenancy by the entireties is required to have five unities:

1. Unity of possession: each party is entitled to possession of the property
2. Unity of interest: each party has an equal interest in the property
3. Unity of title: each party must have acquired title through the same conveyance
4. Unity of time: each party's interest must have been created at the same time
5. Unity of person: parties must be married. Marriage makes them legally one person.

Tenancy by the entireties only provides protection against the claims of one spouse. It provides no protection against joint debts. Therefore, spouses should never co-sign debts if they have property held as a tenancy by the entireties. It also provides no protection for claims made by one spouse against the other. A tenancy by the entireties is not recommended to be used for asset protection or estate planning.

INCOME RECEIVED IN YOUR OWN NAME

Less than 70 years ago, America was the land of free enterprise. It was a place with little or no income taxes or property taxes. America had a cash economy

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and US redeemable in gold. Coins were still minted with gold and silver. The White House and Congress ran a tight financial ship and there was little or no national debt. Americans historically were tied to the land. The American dream was to own a homestead debt free, own your own business, build your own home, plant crops and raise livestock to be almost self-sufficient. People paid for goods and services in cash. If family members lost their job, it was no travesty because Americans lived within their means and the family homestead was a refuge for hard times.

In order to separate the American families from their homesteads, it was necessary to entice the general public into perpetual debt and kill the cash economy. Citizens who are solvent have economic power and government agencies cannot control a cash economy. An economy that contains its financial transactions through banks can be controlled because all income can be traced, tracked and seized at will.

Cash is much like a share certificate that is a bearer share. A bearer share is owned by whoever has possession of it at any given time. The same applies to cash. There is no way to track the movement of cash or bearer shares.

Bankers and businesses are required to report persons engaged in transactions involving large amounts of cash. Any large amount of cash found during a routine stop by law enforcement agencies is treated as contraband and the holders of the cash are presumed to be criminals or terrorists.

When you receive a check, you are receiving property in your name. And these funds are then deposited into a bank or brokerage account held in your name or your company's name. The accounts are tied to your social security number and/or EIN and they are reported to the government. All of your transactions are stored. Any suspicious transactions are reported to the US Treasury Department. Hence, the US government knows where all your financial accounts are located and can review all of your financial transactions for the past seven years whenever they feel the need without notice.

Financial privacy is as American as apple pie, but it has been taken away from us. How do you recover it? Here are a few useful tactics:

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- Get an anonymous debit card. You can purchase a card that you can fill and refill. There is no name on the card and whoever has the card and knows the password can use it at most bank machines to withdraw cash.

- Open a non-interest bearing bank account and keep only enough money in the account to cash commissions and paychecks. Cash your paychecks and pay your bills with cash or via money orders. Keep copies of your receipts encrypted on a personal computer and keep backup copies on an encrypted web storage service located in another country.

- Set up a personal offshore demand account with an offshore bank in a jurisdiction that does not honor US judgments and that has bank secrecy laws. You must report the account on the 1040 Schedule B. This is not a problem because the main reason to go offshore is to protect your assets from seizure absent due process of law. This guarantees a pre-deprivation hearing. Although the US Treasury Department will know about the existence of the account, this information will not be readily available to state agencies or the private sector.

- A debit card or a credit card can be obtained with an offshore account. However, any use of this card to pay bills in the US will leave a paper trail through the card company or whatever US company is used to make the transfer payments. A better strategy, if you want to maintain a high degree of privacy, is to only pay offshore bills with the offshore card. Only use the offshore bank machine when offshore as well.

- Retirement and pension funds should be rolled into a self-directed Qualified Retirement Plan (QRP). Further, hold the IRA/LLC funds offshore and make your investments through the IBC via an offshore brokerage firm.

- If you have investments in your name, transfer them to an offshore bank and/or an offshore brokerage service. Although it is best to hold investments in offshore entities, if you must hold assets in your name it is best to at least move the accounts offshore for asset protection purposes.

Prelitigation Jurisdictional Planning (PJP) is a term we use in reference to methods used to make litigation difficult by moving accounts, entities, trustees and/or managers outside the jurisdiction of state and/or federal courts. This is done to protect assets from unforeseen and unexpected future risk, as well as to deter seizure absent due process of law.

Traditionally, citizens were entitled to at least a pre-deprivation hearing, if not a trial and a court order, before the government could confiscate a citizen's assets.

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Today, government agencies often are given administrative authority to seize your assets without a court order or a pre-deprivation hearing. A notice of levy may be issued that freezes or seizes financial accounts. The notice will provide the person subject to the lien a limited period of time usually about 14-20 days to obtain an attorney and contest the lien or attachment. If a petition for a hearing is not filed within the time limit, the seizure is final or, if the assets were frozen, they will be released by the bank to the government.

Government agencies often freeze financial accounts. This makes it financially difficult, if not impossible, for you to retain counsel to fight the lien within the short period of time you are allowed to contest the seizure of your assets.

By moving your financial accounts outside the jurisdiction of the US Court system, those assets cannot be seized without due process of law because a notice of levy cannot be filed on a foreign account. Access to your offshore funds is essential to assure that you have sufficient funds to obtain an attorney to respond to a notice of levy or other legal process before the deadline to respond. It is the only guarantee that you will be able to obtain due process of law and a competent attorney to represent you.

Pensions & Retirement Accounts

Until recently, Federal Law only protected Employee Retirement Income Security Act (ERISA) approved pension plans from creditors. ERISA plans are excluded from the bankruptcy estate[60] ERISA plans are also exempt from creditor's claims outside of bankruptcy court. Some state laws protect IRAs from creditors while others provide no protection or only cover traditional IRAs. Previously under the US Bankruptcy Code, IRAs were not provided any kind of protection from creditors. As of October 17, 2005, the new Bankruptcy Reform Act excludes IRAs from filer's bankruptcy estates.

Retirement plans subject to ERISA are a relatively safe harbor for your assets because they cannot be reached by creditors in a bankruptcy proceeding. Most retirement plans are covered by ERISA except for IRAs. The US Supreme Court has held that ERISA qualified retirement plans are excluded from a petitioner's bankruptcy estate. Therefore, they are beyond the reach of most creditors. ERISA approved retirement plans usually are exempted from civil proceedings by state statute. In states that do not provide exemptions, the Supremacy Clause doctrine of federal preemption over state law protects ERISA retirement assets from state civil proceedings.

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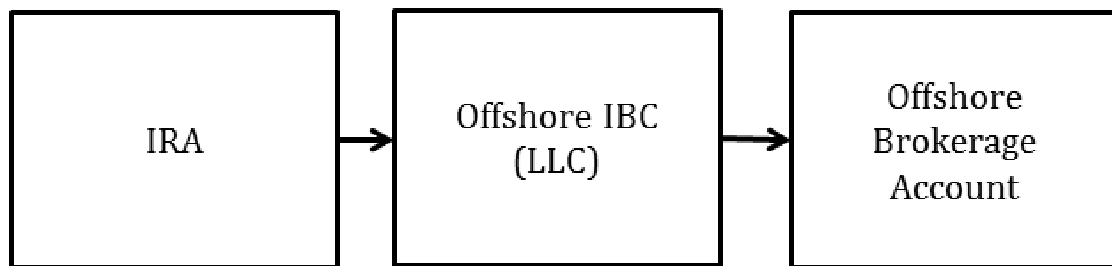
Roth IRAs, Coverdell (education) IRAs and IRA established through SIMPLE and SEP plans are not ERISA approved retirement plans. Accordingly, they are not excluded from the bankruptcy estate. Some state and federal courts have ruled that provisions of the Internal Revenue Code make IRAs exempt in state court proceedings, but many courts have held otherwise.

Each state has different laws with respect to the status of IRAs. Some states exempt all IRAs from state civil actions. Some states only exempt some kinds of IRAs and do not protect others. Other states do not exempt IRAs at all and they can be attached and liquidated in state civil actions. Even in states that exempt IRAs, debtors have to worry about state law being disregarded in US District Court by the doctrine of preemption.

The Bankruptcy Reform Act has resolved creditors' IRA problems by extending the federal bankruptcy exclusion. The law provides up to one million dollars in IRA creditor protection. The million dollar limit applies to traditional IRAs and Roth IRAs and, therefore, should also apply to self-directed IRAs.

The Bankruptcy Reform Act makes self-directed IRAs look better than ever. One can move a self-directed IRA offshore in your name or you can do so through an LLC owned by a self-directed IRA.



WAGES, CHILD SUPPORT, ALIMONY AND GOVERNMENT BENEFITS

The Consumer Credit Protection Act (CCPA)[61] limits the maximum amount a creditor may garnish from a debtor's wages to 25% of a debtor's weekly disposable income or the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage. In addition, every state has an exemption for some type of income, generally including wages, salary, social security, welfare and unemployment. However, most state laws mirror the CCPA. Washington State, for example, exempts 75% of a garnishee defendant's disposable earnings or thirty times the federal hourly minimum wage, whichever

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is higher, from garnishment[62]. Social Security is exempt income. In most states child support, alimony and disability payments are exempt income.

The question that next arises is how do you protect such income after receiving it? This is a problem because your bank accounts can also be garnished and if you commingle exempt funds with non-exempt funds then a zealous creditor may be able to circumvent the foregoing exemptions by attaching the exempt funds after they have been commingled in a bank account with non-exempt funds.

You can avoid such a situation by obtaining a bank account in which you keep nothing but exempt funds. All deposits must be documented with copies of the checks deposited keep in your personal records to be used as evidence to challenge any attempted garnishments.

The legal characterization of the disposition of property in a divorce proceeding can be significant in a situation where a divorce settlement is imminent and you have significant debts. If there is a large sum of liquid assets or cash available, it may be best to have the judgment paperwork characterize a lump sum payment as a payment for back alimony or back child support. Otherwise, your creditors will be able to attach the funds if they are characterized as part of the general disposition of marital property.

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CHAPTER 9: THE FIFTH LINE OF DEFENSE

CONTROLLING PROPERTY WITHOUT OWNING IT

The Fifth Line of Defense is the art of holding the beneficial interest (control, use & possession) of property without owning the property (holding legal title in your name). Creditors can only seize property that you "own". That is why Rockefeller said 'The secret to success is to own nothing but control everything'. The best way to accomplish this goal is to establish a trust or business entity and have the entity acquire property with its own assets from a third party that is not an insider. This avoids the fraudulent transfer problem since the title to the property is acquired from the prior owner straight into the name of an entity that you control. Fraudulent transfers only pertain to shifting property from you to an insider or entity you control. It does not apply where an entity acquires property directly from a third party who is not an insider.

TRANSFERRING PROPERTY TO DOMESTIC BUSINESS ENTITIES

Transferring property to a domestic business entity is not hard to accomplish. For example, suppose you have a profitable business that is a C Corporation. At the end of the fiscal year there are significant profits. You can pay the minimum federal income tax rate and avoid social security and FICA by retaining up to $50,000 profit in the corporation. After a few years the retained funds could be used as a capital contribution to purchase certificates of membership in an LLC that is employed as a real estate business to buy and sell properties. The LLC can be used to purchase a beautiful residence that you can rent from the LLC. This LLC might also own the building the family business operates out of a vacation home, as well as other investments or rental properties, et cetera

Entity Type	Liability Protection	Tax Savings
Sole Proprietorship	None	None
Limited Liability Company	Yes	Possible
Corporation	Yes	Yes
Limited Liability Limited Partnership	Yes	Yes

You can also use your own capital in a similar fashion. You simply make a capital contribution to a corporation to purchase share. The corporation buys a home

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and leases it back for a monthly payment that is set at fair market value and is large enough to cover taxes and maintenance expenses. These types of transactions avoid fraudulent transfer problems.

When an entity is initially organized, one of the best ways of transferring money into the entity is as a capital contribution. This should be done for fair market value (FMV) based upon the FMV of the property and the share should be of equal value. For example, a person wants to donate bonds worth $100,000 to a C Corporation that he or she owns and the par value of the share has been set at $2.00 per share. The corporation should draft a subscription offer that offers 50,000 shares for $100,000 cash or other property with an assessed FMV of $100,000.

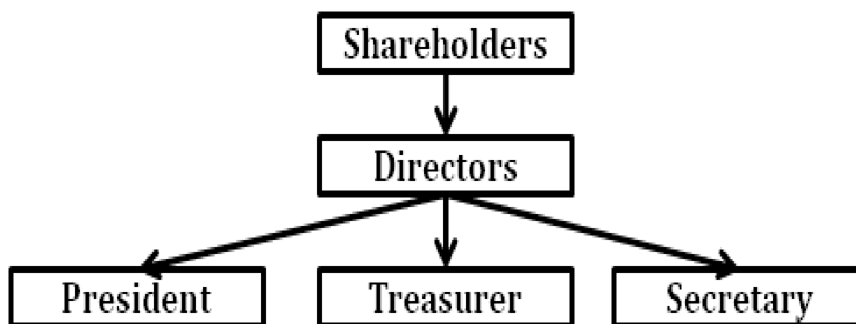
In most states a capital contribution to a corporation controlled by the person making the contribution is not a taxable transaction. This is not true in all states. Funds can also be transferred by means of a loan or gift anytime.

There are many different types of entities that are useful for asset protection. The purpose of this chapter is to provide an introduction to the three primary types of business entities that are useful for asset protection purposes: Corporations, LLLPs and LLCs. Sole proprietorships and General Partnerships are not useful for asset protection purposes. There are several other types of business entities that may be useful, but we rarely use them so they have been omitted.

UNDERSTANDING CORPORATIONS

WHAT IS A CORPORATION?

A corporation is an artificial entity, separate and distinct entity apart from its shareholders. It is basically a child that is born in a Secretary of State's office, having its own rights apart from its controllers, but it also has responsibilities to its mother, the State.



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Although a corporation is separate and distinct from its members, shareholders, Directors or Officers, it is a separate entity that can act only through its members, Officers or agents and cannot have knowledge or belief of any subject independent of the knowledge or belief of its people.

Therefore, a shareholder as a holder of shares of share in the corporation is not in legal consideration or danger. In other words, the owner is not responsible for the corporation's misfortunes.

A corporation is a citizen in the state wherein it was created and does not cease to be a citizen of the state wherein it was born (or domiciled) by engaging in business or acquiring property in another state. Since corporations are solely creatures of statutory law, their powers are derived from the constitution and laws of the state in which they were incorporated. As an artificial person, a corporation is considered to have its domicile in the state where it is incorporated and the place where it has statutory presence. When the corporation functions in a different place, the site of its resident agent is sometimes called its statutory domicile.

The existence of a corporation is not affected by the death or bankruptcy of a shareholder, officer or director. It has a continuous existence and is immortal, as long as, it complies with the annual requirements of the state where it is incorporated. Once brought to life, this entity has most of the rights and privileges that a person has. A corporation can own and operate businesses, hire employees, buy and sell goods and services, make contracts, rent office space, have checking and savings accounts, maintain retirement plans for its employees and can sue and be sued.

Although the corporation is a legal person with rights of its own, a corporation cannot walk, talk, think or act for itself. It cannot market its products, nor can it perform any of the physical tasks required to operate a business. The owner and those hired to work within the structure of the corporation do all of this.

The shareholders are the owners of the corporation and the ultimate authority. A corporation can have one or more shareholders. Shareholders can hold

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meetings at any time to overrule a policy by the board of Directors or an action taken by an officer. The Directors guide the corporation and manage the corporation. The board meets periodically and mandates how the Officers are to proceed in running the company. The Officers are in charge of running the corporation on a day to day basis. Most states only require a president, treasurer and a secretary. One person can hold all three positions in a one person corporation. Hence, it is possible for one person to be the shareholder, director, president, treasurer and secretary.

Types of Corporations

There are many different types of corporations. The following is a list of the major different types of corporations:

- *Public and Private*: A public corporation is one created by the state for political purposes and acts as an agency in the administration of civil government, generally with a particular territory or subdivision of the state, and usually is invested for that purpose with subordinate and local powers of legislation; such as a county, city, town or school district. These are sometimes called political corporations. Private corporations are those founded by and composed of private individuals, for private purposes, as distinguished from governmental purposes and having no political or governmental franchises or duties.

- *Profit and Non-Profit*: For profit corporations are all general business corporations that have the intent of making money during the year. Non-profit corporations are set up for the public's benefit and include clubs, associations, foundations, and schools, charitable and religious organizations. The Officers of a non-profit corporation may or may not get paid a salary, but such corporations may never distribute any surplus funds to Directors or members.

- *Closely Held and Publicly Held*: A corporation is owned by its shareholders. Based on the number of shareholders and the market that exists for those shares, a corporation will fall into one of two broad categories. A closely held corporation is generally a corporation with only a few shareholders. Typically, there are fewer than 50 individual shareholders and the shares are sold privately. Conversely, a publicly held corporation has numerous shareholders and the shares are generally traded on open markets like the New York Share Exchange.

- *Aggregate and Sole*: A sole corporation consists of one person only, with the exception of successors in some situations, who are incorporated by law in order to give them some legal capacities and advantages,

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particularly that of perpetuity, which in their natural persons they could not have had A corporation aggregate is assembled by a number of individuals vested with corporate powers; and a corporation as the word is used in general and popular legal speech, and as defined at the head of this title, means corporate aggregate.

- *Domestic and Foreign*: With reference to the laws and the courts of any given state, a domestic corporation is one created by, or organized under the laws of that state. A foreign corporation, on the other hand, is one created by or under, the laws of another state, government or country.
- *Closed and Open*: A closed corporation is one in which the Directors and Officers have the power to fill vacancies without allowing the general body of shareholders any choice or vote in their election. An open corporation is one in which all the members or corporations have a vote in the election of the Directors and other Officers.
- *Subsidiary and Parent*: A Subsidiary corporation is one in which another corporation (called the Parent Corporation) owns at least a majority of the shares, and thus has control.

ARE CORPORATIONS USEFUL?

The primary purposes for choosing to use a corporation as an entity are: to limit liability, to reduce taxes and raise capital.

LIABILITY PROTECTION:

Only a Nevada Corporations can provide liability protection for everyone involved with its operation. From the investor or shareholder to the Officers, corporate liability stops with the Nevada corporation. Any corporate activities that are not fraudulent in nature will not adversely affect the personal lives of any corporate participants. This is not true with all other corporations in other states.

Unlike a sole proprietorship or even a partnership, a Nevada corporation can accumulate debt without ever making its Officers, Directors or shareholders responsible for the repayment of that debt. If a Nevada corporation becomes involved in a lawsuit, the verdict will only affect the Nevada corporation directly. Negative ramifications from a corporate lawsuit in Nevada will never impose on the personal belongings of shareholders or personnel unless the suit in question is proven to have fraudulent intent. Possible dangers a corporation can protect you from include but are not limited to:

- A lawsuit by business partners

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- A professional malpractice lawsuit
- A major damage suit for injury around your home or business
- A tax audit and a large IRS assessment
- A costly uninsured motor vehicle accident
- Unanticipated medical bills
- A divorce
- A suit for defamation of character

Nevada Corporations are therefore used in the business world today primarily for liability protection. Applying the underlined liability protection, Nevada corporations offer to prospective investment scenarios can be quite favorable for all parties. Investors are comforted because their potential loss is limited only to the amount of money invested and no more. Shareholders and other members of the Nevada Corporation are happy because their personal risk factors are diminished**.** Also, keep in mind:

- There is about a 50% chance you will someday divorce, according to the US Census Bureau in 2002.

- 550,000 businesses will start up this year. Within two years, over 180,000 of those businesses will no longer exist; within four years, another 95,000 will not be operating.

- Based on the previous statistic, there is roughly a 50% chance you will fail if you have been in business less than five years. What liabilities will you have? What assets do you pan on losing? What assets do you least want to lose?

- Over 15 million civil lawsuits were filed in 1999, which is one lawsuit for every 18 people in the US.

- Business owners have an estimated one in four change of being involved in a lawsuit in the next two years.

- It can easily cost you $50,000 to $100,000 to defend against even a frivolous lawsuit.

- Awards of over $1 million are not at all uncommon in cases today.

TAX SAVINGS:
Tax benefits offered by the corporate structure outweigh any other business entities. Many of the tax benefits available to corporations can be multiplied by integrating smart strategies that can help individuals avoid high taxes and take

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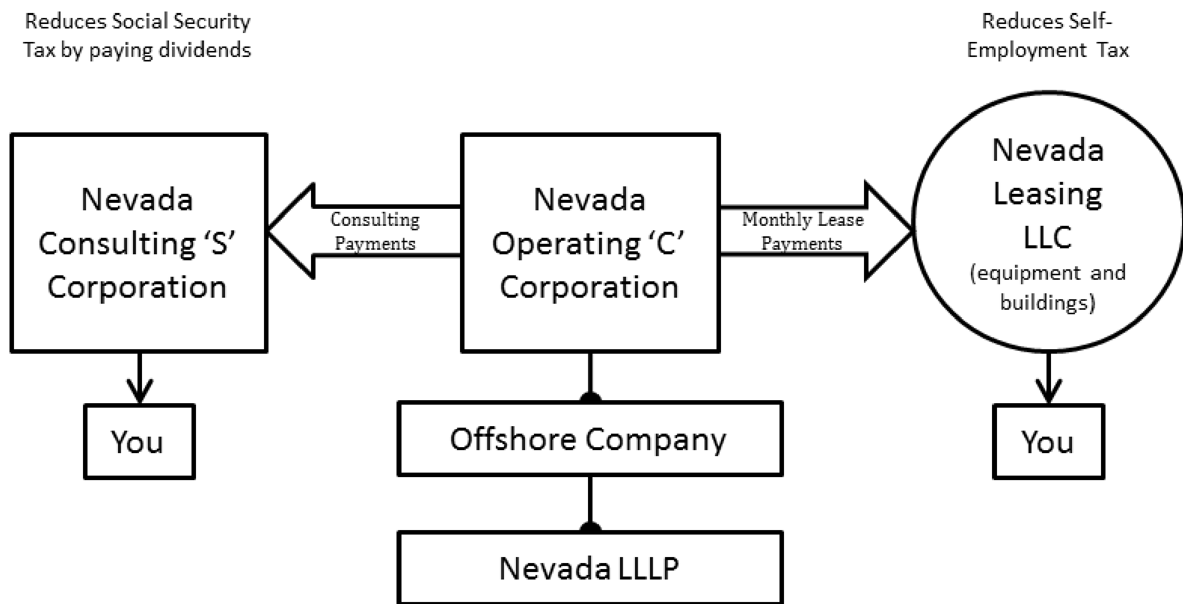
advantage of these unique vehicles as well. Corporations have a lower federal tax rate compared to individual rates. There has never been a better time to incorporate!

Example of Tax Savings

Charging off income against a 'C' corporation for both tax reduction and limiting liabilities for Officers and Directors.

In the above example Officers have limited liability or no involvement. Income is drawn out on the right through leasing back assets and income on the left is drawn out by Officers through billable commissions using an 'S' corporation so that the owners can take advantage of the wages/dividends mix. The 'C' corporation retains the net income at the low 15% tax level and if correctly set up separate tax advantages are allowed for all entities.



RAISING CAPITAL:

The corporation is a superior structure to employ to raise capital for a business project. Corporations allow investors an opportunity to participate in the profitability and growth of a business without having to participate in the day-to-day workings of the business. Through the sale of share to investors, a corporation is able to raise capital at all phases of its life cycle. This process can be kept simple by limiting the number of investors involved. But if a corporation

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is planning to raise large amounts of capital and solicit many potential investors, the rule and regulations can become quite stringent.

Corporate Taxation

The IRS classifies corporations for tax purposes. The primary classifications are C corporations and S corporations. Professional corporations are taxed at higher rates. Non-profit corporations may be taxed unless they are approved as charities via 28 USC. sec. 501(c)(3) or one of several other statutory authorities for charitable exemptions. The following is a concise analysis of the fundamentals you need to know about S, C and professional corporations.

Corporations as taxable entities:

C Corporation: Taxed at Separate tax rates

Advantages:

- Lower Tax Brackets
- Fiscal Year Planning
- 100% of Medical, Dental, Vision Deductions
- Section 179 Deductions on Equipment for the Business (currently $100,000)
- Meals, Travel, Lodging, Entertainment
- Life, Insurance, Disability Insurance
- Pension Plans

Disadvantages:

- Separate tax return requirements with a possibility of double taxation
- Minutes, Meetings and Resolutions can be new and cumbersome

S Corporation: Considered a pass through entity for federal taxes

Advantages:

- Avoids double taxation
- Not subject to personal holdings tax or accumulated earnings tax
- Profits and losses flow through to individual shareholders. Losses can offset income in the current year

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- No corporate tax on liquidation or sale of corporate assets

Disadvantages:

- Shareholders are subject to tax on income (even if funds are not distributed)
- Limited to 75 shareholders
- Generally only persons or select trusts may be shareholders
- Shareholders must be revealed to the IRS
- Must be a calendar year taxpayer
- Limited fringe benefits

Professional or Service Corporations: Required in many states for service professionals (i.e. physicians, dentists, architects, attorneys, et cetera)

Taxation requirements:

C Corporations

- Required to file a Form 1120 regardless of the amount of income or loss. It must file even if it stops conducting business.
- Required to make estimated tax payments
- Tax Rates:
    - $0 to $50,000 15%
    - $50,001 to $75,000 25%
    - $ 75,001 to $100,000 34%
    - $100,001 to $335,000 39%
    - $335,001 to $10,000,000 34%

Professional Service Corporations

- Required to file a Form 1120 regardless of the amount of income or loss. It must file even if it stops conducting business

It Is Perfectly Legal to Take Steps to Lower Your Taxes

Courts have ruled time and time again that people can plan their affairs so as to pay the minimum amount of tax possible and that the taxpayer may use any legal means to do so. Tax laws have become so convoluted with twists and turns that many taxpayers miss opportunities that can reduce and/or defer taxes. Americans ventured into the world of offshore havens a little late in the game, nearly forty years after the rest of the world had discovered and capitalized on the numerous legal and financial advantages of moving liquid assets, or the control of them out of the country. The fact is that it is both legal and quite simple to shelter one's liquid assets offshore.

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- Required to make estimated tax payments
- Tax Rates— 35% flat tax rate

S Corporations

- Required to file a Form 1120S regardless of the amount of income or loss. It must file even if it stops conducting business. An S corporation's profit or loss is passed through to shareholders and reported on the shareholder's Schedule K-1
- Filing deadline: By the 15th day of March
- Estimated tax: Shareholders are responsible for payment of estimated tax on their tax returns

Why Incorporate in Nevada?

People from all over the world are choosing Nevada as their preferred state in which to incorporate. Nevada's popularity is attributed to its many pro-business stances including no state tax. Unlike most states in this country, Nevada supports tax breaks that contribute to its healthy thriving economic infrastructures. Nevada simply refuses to tax the income of its corporations or its state citizens on their income. There are many more reasons why Nevada is the state of choice.

Here's a short list of reasons why to incorporate in Nevada:

- Stronger asset protection
- Difficult to pierce the corporate veil
- Officers & Directors are not liable to company or shareholders except for breaches of fiduciary duty resulting in fraud or intentional torts
- Minimal corporate rules & regulations
- No public listing of shareholders
- Nominee Officers
- No state taxes or franchise fees
- No minimum capitalization
- No information to the IRS

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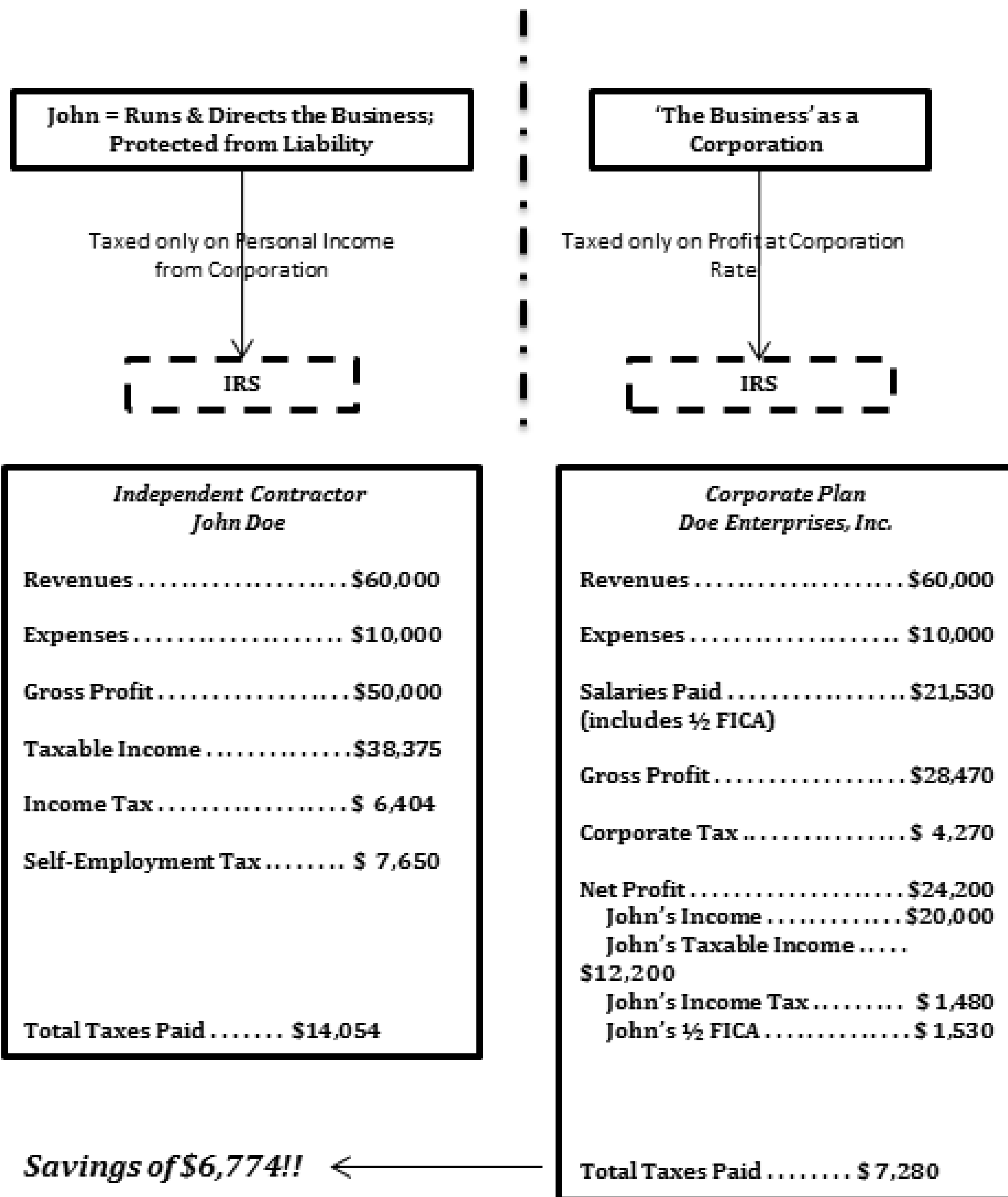
- Nevada has its own Business Court
- Nevada has abolished joint and several liability



LIABILITY PROTECTION

Although most states in America have adopted corporate statutes limiting the liability of corporate Officers, Directors and shareholders, not all states actually

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support their own policies. California, for example, is commonly known as a state that continues to pierce the corporate veil or taps into individual assets regardless of their state statutes. Nevada, on the other hand, is committed to protecting individuals' rights. Nevada's consistent case law upholds its policies and specifically protects all corporate representatives, not just the shareholders. Anyone affiliated with the Nevada corporation is therefore free from personal liability in all cases except fraud. This means that the corporation can be sued, file bankruptcy, and be involved in other unfortunate activities and not personally jeopardize the assets of its agents or representatives.

I have a Louisiana Corporation and my name was posted everywhere. My Nevada Corp offers me privacy because the owners aren't public knowledge. It makes me feel safer and the state fees are the cheapest in the nation.

Piercing the Corporate Veil:

Piercing the corporate veil is a metaphor for ignoring the limited liability of a corporation or other entity. When a corporate veil is pierced by a judicial order, the corporation's creditors can go after the assets of its shareholders**.** In order to determine whether the corporate veil shall be pierced most courts use the alter ego or instrumentality rule which is a test with three elements: 1) unity of interest and ownership, 2) wrongful conduct and 3) proximate cause of damages. The first prong is the primary element and it asks the question: When is a corporation not a corporation?" The answer: When it's an alter-ego; when one person owns and controls it and there is a unity of interest to the extent that upholding the corporate fiction would sanction fraud or promote injustice.

To determine if a corporation has become the alter ego of the shareholder the courts look to numerous kinds of circumstantial evidence such as:

- The company is so grossly undercapitalized that fraud is likely
- Failure to observe corporate formalities
- Intermingling of assets of the corporation and of the shareholder
- Treatment by an individual of the assets of the corporation as his/her own
- Failure to pay dividends
- Siphoning of corporate funds by the dominant shareholder
- Non-functioning corporate Officers and/or Directors

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- Concealment or misrepresentation of members
- Absence of corporate records
- Was the corporation being used as a façade for dominant shareholder personal dealings
- Failure to maintain arm's length relationships with related entities
- Manipulation of assets or liabilities to concentrate the assets or liabilities
- Other factors the court finds relevant

In most states the presence of one or more of these factors may be enough to pierce the corporate veil. Nevada has the toughest statutes, making it extremely difficult to hold corporate actors responsible for the liabilities of the corporation they serve. Some people think this is the number one reason to incorporate in Nevada. It is certainly a very good reason, although we may beg to differ with regard to it being the decisive factor on its own.

The Alter Ego test in Nevada is set forth below:

NRS 78.747: Liability of shareholder, director or officer for debt or liability of corporation.

1. Except as otherwise provided by specific statute, no shareholder, director or officer of a corporation is individually liable for a debt or liability of the corporation, unless the shareholder, director or officer acts as the alter ego of the corporation.
2. A shareholder, director or officer acts as the alter ego of a corporation if:
3. The corporation is influenced and governed by the shareholder, director or officer;
4. There is such unity of interest and ownership that the corporation and the shareholder, director or officer are inseparable from each other; and
5. Adherence to the corporate fiction of a separate entity would sanction fraud or promote a manifest injustice.
6. The question of whether a shareholder, director or officer acts as the alter ego of a corporation must be determined by the court as a matter of law.

The burden of proof is on the plaintiff who seeks to pierce the veil, and a failure to prove result in the veil not being pierced. A classic Nevada case illustrates just how seriously Nevada courts protect against piercing of the corporate veil

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and why it has only been pierced on very rare occasions in this state. The case is Rowland v. Lepire[63],. In this case, the plaintiff wanted to hold the respondent liable for damages caused by the respondent's corporation. On the face of things it was clearly a case of alter-ego. Personal funds were commingled with the corporation's funds and fundamental corporate formalities were not maintained. The Nevada Supreme Court has made clear that unless the plaintiff is able to meet the burden of proving that the financial setup of the corporation is only a sham and caused an injustice, the veil is unlikely to be pierced. Mr. Lepire was saved by Nevada's powerful liability protection.

In combination with the privacy of control and ownership Nevada offers, this feature allows for the development of many powerful strategies because it is very difficult for someone outside of the corporation to determine just how many owners and operators are actually involved. Most strategies, however, are not developed around one-man corporate structures, making this point irrelevant to most situations. But it's worth examining in greater detail for one-person structures.

If a corporation exists only to serve your singular purposes and you are the sole owner, then it is you and you are it and you can be held responsible for its liabilities. If you have perused the section on Privacy, however, you are aware that ownership of a Nevada corporation can be very difficult for anyone on the outside to ascertain. If you have begun to follow the advice of Nelson Rockefeller 'The secret to success is to own nothing but control everything.', then you can see how the alter ego label simply cannot be properly applied to your situation because you would never be the sole owner of a Nevada corporation and there cannot therefore be a unity of interest. Ideally, disclosure of the private ownership of the corporation could be handled with the owners' consent with video, off the public record.

Most every state in the US has adopted corporate statutes that limit the liability of any of a corporation's representatives, Officers, Directors and shareholders. Nevada has gone one step further, very specifically spelling out in its statutes that all corporate representatives are free from personal liability with regard to corporate activities except in cases of fraud or willful criminal activity. This means that the corporation can be sued, file bankruptcy and be involved in other unfortunate activities and not jeopardize the personal assets of its agents or representatives.

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The Liability of Officers and Directors to the Corporation and to the Shareholders

Piercing the corporate veil pertains to holding shareholders, Officers and Directors personally accountable for the debts and liabilities of the corporation. However, another concern is that of the liability of Directors and Officers for negligence or breach of fiduciary duties to the shareholders and the corporation. Once again, Nevada provides significant protection to Officers and Directors of corporations. They are only liable for intentional misconduct or fraud that results in a breach of fiduciary duty:[64]

1. Directors and Officers shall exercise their powers in good faith and with a view to the interests of the corporation.
2. In performing their respective duties, Directors and Officers are entitled to rely on information, opinions, reports, books of account or statements, including financial statements and other financial data, which are prepared or presented by:
    a. One or more Directors, Officers or employees of the corporation reasonably believed to be reliable and competent in the matters prepared or presented;
    b. Counsel, public accountants, financial advisers, valuation advisers, investment bankers or other persons as to matters reasonably believed to be within the preparer's or presenter's professional or expert competence; or
    c. A committee on which the director or officer relying thereon does not serve, established in accordance with NRS 78.125, as to matters within the committee's designated authority and matters on which the committee is reasonably believed to merit confidence,
    d. But a director or officer is not entitled to rely on such information, opinions, and reports, books of account or statements if he has knowledge concerning the matter in question that would cause reliance thereon to be unwarranted.
3. Directors and Officers, in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation.
4. Directors and Officers, in exercising their respective powers with a view to the interests of the corporation, may consider:

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   a. The interests of the corporation's employees, suppliers, creditors and customers;

   b. The economy of the State and Nation;

   c. The interests of the community and of society; and

   d. The long-term as well as short-term interests of the corporation and its shareholders, including the possibility that these interests may be best served by the continued independence of the corporation.

5. Directors and Officers are not required to consider the effect of a proposed corporate action upon any particular group having an interest in the corporation as a dominant factor.

6. The provisions of subsections 4 and 5 do not create or authorize any causes of action against the corporation or its Directors or Officers.

7. Except as otherwise provided in NRS 35.230, 90.660, 91.250, 452.200, 452.270, 668.045 and 694A.030, or unless the articles of incorporation or an amendment thereto, in each case filed on or after October 1, 2003, provide for greater individual liability, a director or officer is not individually liable to the corporation or its shareholders or creditors for any damages as a result of any act or failure to act in his capacity as a director or officer unless it is proven that:

   a. His act or failure to act constituted a breach of his fiduciary duties as a director or officer; and

   b. His breach of those duties involved intentional misconduct, fraud or a knowing violation of law.

In 1987, the Nevada Legislature passed a law that permits corporations to place provisions in their articles of incorporation that may eliminate the personal liability of Officers and Directors to the shareholders of Nevada Corporations.

The law contained in NRS[65] reads as follows:

> *The articles of incorporation may also contain: A provision eliminating or limiting the personal liability of a director or officer to the corporation or its shareholders for damages for breach of fiduciary duty as a director or officer, but such provision must not remove or limit the liability of a director or officer for: Acts or omissions which involve intentional misconduct, fraud or a knowing violation of law.*

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This is one of the main reasons many large Fortune 500 companies are domiciled in Nevada. Nevada's laws protecting Officers and Directors remain among the most thorough and comprehensive in the country.

Indemnification

Nevada corporation code allows for the indemnification of all Officers, Directors, employees, shareholders, or agents of a corporation for all actions that they take on behalf of the corporation that they had reasonable cause to believe was legal. This indemnification can include any and all civil, criminal and administrative action. If you are sued, it is nice to know that as an officer of a Nevada corporation, you may be indemnified by the Board. NRS 78.7502 spells out discretionary and mandatory indemnification of those who act on behalf of a Nevada corporation:

NRS 78.7502**:** Discretionary and mandatory indemnification of Officers, Directors, employees and agents: General provisions.

1. A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, except an action by or in the right of the corporation, by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with the action, suit or proceeding if he acted in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and that, with respect to any criminal action or proceeding, he had reasonable cause to believe that his conduct was unlawful.

2. A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in

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its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including amounts paid in settlement and attorneys' fees actually and reasonably incurred by him in connection with the defense or settlement of the action or suit if he acted in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation. Indemnification may not be made for any claim, issue or matter as to which such a person has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable to the corporation or for amounts paid in settlement to the corporation, unless and only to the extent that the court in which the action or suit was brought or other court of competent jurisdiction determines upon application that in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

3. To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding, or in defense of any claim, issue or matter therein, the corporation shall indemnify him against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense.

Joint and Several Liability Abolished

Another significant recent change in Nevada law is the abolishment of joint and several liability. Joint and several liability means that should a judgment be entered against several defendants, they will each assume equal liability for the full amount of the judgment, regardless of their relative fault in causing the damages. Nevada requires the court to assign a percentage of faults to each defendant, from zero to one hundred with the total equal to 100 percent. Every defendant found liable is required to pay a share of the total judgment no greater than his/her fault. Under traditional joint and several liability, a creditor could seize the entire judgment from one defendant. If that defendant only owed a portion, it would then be up to him or her to collect reimbursement from the other codefendants.

Jurisdiction and Choice of Law

If a corporation is sued, the initiator of the suit is often required by the rules of civil procedure in most jurisdictions to file the civil action in the state where the defendant is domiciled. This is where it becomes important to have your

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corporation set up in a state such as Nevada that has taken a stand to eliminate the personal liability of a corporation's participants. Defendants are also entitled to file motions for a change in forum to their home state on the grounds that it would be more convenient and in the interests of judicial economy.

It is also a good practice that all contractual business done with parties who are outside of the State of Nevada should contain a choice of jurisdiction and a choice of law provision specifying that disputes will be litigated in Nevada if possible, and if not, the laws of the State of Nevada shall be the laws applied to the case even if the case is heard in another state. Most courts will honor a contractual choice of law clause. However, sometimes they will only do so in part. For example, if an agent had an auto accident out of state in a company car. The tort law of the other state may apply, but if there was an issue with piercing the corporate veil, Nevada law may apply.

The doctrine of choice of law requires that the internal affairs, voting, management, et cetera, and the liability of the owners for an LLC or corporation will be governed by the state where the business is formed, and not the state where it does business. Many states follow the choice of law doctrine and will look to the state of incorporation as the appropriate choice of law pertaining to piercing the corporate veil. Hence, even if the case is heard in another state a motion can be filed that issues pertaining to shareholder, director or officer liability be determined by the laws of the state of Nevada because that was the state of incorporation.

Practical Uses of Nevada Corporations

There are two primary reasons I recommend Nevada Corporations for use as privacy corporations and as tax saving corporations. Generally speaking, these are two different concepts and cannot be mixed.

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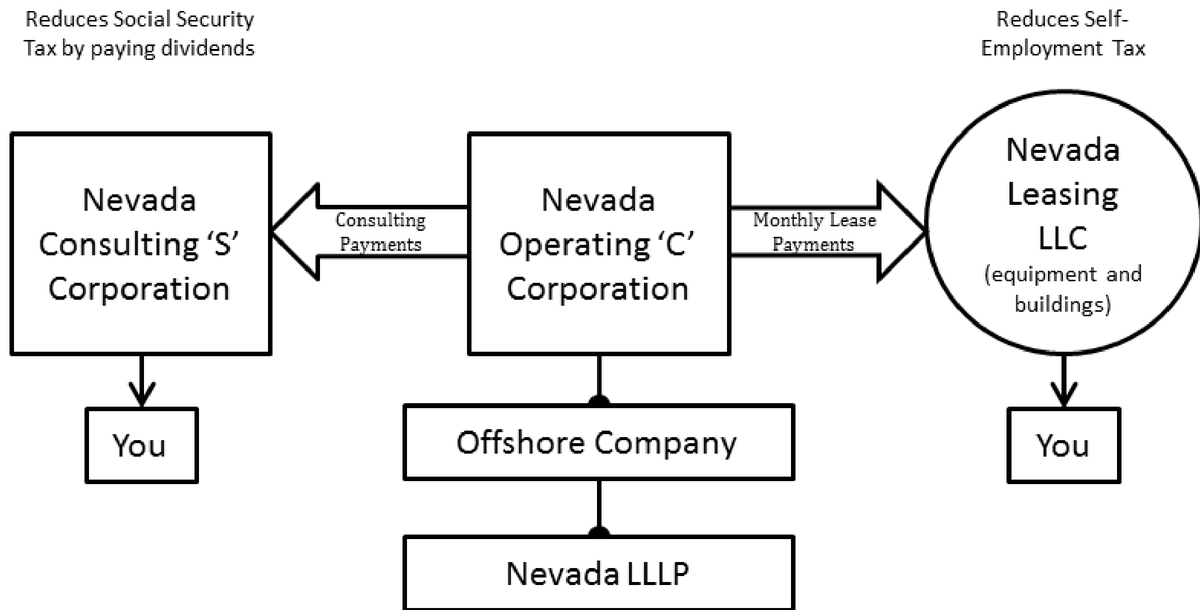
Example of Tax Savings

Charging off income against a 'C' corporation for both tax reduction and limiting liabilities for Officers and Directors.

In the previous example Officers have limited liability or no involvement at all and can appoint a nominee within their firm to stand in place of President with a pre-signed letter of resignation.

Income is drawn out on the right through leasing back assets and income on the left is drawn out by Officers through billable commissions or fees using an 'S' corporation so that the owners can take advantage of the wages/dividends mix. The 'C' corporation retains the net income at the low 15% tax level and if correctly set up separate tax advantages are allowed for all entities.



To further enhance a lower tax bracket a <u>personal</u> 'C' corporation can be utilized alongside the personal 'S' corporation. This strategy avoids the apportionment connection of the 'C' corporate entities sharing the 15% low tax rate on the first $50,000 of net taxable profits.

Again, the main operating 'C' corporation is owned by the LLLP which in turn is owned by the WPT.

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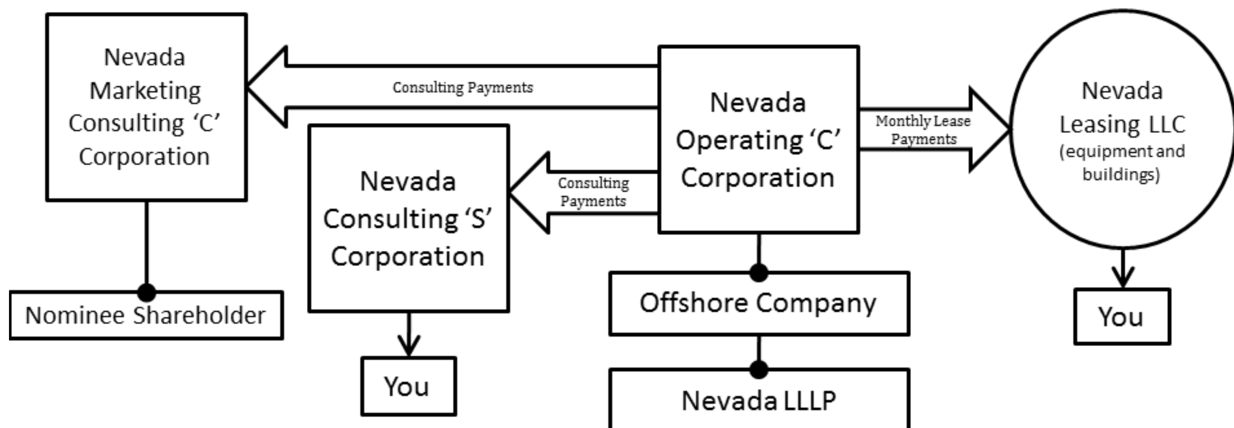
All other entities are owned as follows:



The advantages are as follows:

- Operating 'C' corporation has a tax base rate of 15% on the first $50,000 of net taxable income.
- A Nevada marketing/consulting (second 'C' corporation) company can be owned so that a second tax base rate of 15% on the first $50,000 of the net taxable income can be allowed thereby doubling up the low tax rate available to 'C' entities. Many corporations hold what is known as a 'signed off' stock certificate to accomplish a future takeover of the company with all of its holdings and such a corporation provides asset protection and invisibility to litigators and creditors since that ownership remains concealed.
- A Nevada consulting 'S' corporation personally owned will allow for the wage and dividend mix on all income to the owners thereby reducing the 15.3% social security or self-employment taxes on income that would otherwise be taxed.
- A Nevada leasing LLC personally owned will allow all lease payments to flow from the operating 'C' corporation to the owners thereby eliminating the 15.3% social security or self-employment taxes on income that would otherwise be taxed.

In summary, asset protection, limited liability and tax savings are achieved with such a creative strategy.

The second 'C' corporation cannot be owned by either the Nevada 'S' corporation or the Nevada LLC on the grounds that two 'C' corporations both get their own set of lower tax brackets and are deemed to be directly or indirectly controlled

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by one owner. You must apportion the lower tax brackets between commonly controlled corporations. For purposes of determining if corporations are commonly controlled, you have to look to see if the same individuals directly or indirectly commonly own more than 50% of both entities. You have to consider the attribution rules in determining this which states that husband and wife, ancestors, descendants and their controlled entities are considered as one owner for purposes of this test. The owner of the operating company could own 49% of an additional 'C' corporation while at the same time utilize the charging order rules in Nevada of two or more owners under NRS 78.435 1.2(a)1(c).

Regarding the employee benefit plans, the same rules apply. If they are considered commonly controlled, then you have to offer benefits to all employees of both companies. The 'second' corporation can have a solo insurance plans, a medical and dental deduction plan, and other CEO benefit plans and not be forced to involve employees in any sharing program in the operating company. Under the current rules an owner must share these benefits with their employees however, structuring in this manner offers huge tax savings and benefits to the operating owner if structured correctly. In other words, this allows for the doubling up effect.

Nevada Management and Consulting Companies

The operating company is the company through which you do business with the general public. It could be a hardware store, a doctor's office, a law firm or any kind of business. Anonymity of ownership is irrelevant because your ownership of the operating company is probably already known or impossible to conceal. Moreover, if you are a tradesman, plumber, electrician, et cetera, or a professional person, doctor, dentist, lawyer, et cetera, it will be assumed you are an owner or partner. In addition, you will have personal malpractice liability.

Nevada management, consulting, lending and lease-back companies are means of equity stripping your operating company so that it contains minimal assets. These firms may be anonymous and can be used to transfer funds for services rendered to the operating company as independent contractors. These companies should also be kept lean. Profits should be used for: (1) salaries, benefits and pensions for you and your family members, (2) loans to your COP Entities or other businesses as needed, (3) exempt investment or purchase of exempt property or (4) transferred to an offshore IBC, LLC or APT.

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Salaries, benefits, IRAs and pension plans can be obtained from your operating company as well as from the consulting and/or management corporation. In addition, a 'C' corporation can retain up to $50,000.00 per year and pay a corporate tax at the rate of 15% with no self-employment tax or FICA tax payments required. However, you must be aware of the rules of single ownership sharing.

The Nevada Tax Savings Corporation

Anyone operating their business as a sole proprietor or a General Partnership should incorporate to obtain limited liability protection and tax reduction opportunities. A Nevada corporation should be used in the state where your business's main office is located. This can be done by filing as a foreign corporation. Foreign filing may be economically impractical in a few states such as California, due to exorbitantly high filing and renewal fees. Of course, whether the fees are even relevant will depend upon the size and profitability of your business.

The primary reasons you want to use a Nevada Corporation are because Nevada has no corporate or personal income tax and it has superior limited liability protection.

The primary reasons you want to use a Nevada Corporation is because Nevada has no corporate or personal income tax and it has superior limited liability protection. Please note: there are attorneys who will advise you that your state probably will not use the liability laws of the state of Nevada. This argument fails for a couple of reasons.

First, you may be able to force many employee, client and vendor lawsuits to use Nevada law by means of the use of choice of law and choice of jurisdiction clauses in your contracts.

Second, most states will defer to the laws of the state of incorporation regarding corporate administrative matters. A state may allow a plaintiff to pierce the veil for failure to follow corporate administrative procedures. To determine whether your corporation failed to perform statutory or administrative procedures a judge should look to the statutory and administrative codes of the state of incorporation because a corporation is bound to follow statutory and the administrative procedural laws of the state where it was incorporated. Consequently, Nevada is the best state to incorporate in because the Nevada Revised Statutes in Chapter 78, as well as the administrative code, have the least red tape of any state regarding corporate administrative obligations that are

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required by law. Therefore, it will be much harder to pierce the corporate veil using Nevada corporate law than the laws of other states that usually carry numerous and burdensome corporate rules and regulations.

Corporations are Flexible Vehicles for any Business Venture

The important thing to remember is that when you control a Nevada corporation, it exists as a separate entity or person apart from you. You can live anywhere you choose, in any state or country. The corporation alone is restricted by the requirements of the state in which it resides. You will find that Nevada is ideal for corporations in many respects as it is the only state providing maximum benefits to protect both corporations and the people who control them.

Where Should I Incorporate?

People from all over the world are choosing Nevada as their preferred state in which to incorporate. Nevada's popularity is attributed to its many pro-business stances including NO STATE TAX! Unlike most states in this country, Nevada supports tax breaks that contribute to its healthy thriving economic infrastructures. Nevada simply refuses to tax the income of its corporations or its state citizens on their income. Imagine that!

Nevada Corporations can own Property Anywhere in the World

A Nevada corporation can own property in ANY state by setting up an LLC in that state without having to register or be incorporated in that state. According to this rule, when owning or buying real estate, you are exempt from incorporating or qualifying to do business in your home state. Using this strategy, the Nevada corporation will actually purchase the property or assume responsibility for it protecting you from unwanted liability. When you are ready to sell the property, simply sell the LLC or whole corporation. To determine what corporate activities are exempt from qualifying to do business as a foreign corporation and those that are not, just contact the Secretary of State where you live to find out specific guidelines. It is wise to incorporate in the state that offers you the best of everything regardless of where your current business resides.

One Person Can Hold All Offices in Nevada

In Nevada, the Board of Directors only requires one individual compose the entire membership of its elite group. More than one may serve on the Board of Directors if they meet the criteria, but this attribute allows one individual total control over a corporation's direction. The majority of corporations have

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anywhere from two to one hundred Directors serving on the board. Directors are appointed by the shareholders based upon their abilities to represent the corporation's best interests.

Knowing What it is Will Help You Decide How to Use it

Business Corporation: One formed for the purpose of transacting business in the broadest sense of the term, including not only trade and commerce, but manufacturing, mining, banking, insurance, transportation and practically every form of commercial or industrial activity where the purpose of the organization is profit; contrasted with religious, charitable, education and other like organizations, which are sometimes grouped in the statutory law of a state under the general designation of corporations not for profit.

Offshore Corporation: This is a corporation, which is incorporated in a foreign country.

Offshore LLC: This is a Limited Liability Company, which is incorporated in a foreign country with privacy options.

Public Service Corporations: The operations of public service corporations serve the needs of the general public or are conducive to the comfort and convenience of an entire community such as railroads, gas companies, water companies and electric light companies. The business of such companies is said to be 'affected with a public interest', and for that reason they are subject to legislative regulation and control to a greater extent than corporations not of this character.

Spiritual Corporations: The members of this type of corporation are entirely spiritual persons, and incorporated as such for the furtherance of religion and perpetuating the rights of a particular religion or church.

Trading Corporations: A commercial corporation engaged in buying and selling. The word trading is much narrower in scope than business as applied to corporations and though a trading corporation is a business corporation, there are many business corporations that are not trading companies.

What is Double Taxation?

After the Tax Reform Act of 1986 went into effect, many corporations elected to move from 'C' Corporations to 'S' Corporations. An 'S' Corporation allows the profits and losses of the corporation to flow through the corporation to the shareholders without corporate tax consequences, thus eliminating the

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possibility of double taxation. Double taxation occurs when the corporation has profits that are taxed and then those profits are later pad out to shareholders in the form of dividends that are then taxed again as personal income. This problem can quite easily be dealt with by eliminating or deferring profits through good, solid money management. 'S' Corporations are also generally limited to calendar year ends. This can be changed if you can prove that you have a good business reason to make your year-end during a different month. All 'C' Corporations, on the other hand can elect to make the year-end date in any month.

'S' Corporations are often used to lower the payroll taxes of a corporation. This is done by having the owners of the corporation pay themselves a low salary and a high dividend. This lowers payroll taxes because there are no payroll taxes on dividends. This strategy can be used to a limited extent, but if the proportions of these two types of distributions are way out of line, the IRS will reapportion them and you will be stuck with the outcome.

'C' Corporation versus 'S' Corporation

There is much discussion in the corporate world about which type of corporation is best. There are two primary forms of profit corporations with respect to federal taxation, the 'C' Corporation and the subchapter 'S' Corporation. Both of these forms of incorporation have their advantages in different circumstances and should be examined based on your specific situation.

Beware of 'S' Corporations

The critical factor, when considering which type of corporation to use, is personal privacy. Every corporation that elects subchapter S will be giving notice to the IRS and the state in which it operates the name and address of the person or persons who own the corporate stock. Due to the fact that all profits and losses flow through to the owners, there is no privacy in this corporate structure. If you are incorporated in Nevada and set up a 'C' Corporation,

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ownership is completely hidden if you so desire. Remember that Nevada is the only state that does not require that the owners be listed on any state records.

BYLAWS

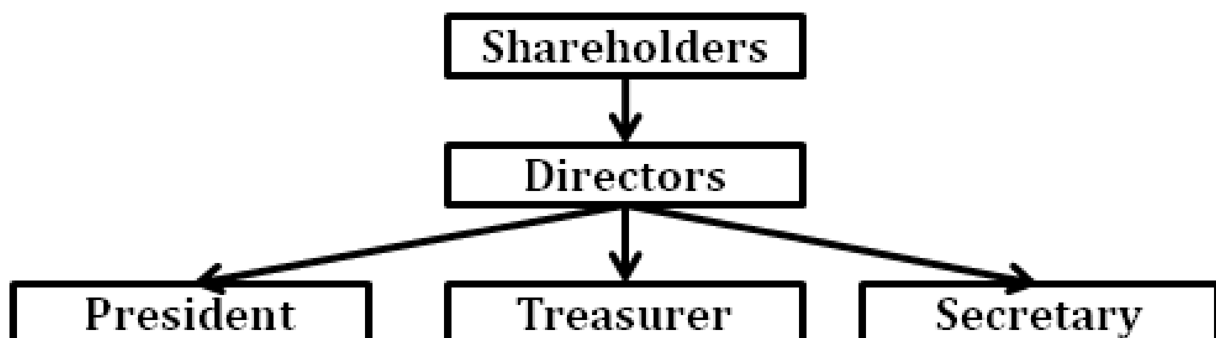
Corporate bylaws set out the specific structure of a corporation. They are created and adopted by the Board of Directors of the corporation. They set forth the procedure of operations for the corporate representatives and they set forth the roles and responsibilities of each party related to the corporation.

Any specific boundaries that you wish the corporation, or its representatives, to be bound by can be set forth in the corporate bylaws. The bylaws give the corporation an operating framework to work within. Any matters not specifically adopted in the bylaws of the corporation should then be set forth in the corporate resolutions and approved meeting minutes. Every child should have guidelines and boundaries which is essentially what the bylaws represent for the corporation.

Bylaws created and adopted by the Board of Directors establish the specific structure and operating procedures of a corporation. Specific restrictions on Officers responsibilities should be established within the bylaws setting boundaries and guidelines providing a framework of duties. Any matters that need to be addressed after the bylaws have been created should be included in the form of a resolution.

DIRECTORS SET THE VISION & OFFICERS CARRY OUT THE VISION

Responsibilities of the Officers are to carry out the vision of the Board of Directors. Officers plan more short-term goals to progress toward overall long-term direction of the corporation. The Officers implementing day to day policies determine immediate management issues of the corporation. The Directors are not generally involved in the day to day activities of the corporation, but in



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Nevada corporations, one person often assumes more than one or all roles in a corporation. Documentation is important to keep in mind when wearing many hats. To learn more about the roles within the corporate structure, see Title 7 of the Nevada Revised Statutes, available on the internet. These statues establish the guidelines every corporation must follow according to Nevada law. Reviewing this information will expand your knowledge of how a corporation is regulated and legitimized by the state of Nevada.

Corporate Officers Roles & Responsibilities

Understanding the roles of shareholders, Directors, Officers and employees is crucial to the structure of any corporation. Individuals interested in privacy need to pay close attention to their changing roles. Depending on the business at hand or function to be carried out by a particular office, your role will change often. For example, one week you may be the Vice President and the next week you may be Chairman of the Board of Directors to have the authority to sign an important resolution. Every position in the corporate structure is different and usually corresponds with specific corporate tasks and responsibilities.

The corporate hierarchy basically starts off with a new corporate entity often referred to as a shell. Those with the most control and power within the corporate structure reside at the top of the hierarchy – the shareholders or owners of the corporation. The shareholders are responsible for appointing themselves to the Board of Directors to establish corporate policy and direction.

Special Role of the Vice President

Those concerned with privacy should take advantage of Nevada's brief requirements regarding the Initial and Annual List of Officers filing. As discussed earlier, one person may assume position of all Officers involved in the corporation, but one added element to protect your identity might include nominating another person to sign on the list while in actuality, you still control everything. The key to this procedure is the special role the Vice President plays in the corporate structure.

Whereas other states require all Officers to sign the List of Officers, Nevada conveniently excludes the Vice President from the List of Officers. This fact might seem irrelevant, but suppose you assumed the role of the Vice President, which is not a matter of public record in Nevada, and elected an Officer nominee to sign on as the rest of the Officers that is eventually filed with the state. The Officer nominee in this case would have no control over the corporation, as

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stipulated in the corporate bylaws and contract agreement, but is rather just a hired name to protect your anonymity. The role of Vice President is indeed special and can help you lower your public profile!

The Vice President, who would not have a public profile, then handles all of the corporate affairs. Remember the bylaws state that the Vice President fills in when the President is absent. If the Directors and Officers are hired to simply represent the corporation on public records, then the President is quite absent on a day to day basis then the Vice President is therefore given the authority to act in his/her place without having to re-file the list until the following year.

To further protect the owners of the corporation from any involvement from their contracted Officers and Directors, amendments to the articles and bylaws could be added to strip those individuals of any corporate power whatsoever.

Considering that most people incorporate in Nevada to preserve their privacy, it is no surprise that the special role of the Vice President is used so frequently in corporations today. Vice Presidents have the unique advantage of being able to maintain complete control over corporate affairs while keeping their anonymity as well. Nevada state provisions make this special role possible. The List of Officers does not require the Vice President to disclose his/her name for the public record. Instead, only the offices of the President, Secretary, Treasurer and Director are required. In Nevada, all of the remaining positions may be filled with the name of just one individual. Those who want to lower their public profile can take advantage of this fact by electing an Officer nominee to represent the corporation on the SOSN's public records.

THE CORPORATION IS NOT YOUR CORPORATION: YOUR ROLE AS CONTROLLER

The best way to think about your affiliation with the corporation is that it is an entity separate and distinct from yourself. In other words, you really do not have a corporation at all. Refer to the corporation as "the entity I work for", "the

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entity I contract with" or "the entity I do business with". Also, DO NOT refer to the entity as "MY Corporation". Keep this in mind at all times. Do not disclose any information about your control or ownership of the corporation to individuals with which you are affiliated. Separate yourself from the corporate identity. Be sure to be conscious of the language you use around colleagues and business acquaintances to reflect the relationship to the corporation that you prefer. Too often many people, because of ignorance or ego, share their personal affairs with others. But exposing information may hurt you in the future to keep your affiliation with the corporation private.

It is Important to File the Annual List of Officers

Once your Articles of Incorporation have been filed with the SOSN, you have 60 days from the incorporation date to file the Initial List of Officers with the state. The cost to files this list is $125 annually. Filing the Annual List of Officers on time is required to keep the corporation in good standing with the state. If not filed, the corporation will go into default and eventually, revoked status. Late fees are assessed and attached to the normal fees so be sure to file on time!

This List asks for the names of the President, Secretary, Treasurer and Directors of the corporation. The state also requires that accurate addresses for the Officers be listed as well. Remember that the List of Officers is a matter of public record**.** Anyone requesting information can access this public information very easily. Note: the List of Officers does not require the Vice President's name. Individuals who wish to remain anonymous can assume the Vice Presidency and still maintain complete control.

Officer Nominee Services

Electing an Officer Nominee Does NOT Mean You Give up Control.

Owners of Nevada corporations who wish to remain out of the spotlight should consider using an Officer nominee. Corporate owners can achieve something unattainable otherwise: total privacy and anonymity protection. Choosing an Officer nominee does not mean that you are surrendering any portion of your corporation or your control over it. This process is a simple business traction wherein you are essentially hiring someone to sign on the public list so you do not have to. The nominee will sign on as corporate Officers (including President, Secretary, Treasurer and Director) with the exception of the Vice President.

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SHARES

A corporation is owned by its shareholders or stockholders who make a contribution to the corporation in the form of cash, notes, tangible/intangible property and anything else of value, in a free exchange for share of ownership or stock in proportion to the accepted value of property they contributed. Multiple owners usually agree on the value of any non-cash contributions, but single owners merely put in what they need to operate and re-issue 100% of the issued shares in return.

SHAREHOLDERS OWN THE CORPORATION

DIRECTORS

Directors implement the policies of the corporation's quarterly and yearly agendas. They establish financial policies according to the corporation's established goals. Directors elect annual Officers who will serve the roles of President, Vice President, Secretary, and Treasurer of the corporation. Their decisions are made based on the experience and expertise of the potential Officers.

NEVADA DOES NOT REQUIRE THE CORPORATION TO ISSUE SHARES

As a value of a corporation rises, so does the value of each share of the corporation's stock. Any additional assets placed into a corporation by its owners will increase the value of the shares in the corporation. The value of a corporation's shares are determined by calculating the difference between a corporation's assets and liabilities, plus the value of the good will of the corporation, divided by the number of issued share of the corporation.

Every corporation is authorized to issue a certain number of shares of stock. This authorized number of shares is set in the Articles of Incorporation. Of those authorized shares, the corporation's Directors decide how many shares they will issue. A corporation could have 75,000 shares authorized and only have issued one share of stock. That one share of stock would then comprise the entire ownership of the corporation. A corporation's ownership is only based on those shares of the corporation's stock that have been issued.

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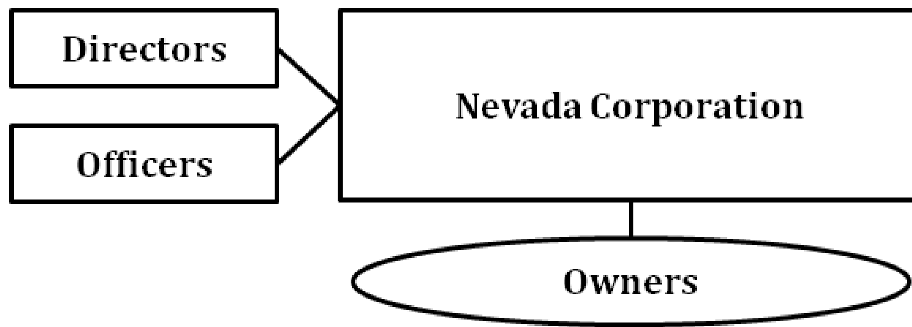
A corporation in Nevada may choose to delay the issuance of stocks. If your corporation files as an S-Corporation with the IRS, you can only issue one class of stock to individuals only. If you issue stocks as a C-Corporation, you may elect categories of stocks to issue. These categories include preferred, common, voting, non-voting, et cetera and are referred to as classes (Class A, B, C, and D).

NEVADA DOES NOT WANT TO KNOW WHO YOU ARE



Since the state of Nevada allows the ownership of a corporation to remain private, finding out just who the owners are can be quite difficult to discover. Usually the IRS or an individual filing suit against a corporation will try to track down a corporation's owner through the registered agent's office. Depending on their loyalty to their clients, the registered agent may acknowledge that they represent the corporation in question but give no documentation on file about the corporation unless served with a court order. Even under legal obligation, however, information in the registered agent's files is scarce; it usually includes only a copy of the Articles of Incorporation, the bylaws and Stock Ledger Statement. Of the three documents on file, the only one that could establish a paper trail would be the Stock Ledger Statement because it indicates where the share certificates are held.

Once on the paper trail to find the corporate record book, it is only a matter of time before the Stock Ledger is found reflecting to whom the shares of stock have been issued unless you take preventative measures. If the shares have never been issued, no names will appear, but if they catch up with the corporate record book, it is assumed that they have basically caught up with the owner of the corporation. If the shares are not filled out, but are in your possession, a judge will most likely rule that you are indeed the owner of the corporation. You can however, place your shares into a Nevada Limited Liability Limited Partnership (LLLP) held by a Wealth Protection Trust (WPT) with complete privacy.

One way to avoid inquiry is to instruct your registered agent to notify you as soon as possible after initial contact is made by investigators. With sufficient

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notice, the corporate record book, which has the Stock Ledger in it, could be moved, transferred or sent somewhere else. It is then the responsibility of the owner of that corporation to get the registered agent the new address of where the Stock Ledger is kept in the form of a new Stock Ledger Statement.

This strategy works well if your registered agent is willing to warn you and look out for your interests. Timing is everything. Although this procedure may seem unconventional, there is nothing wrong with wanting to preserve your privacy. Actually, the mere fact that you must take such measures is indicative of society's commentary itself with regard to individual privacy. There is nothing wrong with you packaging up and sending your corporate records to your brother, hopefully a long way away, under the expectation that you will continue to work on corporate matters even on a short vacation. By the time the government, or anyone else, for that matter, gets busy and goes to see your brother 5 states away, they will find that the corporate record book is gone once again. At some point even the government abandons such a silly pursuit. Regardless, keep in mind that a new Stock Ledger Statement needs to be sent to your registered agent to update the file.

When to Issue Shares

When people set up a corporation, they often wonder when the best time to issue shares is. Unfortunately, no one knows exactly what the future holds. Lawsuits, IRS investigations or serious illness could seriously jeopardize one's assets risking all you own. In most cases there are advantages to withholding the issuance of a corporation's shares until you are confronted with a situation that may require proof of ownership. This is not possible when filing for a sub-chapter "S" status with the IRS. Form 2553 requests who the owners are of the corporation.

Select the Right Type of Shares for Your Specific Situation

Voting shares allow the holder of the shares a voting right for each share. Control of the corporation resides in these shares regardless of the number of non-voting shares that may have been issued. So it is possible to dilute the earnings of a corporation without diluting control. Sometimes this is referred to as Class A Share.

Non-voting shares: These types of shares allow holders to a portion of the profits, but they represent no control over operations. This stock may be used when someone wants to invest money into the corporation for a portion of the

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profits without gaining any control over the corporation. This is sometimes called Class B Shares.

Preferred shares: Preferred shareholders re paid out of the profits first before any dividends are paid to the common shareholders. Preferred shares hold a more secure return than just non-voting shares.

Cumulative or Convertible preferred shares**:** These are preferred shares that allow the owners to receive a dividend and allow the owner to convert those shares into common shares and participate in the profits of the company.

One of the Few State Requirements: Have an Annual Shareholders Meeting

Nevada law requires that all corporations have annual shareholders and Directors meetings. Aside from annual fees, this is the only other requirement imposed by the state to keep the corporation in good standing.

You will receive a record book from Bridgeway Financial Corporation that will provide you with sets of shareholders and Directors meeting minutes designed to fit the needs of your corporation. Regardless, any meeting minutes can be modified or amended easily to meet any eventuality.

Before we get into the minutes themselves, keep in mind that every shareholder and every Director must first be notified by a formal notice or agree to waive their right to formal notice. This is also a requirement for each year before the meeting occurs. Section 78.370 of the Nevada Revised Statutes (NRS) provides as follows:

> *A copy of the notice must be delivered personally, mailed postage prepaid or given as provided in subsection 8 to each shareholder of record entitled to vote at the meeting not less than 10 or more than 60 days before the meeting. If mailed, it must be directed to the shareholder at his address as it appears upon the records of the corporation, and upon the mailing of any such notice the service thereof is complete, and the time of the notice begins to run from the date upon which the notice is deposited in the mail for transmission to the shareholder. Personal delivery of any such notice to any Officer of a corporation or association, to any member of a limited-liability company managed by its members, to any manager of a limited-liability company managed by mangers, to any general partner of a partnership or to any trustee of a trust constitutes delivery of the notice to the corporation, association, limited-liability company, partnership or trust.*

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If one person controls the corporation and fills all the positions of the corporation, they can sign a simple waiver of notice to satisfy this requirement.

The annual shareholders meeting usually involves a review of the past year's financial situation, a report by the chairman of the board about the plans for the coming year, and a vote for the next year's Board of Directors.

The Annual Meeting of the Board of Directors generally involves a review of the past year, special reports by Directors, nominations of next year's Officers and a plan for the next year's growth.

Essentially we have covered all of the territory that is required to be documented annually for the corporation. Specifics can be entered into the meeting minutes if someone chooses to do so, but this essentially is all you need. Your corporate records can be kept simple; they just need to be done!

The meeting minutes prepared by Bridgeway Financial Corporation will not show the location where your meeting took place. As an option to a corporation, the corporation can decide to have its annual meeting absolutely anywhere. Many corporations send their Directors all over the country or all over the world. They get paid to attend; they get a vacation, and they get taken care of. It is used as a type of fringe benefit for serving the corporation, as generally they are not highly paid to serve as a Director. This is all a direct expense of the corporation.

Corporate Formation, Structure and Formalities

We will now take a look at how the components of a corporation come together. As we move through this section, keep in mind that there is a specific process to setting up a corporation. Proper corporate documentation is very important at all times. This section will take you through the steps needed to bring a corporation to life. From its birth and the early stages to its perpetual existence, a corporation's life course is determined early on. Keep in mind that every document contributes to a specific part of the corporation's unique identity and provides evidence of its existence.

What are Corporate Formalities?

Corporate formalities are really the most important procedures to keep up with what managing operations. Formalities are basically documents that show the thought process of that corporation. Corporate resolutions, documentation, notes and meeting minutes legitimize the activities conducted. All significant decisions need to be documented and maintained in the record or minute book.

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In a court situation, accurate documentation proves that the procedures were followed; proper methods show the thought process involved in actions. Proper paperwork helps maintain the corporate identity and preserve its intentions.

Beware of the Three Part Alter Ego Test

To emphasize just how serious Nevada is about protecting the liability of individuals, let's look at an excerpt from Stephen Presser's 1994 edition of Piercing the Corporate Veil. Presser's book explains the difficulties lawyers often face when attempting to pierce the corporate veil in Nevada. Most difficulties in piercing the veil are attributed to Nevada's three-part test that must be proved in order to assert that the corporation is merely an alter ego of its representatives.

The three requirements are:

1. The corporation must be influenced and governed by the person asserted to be the alter ego.
2. There must be such a unity of interest that one is inseparable from another.
3. The facts must be such that adherence to the corporate fiction of a separate entity would, under the circumstances, sanction fraud or promote injustice.

The burden of proof for this test rests with the plaintiff. All three parts of the test must be proven to succeed; failure to prove any one of the three requirements results in failure to pierce the veil. Nevada clearly is dedicated to protecting your security and privacy as individuals. Presser's book covers statutes and case law from every state in the country amounting to almost 900 pages – only seven of which discuss Nevada's alter ego doctrine.

Simple Resolutions Can Replace Time Consuming Meetings

You will find that for your own corporate protections and security; you may want to have a lot of paperwork in your corporate record books. It is a good idea to document all that you wish to accomplish and what you have accomplished. Sometimes you may find that it pays to wait until the end of the year to reconstruct some things and see what it is that you want in those records to cover you if anyone comes into verify your records.

There are two basic ways to manage unordinary functions of a corporation with documentation. One way is through meeting minutes that are similar in format to the First Meeting Minutes. Directors and shareholders can have minutes of a

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meeting that took place with someone who took notes as the meeting progressed. This is usually the role of the Secretary. The other alternative, which is a more simple way of corporate record management, is to create a document called a Corporation Resolution.

With a corporate resolution, a physical meeting does not have to actually take place. Each Director or shareholder must sign this resolution acknowledging that a certain proposal is approved. By signing the resolution, each shareholder or Director is putting his or her approval on it. Corporate resolutions are the easiest way to manage and document a corporation's actions as opposed to someone taking notes and typing out an entire meeting that has taken place. Just put the specifics of what you are trying to accomplish. Both Directors and shareholders can handle corporate affairs through resolutions, but generally it is the Directors who hold the meetings that decide changes to significant business of a corporation.

Corporate Resolutions

There is a general format from which all resolutions can be formatted. You will see this format in every resolution. There are three or more parts to every resolution. The format begins with the Directors announcing the resolution. In the middle of every resolution is the body that tells what actually is being proposed and what the decision is. The last part is the date of the resolution and the signatures of the Directors or the shareholders. Corporate resolutions are usually typed but they can also be handwritten or kept in a computer.

One thing to keep in mind with your corporate resolutions or meeting minutes is that they can be created after the fact. It is simple practice of creating corporate resolutions once something has occurred. This way you know why it was created, exactly who did it, when it happened and what actually occurred. Then you can go back and create the necessary paperwork that describes your approval of the activity that took place. Postdate these resolutions as long as something did take place. In a legal situation, corporations that did not properly keep good records all of the time suddenly find that their corporations are full of records just in the nick of time.

Resolutions do not have to be as formally written as we have put them together, but you want to be sure that your focus is clear and concise so as not to confuse anyone who may read it. The attorneys have put their language, often referred to as legalese, into far too many things today.

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Personal Effects

The movement of personal effects into the corporation also requires a corporate resolution, which identifies the specific personal effects to be transferred.

Vehicle Transfers to a Corporation

A corporate resolution is necessary to accomplish the transfer of a vehicle into the corporation. Keep in mind that the transfer of a vehicle to the corporation makes a public announcement about your ownership of the corporation. To avoid the publicity, simply sell the vehicle to the corporation. The process is the same as if you were to purchase the vehicle from a third party. Simply present the title transfer and proceed to re-register the vehicle into the new owner's name, which will be the corporation. As in all such transfers, there are other considerations, such as the fact that a corporate vehicle is far more expensive to insure. Look before you leap! For privacy, a vehicle could be transferred into that states LLC that be owned by the offshore company.

Authorization to Transfer Vehicle

This resolution would be used when you are taking a vehicle that is currently owned in your name and placing it under your corporate umbrella. This document, once completed is then taken to the Department of Motor Vehicles (DMV) in your state and is used for the new title and registration. Every state has a little different procedure for accomplishing this task. The thing to do first is to call the DMV in your home state and see what they require to transfer a vehicle into your corporation's name. Please note that in this document you are identifying yourself as a shareholder; this is significant to some individuals but not to others. It depends upon how important it is to get your vehicle into your corporation. With a transfer accomplished in this way, you will avoid any taxes because this is not considered a sale. The other alternative is to just sell the car to the corporation for a set price. In this situation, you will incur some registration fees and taxes.

If you are considering the registration of your vehicle in Nevada, it costs less annually than most other states and it is quite easy to justify why you would be

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in your state with a Nevada licensed vehicle – especially a corporate car. Authorities would need to prove that you do not take trips to Nevada or that you do not live there part-time for you to have any problem with a Nevada licensed vehicle.

Incidentally, there are many advantages to being a Nevada resident. There are some requirements that you must be living in Nevada for six weeks to have a Nevada residency, but there are not many ways of documenting this fact. You can take it from utility bills. For example, if you are a roommate of someone living in an apartment, the utilities might not be in your name. You can go to the DMV in Nevada and get a driver's license the day you arrive in Nevada. You do not even need a mailing address. You will need an address for the driver's license, so you will need to have somewhere that you can use as an address or just pick an address somewhere in Nevada and use that.

Authorize Leasing

This resolution can be drafted as an authorization to lease an item; it could be a car, a computer, a small airplane or anything of value that the corporation wants to lease to you or the other way around. In many cases it can be beneficial to lease something that you own to the corporation as a way of getting funds to yourself as opposed to taking a direct salary. Your overall tax liability is going to be lower on rental income than on ordinary income.

In addition, there is no social security, unemployment or workman's compensation tax to be paid on rental income. If you are a contractor and you receive $1,000 per month, why not figure out a way to rent a computer and office equipment for $1,000 per month and eliminate the extra tax dollars?

Leasing can also be useful to alleviate the risk of losing valuables in the event of a lawsuit. For example, although your personal valuables are shielded from corporate litigation, corporate valuables such as computers, heavy equipment, et cetera may be at risk if they are property of the corporation at the time of an engaged lawsuit. Multiple corporation strategies can help distribute corporate assets so that if your corporation is attacked and must forfeit its possessions, not all valuables will be lost.

Personal Holding Corporations

In this final section, we will discuss some of the traps of the corporate lifestyle. Personal holding corporations are entities that are taxed an additional 28% on top of regular tax on undistributed income within the corporation. That is a

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significant amount of tax if you consider 15% federal corporate income and California state income tax of 8-9%. Add 28% tax on your corporate income and your tax rate goes through the roof.

What is a personal holding corporation? It is any corporation in which one or both of the next criteria are present:

The first criterion: In the last half of its tax year, five or fewer shareholders own more than 50% of the value of outstanding stock. If you have six people and the shares are broken down equally, that will qualify and you will not be considered a personal holding corporation.

The second criterion is any corporation in which 60% of the corporation's undistributed adjusted gross income is personal holding corporation income, or passive income. This criterion was created by the IRS to stop people from dumping investments and other income producing property into a corporation to create tax savings. In other words, it is a penalty due to the tax savings available to the corporate structure (15% of the first $50,000 of profit).

There are some creative ways to work around the personal holding corporation status. Passive income is referred to as interest, dividends and rental income, or income not actively earned by personal effort. A corporation will be labeled a holding corporation if at least 60% of the corporation's income is passive. One means of avoiding this label is to have six people own stock of the corporation.

There are many advantages to having friends whom you can trust and work with. This allows you to pass the ownership of a corporation around quickly and quietly. It is important that you make good and trusted contacts when you are playing these games. You should feel confident enough in the loyalty of those people to give them control over every cent of everything you own.

It is Common for New Businesses to Struggle for the First few Years

Another way to avoid the designation of personal holding corporation is to not make any profit. Work the corporation carefully so that at the end of the year there are no profits showing. Better yet, perhaps at the end of the year the corporation will actually be in debt. This appearance keeps the IRS auditors out, especially on small and newer corporations because they expect to see some losses in the first few years of operation. Also consider that you should limit passive income to 59% or lower and have the balance be active income in one

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way or another. Sell goods and services that add up to 41% or more of the corporation's total income.

34% Flat Tax on Personal Service Corporations

If at all possible, you want to avoid the area of personal service corporations. The IRS assesses a 34% flat tax on personal service corporation profits. Personal service corporations are composed of lawyers, accountants and consultants.

There are two tests to 'qualify' as personal service corporation. Those tests are:

1. The Functional Test: To 'qualify' as a personal service corporation, the principle activities are health care, law, engineering, architecture, accounting, actuarial sciences, performing arts and consulting. Capital is not a material income producing factor in these businesses. The services are intangible, rather than selling goods to other entities.

2. The Ownership Test: To 'qualify' under this test, if all stock is owned by current or related employees, their estates or their heirs, the designation will be made. This is an easy test to get around. Simply sell some or all of the stock. If individuals who are not employees or are not involved in the corporation own 10% of the stock of the corporation, then you can get around the personal service corporation status and avoid the 34% corporate tax.

Avoid Intangible Services

How do we avoid personal service corporation designation? Simply consider selling something instead of doing exclusively consulting, law or other services. Sell a book, sell some kind of product, do seminars or do something that is more tangible. The other simple way is to not own the corporation. Sell part of the corporation to non-employees. If you produce income, but you are not an employee, perhaps a contractor for the corporation, then you are not a personal service corporation. It is imperative that you think very clearly and carefully about your relationship to the corporation. In an audit situation, the IRS may come in and declare that you are an employee, rather than a contractor. If you have not covered all of the angles, you may be designated a personal service corporation. Keep someone in mind that you can trust to help you who can own a percentage of the corporation.

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SELL SOMETHING REAL

When working with the corporation where personal service or personal holding corporation status could be a problem, you can see the value of a few trustworthy friends. To avoid personal service corporation designation, the owners have to be non-employees and non-relatives of the employees or their heirs, so have someone who is not in your immediate family come in and helps out. In-laws are a good example of people to use with your corporation strategy because they are not immediate family members. Always have somebody around you to assist you if you need to move ownership quickly out of your own name.

WHICH HAT WILL YOU WEAR TODAY?

Your relationship to the corporation is, in essence, a role-playing game. Your role, can and more than likely will change often, depending on the business at hand. Think of your role similar to the one James Garner played in that old television show, “the Rockford Files”. In the show, the main character would have to assume professional titles in order to solve the case. One day he would be the President of a major company and the next day he would present himself as a humble phone repairman. Essentially, you must wear many different hats. One day you will need to be the corporation’s business manager to carry out certain duties; on another day you might need to present yourself as the President of the corporation to close a big sale. Many different situations will arise requiring you to play different roles within the corporate structure.

Flexibility is the key when taking on these different rolls and tasks. Occasionally in order to sign a certain document, you will need to be an elected Officer. It is important that you maintain accurate and sufficient documentation to support the changes in your role when required. Making contracts and getting into business dealings should be simple procedures if carried out correctly. Simply

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choose a title that will best facilitate a task and document the changes within your corporate records.

The more you practice this game in your day to day corporate routine, the easier it will be to verify your relationship to the corporation should you become involved in litigation. Preserving your distance from the corporation will help prevent anyone from piercing the corporate veil. Remember, you are not the corporation. If you are ever called onto a witness stand, you need to have your relationship to the corporation very clear in your mind so that you do not hesitate to answer the questions accurately.

Why Maintain Documentation?

Corporate formalities generally revolve around a practice called piercing the corporate veil. Piercing the corporate veil refers to a procedure practiced during litigation when lawyers attempt to make corporate representatives personally responsible for corporate matters. Although it is virtually impossible to pierce the corporate veil in Nevada, in many states improperly handled corporate formalities are justification enough to hold individuals accountable!

Keeping Proper Records is Key!

Maintaining complete and accurate documentation and carrying out the business formalities without fail is imperative to protect the corporate shell from being broken. Formalities are procedures of documentation that track the corporation's thought process. More specifically, the formalities may be in the form of corporate resolutions, amendments, notes and meeting minutes of conducted activities.

Assembling these forms within the corporate record book legitimizes the business conducted by validating their appropriateness, authenticity and authorization. Such formalities protect the corporation from a procedure called piercing the corporate veil. Strong documentation gives the corporation a shield to defend the individuals behind it. In many states, improperly handled corporate formalities justify piercing the corporate veil. Although Nevada's policies relinquish individuals from personal liability, except in cases of fraud, many states look forward to such an opportunity.

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Keep Accurate Records on Compensation Received for Services Rendered

Your current home state business can divert profits that are being taxed and direct those profits into Nevada where there will be no state income taxes. For example, if your home state business sells widgets, why not have your Nevada Corporation purchase the widgets from your present supplier, mark it up to near retail and sell it to your home state business to be resold. You have just left all of the profit from the sale of the widgets in tax free Nevada, and reduced or eliminated any home state tax that you will have to pay. Now, if this strategy is implemented in a high tax state like California, your overall tax savings can be substantial.

Minimize Risk by Keeping Proper Records of Corporate Decisions

When you begin using these corporate strategies, be sure that you do not let your record keeping slip. Be sure to plan out your corporate objectives and create the proper documentation. Whether in the form of resolutions, promissory notes or contracts, make certain that they are properly prepared and recorded in the corporate record. Do not risk all that you have developed with the corporation when a judge decides that poor record keeping is not characteristic of a fully functioning corporation and therefore pierces the corporate veil.

Creating the proper documentation may be time consume, but in most situations will be worth its weight in gold. If you are working with multiple corporation strategies, make sure that invoices and contracts are drawn up for their interaction in increments. Do not make huge transactions at one time in the year and think that they constitute a strong business relationship between the two entities. Lump sum deposits are bright red flags to the IRS. When you begin to use your corporation be sure to manage records consistently.

Innocent until Proven Guilty in Nevada

The burden of proof for this test rests with the plaintiff. All three parts to the test must be proven to succeed; failure to prove any one of the three requirements results in failure to pierce the veil. Nevada clearly is dedicated to protecting your security and privacy as individuals**.** Again Presser's book covers statues and case law from every state in the country amounting to almost 900 pages – only seven of which discuss Nevada's alter ego doctrine.

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What's in it for me?

Although it is necessary to separate yourself from the corporation, the fact is that any endeavor requires money. Unless you have a slew of investors anxious to hand their money over, chances are that the startup capital will have to come from your pocket. But remember that your generosity alone is not enough to justify giving the corporation a large sum of money to get started. In this day and age, compensation is the key word. What's in it for me? This should be the question on your mind because it will be the question on the minds of others should your motivation for giving the money ever be questioned.

One way to give the corporation money is through a capital contribution in exchange for stock. Although this would not be ideal for those wanting anonymity, this is a simple and effective way to fund a corporation. The value of the stock increases with the additional capital formation. Startup capital is non-taxable income, so invest your money wisely.

Liability Protection!

Corporations provide liability protection for everyone involved with its operation. From the investor or shareholder to the Officers, corporate liability stops with the corporation. Any corporate activities that are not fraudulent in nature will not adversely affect the personal lives of any corporate participants.

Unlike sole proprietorship or even a partnership, a corporation can accumulate debt without ever making its Officers, Directors or shareholders responsible for the repayment of that debt. If a corporation becomes involved in a lawsuit, the verdict will only affect the corporation directly. Negative ramifications from a corporate lawsuit in Nevada will never impose on the personal belongings of shareholders or personnel unless the suit in question is proven to have fraudulent intent.

Corporations are therefore used in the business world today primarily for liability protection. Applying the underlined liability protection corporations' offer to prospective investment scenarios can be quite favorable for all parties. Investors are comforted because their potential loss is limited only to the amount of money invested and no more. Shareholders and other members of the corporation are happy because their personal risk factors are diminished.

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Loans are Good Vehicles to Give & Receive Money

Another way to move money around is to give a loan to the corporation. In exchange for the funding you give to the corporation, the corporation provides you with a promissory note with the specific payback terms including interest acquired over time. The payback period may not be immediate; it could be seven years from the time of the loan, but be sure that the compensation is reasonable.

Corporate Perks Instead of Cash Alone

Regardless of how the transaction takes place, documentation and compensation of that exchange is the key. There must always be a legitimate business reason to support transactions between the corporation and you. But strategies can be very creative as well. For example, if you are interested in purchasing a piece of property, buying a new car, or taking a vacation, you still can, but you must act according to legitimate business reasons. Keep in mind that the items purchased will not be yours but rather you are able to access these items as an employee, agent or affiliate of the corporation. So let's say that the corporation purchases a corporate car and you, as the Vice President, carryout important duties on behalf of the business and consequently need a car to drive. Although the corporation is formally registered under the corporate name and owned by that entity, you are allowed to drive the vehicle as a condition of your position with the business. You have just established a legitimate business reason to drive the corporate car. The same basic concept can be applied to taking a vacation by having a meeting during your trip or buying a piece of property for the corporation's future investment. The more creative you are the better, but you need accurate and complete documentation to support these decisions.

Privacy Strategies

Privacy is the one feature Nevada offers that no other state in the country can. Together with tax savings and liability protection, privacy is the number one reason why people from all over the world incorporate in Nevada. It is Nevada's bold tax policy that allows it to take a stand on privacy and remain out of the information network with the IRS. Because Nevada does not have anything to gain from a relationship with IRS, they have no need for sensitive information about the infrastructure of corporations. For these reasons, Nevada is the only state in the country that does not require disclosure of information about corporate ownership, stock or capital. Individuals are therefore allowed to keep very low profiles about business matters and personal assets. Also remember that although Nevada does want to know the names and addresses for the

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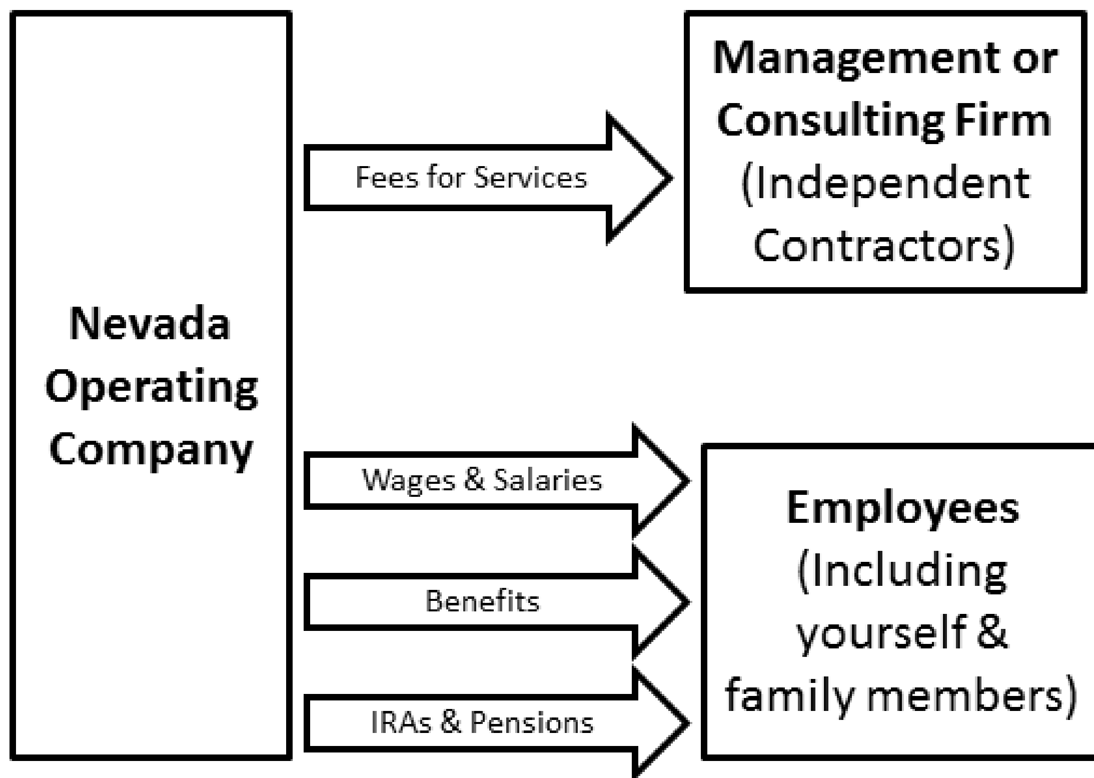
President, Secretary, Treasurer and Directors of a corporation, they leave the Vice Presidency open; this is where Officer Nominee Services come into play.



Nevada is a tax free state; there are no corporate or personal income taxes. This is significant when you compare it to states like California where you will pay 9.3% on $100,000 or $9,300. By the use of some simple strategies, that $9,300 can remain in your pocket.

So, how does it work? Unfortunately, everyone will not be able to use these strategies. These strategies work with the self-employed and those who manage their own businesses – small and large. The first step is to establish a Nevada Corporation to work with your current non-Nevada corporation. Then you will want to place the Nevada Corporation in a position where it will be providing service to your non-Nevada corporation. Your Nevada Corporation can act as a supplier, consultant, marketing service provider, advertising service provider, management company or financier. All of these businesses could provide a service to your current home state corporation.

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Realistic Strategic Alliances are Helpful in Legitimizing Transactions

Let's say that your California business is doing quite well and that you are ending up with $100,000 in new profits per year; $9,300 is being paid to the state for taxes. Now let's say that you create a Nevada company that is going to provide marketing services to your California business. This new business just so happens to charge about $100,000 for the marketing expertise that it is providing your California business. You have now successfully taken all of your profit that would have been left in your California business and taxed in the amount of $9,300 and moved it into Nevada. You have just legally saved yourself a bundle.

This situation can be modified to fit just about any type of business situation. With businesses going into bankruptcy every day, you need to take aggressive measures for the survival of your business.

Give Yourself a 0% Interest Loan

One option with the low taxed retained earnings in the corporation would be to give you an interest free loan. A Nevada corporation can make a loan to one of its corporate Officers with no interest attached and the Officer would not need to consider these funds as income. This strategy is a good way for you to personally have the use of corporate funds without paying any personal income tax on the funds. Check with our CPA or a tax attorney when using this separately.

Judgment Proofing Yourself and the Corporation

Judgment proofing your corporation means protecting assets within the corporate structure. Judgment proofing can be for the corporation or for you; the strategies can involve multiple corporations or just one. Lawsuits destroy businesses and lives every day. As the number of emerging lawyers exceeds demand, litigation situations will become more intense. To limit your exposure and protect your assets is no longer an option, it is a necessity.

One of the main reasons business owners choose to incorporate is to avoid the liability that his/her business activities would otherwise have on their personal assets. Within the corporate structure, personal assets are separated from the liability of the corporation, and likewise, corporate assets are protected from personal problems.

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Despite the effectiveness of the corporate vehicle, attorneys do not cease to attack. In fact, corporations are increasing targets for lawsuits. Attorneys may assume that corporations have assets and are therefore worthy of pursuit. Today, just cause is no longer a prerequisite to engage in litigation. Judgment proofing your corporation is one way to prepare for the future. Assets such as equipment and building now demand the ownership of a second entity with COPE provisions. Only in Nevada do all entities have COPE provisions.

Protect Yourself from Lawsuits

Corporations are one of the single most dynamic business structures available in an age when rules invade our personal privacy. Increasing tax laws, stringent state codes and restrictive business policies make it difficult for individuals to avoid simple mistakes that often lead to serious legal trouble. As lawsuits become more prevalent and the options available to protect personal interests decrease, you must look for shelter. Offering advantages that outweigh all other business structures, the corporation is the most secure entity in the shelter industry.

Corporations Encumbered with Debt are Not Appealing to Lawyers

Another useful strategy for judgment proofing your corporation involves encumbering your cooperation with heavy debt. The idea of this strategy is to turn your corporation into a turnip so that anyone considering a suit will find nothing to go after. To initiate this strategy, the corporation that you wish to protect borrows money from you personally or from another corporation. The objective is to bury the corporation in debt so that it is unattractive to those seeking to penetrate it. A series of loans can place the corporation at least $100,000 in debt. To secure these debts, the loan benefactors must sign a security agreement with the borrowing corporations. A security agreement is a powerful tool commonly used to secure certain assets as collateral for a loan. Security agreements solidify the agreement between the benefactor and

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recipient by stating that the assets, receivables, inventory and everything belonging to your corporation is collateral for the loans.

Best Way to Invest Without Day to Day Work

For the individual looking to raise capital for a business project, the corporate structure is superior. Corporations allow investors an opportunity to participate in the profitability and growth of a business without having to participate with the day to day workings of the business. Through the sale of stock to investors, a corporation is able to raise capital at all phases of its life cycle. This process can be kept simple by limiting the number of investors involved. But if a corporation is planning to raise large amounts of capital and solicit many potential investors, the rule and regulations can become quite stringent.

Protecting Personal Savings

If you are trying to protect money that you have in the bank, there is an important strategy, which you may want to consider. FDIC insurance has a limit of $250,000 per account for each individual bank account, despite the number of accounts held. Up until recently, you have been able to spread money out – putting money not just in different branches, but in different banks altogether. A strategy that may be used to help protect your money includes setting up one new Nevada Corporation for each $250,000 held in savings. In essence, this provides an inexpensive insurance policy. However, you may want to consider an offshore company for your entire 'mother lode' which can be insured by Lloyds of London in the Caymans for $20 million. Your funds can be invested in any kind of stocks, interest, et cetera with your income declaration remaining in your Nevada privacy corporation, which is if you earn taxable income!

Security Agreements Secure a Loan between Two Parties

Security agreements are used to secure a loan with the assets of the borrower such as a house, car or even gold. If you were making a loan to a friend, and you wanted to secure it with something they had, this would be the way to do it. Then after this was accomplished, you would want to take the next step and file a UCC-1 against the individual. A UCC-1 is a public document that goes on record in the country and/or state of the borrowing party. The UCC-1 establishes a public record that a particular individual's assets, maybe a house, car or something else, have been pledged as security for a note. You can also add specific clauses in your security agreement that can tie up a business's future value. This agreement is between two parties to encumber an asset or to show

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that something was pledged as collateral for a note. The UCC-1 becomes a public document as soon as it is filed.

Corporate Estate Planning Secure Your Estate for Your Heirs

Moving your estate into the corporation is very advantageous with Nevada corporations. The objective is to pass your estate to your family without probate and attorney's fees through the use of corporations. Many approaches to estate planning are legitimate and often effective means of preserving family estates, but when you consider the rapidly changing tax and legal world while looking to preserve a lifetime of hard-earned assets, alternatives need to be examined. During the planning of your estate you should assemble competent legal and accounting teams to coordinate proper documentation. Bridgeway Financial Corporation is such a team. Planning for the next generation is very important. There is genuine concern about changes coming that will affect the amount that is allowed to pass through estates from parents to children. Estate tax can devour about half of a family's estate and then usually attorneys, probate and court costs devour the other half, leaving little of the estate left for the actual heirs to receive. It is important that you start making plans to deal with this actual or potential problem and there are creative preventative measures to keep the government out of your pocket.

A strategy to plan for the transfer of your estate starts by transferring real estate into the corporation to protect those assets from probate and high estate taxes. Individuals who are working with a corporation with the intent of moving assets into it should start with real estate. A Deed is a document, which works in California to transfer property from the individual name into the corporation name. Some States and counties require a Quit Claim Deed.

A side issue in the transfer of real estate into a corporation revolves around the requirement of some states and counties that you show that you own the

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corporation in order to avoid transfer taxes. Whether you want to transfer such property to the corporation, therefore, depends upon the degree of visibility you want to expose in the transaction.

Whatever strategy you employ, always remember corporate formalities such as the corporate resolution authorize the corporate representative to transfer the property into the corporation and the corporation accepting the transfer of that property.

CORPORATE PLANNING & ESTATE PLANNING

Long term corporate planning is not just estate planning. Estate planning alone normally begins when one contemplates death. Such planning has tax implications and interpretations by the IRS that simply do not apply to corporate planning. If you have done your long term corporate planning, then you have successfully accomplished a dynamic feat. With your long term corporate planning, little exists for your lawyer to do. Legal expenses or taxes will not consume your estate. This is why some lawyers will not tell you how to take advantage of long term corporate planning. It is simply bad for their business. The key is – a corporation is immortal unless terminated by statute or by its corporate articles. The corporation does not cease to exist because Officers or shareholders die.

ADVANCED CORPORATE STRATEGY

Here is an example of long term corporate planning. This strategy is referred to as an Advanced Corporate Strategy. The sequence in this long-term corporate planning strategy is important.

A corporation is established called a shelf corporation. It has no assets, no liabilities; the stock from the corporation can be sold to your investors or heirs at one cent per share divided by the prorated amounts you choose depending on how you want to give it to your heirs. Since the stock has been sold to them, it is not a gift. One objective of all stock is to increase in value over a period of time. If the stock increases in value, nothing wrong, illegal, unethical or strange has occurred. Take a proxy from your shareholders, your heirs, which allow you to hold the stock even though you do not own it. The proxy may be irrevocable so that your right to vote is guaranteed. In Nevada, a proxy must be renewed every seven years. To ensure its renewal, the shareholders should give you an option to buy the shares back at the initial price of one cent per share. The option can

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be worded in such a way as to expire upon your death so it would not go through probate. They transfer your assets into the corporation.

Some of the means by which assets are transferred to the corporation include:

a.) Giving assets to the corporation as capital contribution on behalf of the shareholders. This is a gift to the shareholders, but if you are within the tax exclusion limits that is not problem ($13,000 per individual).

b.) A lifetime management contract can be drafted under which you agree to provide certain services for the corporation and the corporation agrees to provide you with a house, all living expenses plus medical care. This option is quite attractive, but you should have your lawyer draw up the contract, as the IRS likely will scrutinize the paperwork.

c.) Place assets in the corporation in exchange for a promissory note with interest payments only for a period of 10 years, and larger installments on the principle and interest after 10 years. The note will expire on your death. The note may also be a demand note that expires on your demise. So, you can transfer assets in, get some return on those assets and, before you die the note expires and the assets of the corporation end up with your heirs. You will control all of the corporate assets, but your heirs will own them before you die. No probate, no estate and no hassles! When you transfer assets to the corporation the value of its stock increases but there are no taxes assessed until such time as the corporation pays dividends or the stock is sold. In either case, you have complete control over the matter and can adequately plan in advance to legally avoid the payment of taxes.

d.) Place assets in a corporation by selling shares of non-voting common stock to yours heirs. By doing this you control all of the voting shares. Your heirs have their stock in non-voting shares and upon your death; whatever percentage you have left would then be passed to them and the voting shares would be divided among them.

Legal Business Expenses Defined

In managing an active company, it is important to be familiar with all the aspects of how a company works. Part of those management responsibilities is being familiar with business expense. Understanding expenses that are deductible and those that are not is important. By familiarizing yourself with all legal business

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expenses you can dramatically reduce your company taxes and get more personal tax free perks. Listed in the following diagram are noteworthy business expenses that would be considered perks or fringe benefits.

Refer to the following IRS publications for further information: 535 Business Expenses, 529 Miscellaneous Expenses 542 Tax Information, and Package 1120 US Corporation Income Tax Package. All of these publications can be picked up at your local IRS office, found online at http://www.irs.gov or mailed to you by calling 800-TAX-FORM.

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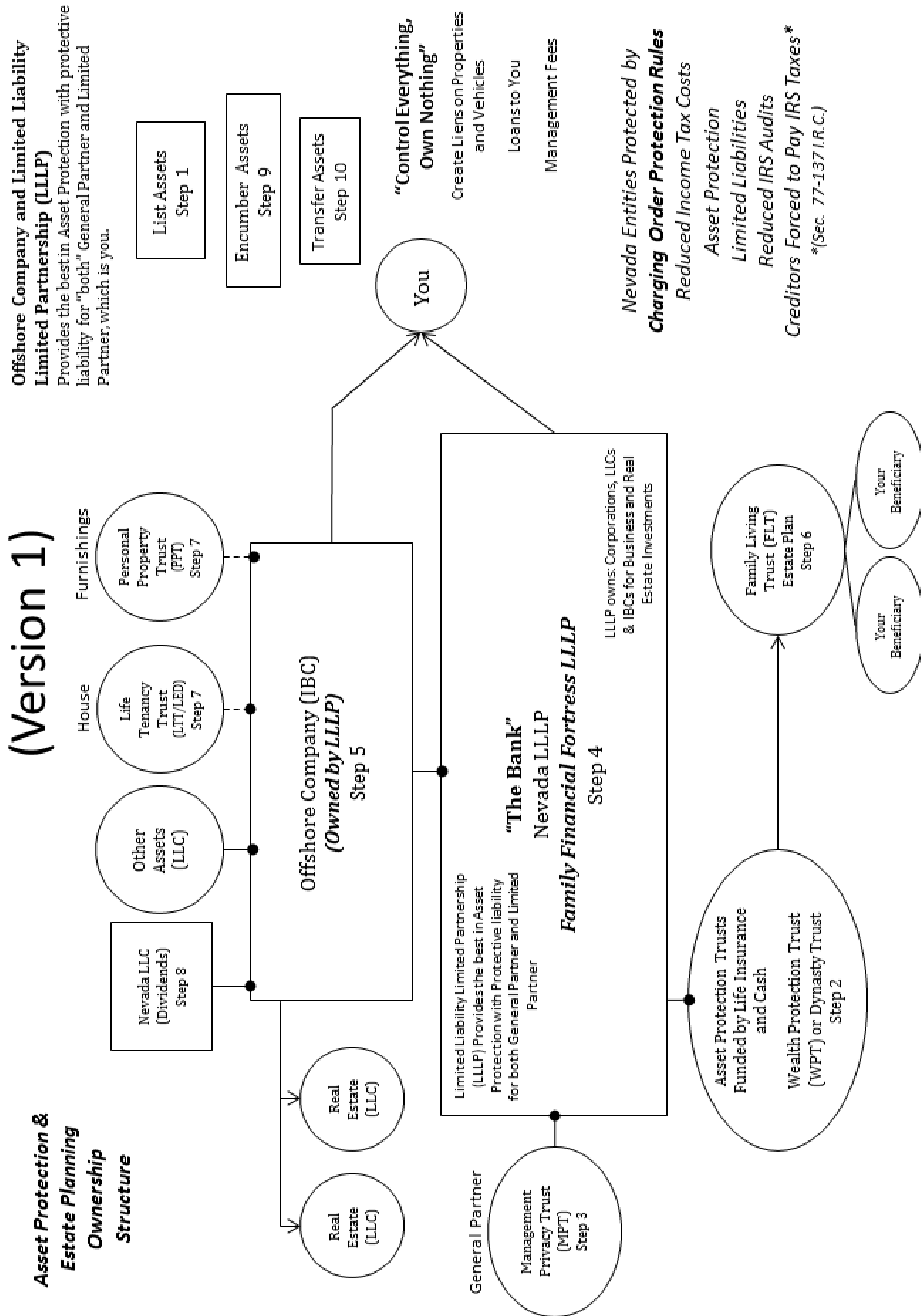

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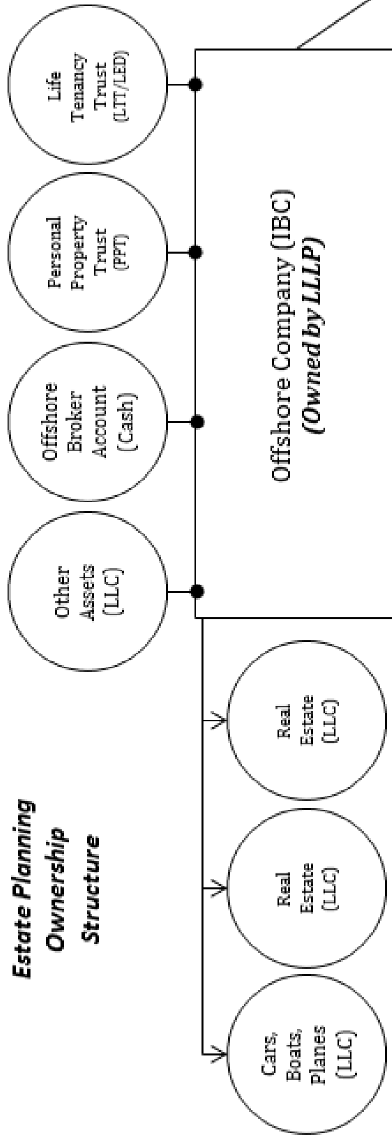
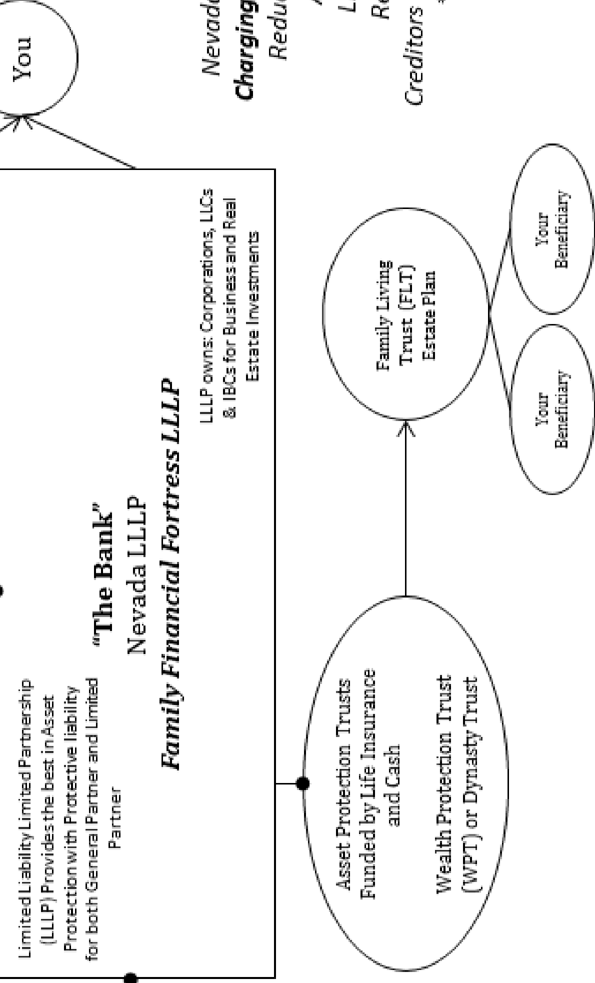
Comprehensive Protection Plan ™
(Version 2)

Asset Protection & Estate Planning Ownership Structure



Offshore Company and Limited Liability Limited Partnership (LLLP)
Provides the best in Asset Protection with protective liability for "both" General Partner and Limited Partner, which is you.

"Control Everything, Own Nothing"
Create Liens on Properties and Vehicles
Loans to You
Management Fees



General Partner
Management Privacy Trust (MPT)

Nevada Entities Protected by **Charging Order Protection Rules**
Reduced Income Tax Costs
Asset Protection
Limited Liabilities
Reduced IRS Audits
Creditors Forced to Pay IRS Taxes*
*(Sec. 77-137 I.R.C.)

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Be Creative When Deducting Business Expenses

In managing an active corporation, it is important to be familiar with all the aspects of how a corporation works. Part of those management responsibilities is being familiar with business expense. Understanding expenses that are deductible and those that are not is important. By familiarizing yourself with all legal business expenses you can dramatically reduce your corporate taxes and get more personal tax-free perks. Listed below are a few noteworthy business expenses that can be considered perks or fringe benefits.

- A
  - Abandonment of property used for business purposes
  - Accounting and auditing expenses, such as:
    - Auditing of your books and accounts
    - Costs of bookkeeping
    - Costs of tax strategy preparation
    - Costs of preparing and filing any tax returns
    - Costs of investigation of any tax returns
    - Costs of defense against IRS or state agency audits or challenges
  - Accounts receivable, worthless
  - Achievement awards
    - Longevity
    - Safety awards
    - Sales awards
  - Advances made to employees or salespeople where repayment is not expected
  - Advances to employees canceled as bonus
  - Advertising expenses, such as:
    - Premiums given away
    - Advertising in:
      - Newspaper
      - Magazine
      - Radio
      - Other media
    - Prizes and other expenses in holding contests or exhibitions
    - Contributions to various organizations
    - Costs of displays, posters, etc. to attract customers
    - Publicity-generally, all costs including entertainment, music, etc.
    - Christmas presents to customers or prospects-de minimis rule.
  - Alterations to business property, if minor
  - Amortization

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- Attorney's fees and other legal expenses involving:
  - Tax strategy
  - Drafting of agreements
  - Defense of claims against you
  - Collection actions taken against others
  - Any other business-related activity
- Auto expense
  - Damage to auto not covered by insurance
  - Gasoline
  - Oil
  - Repairs and maintenance
  - Washing and waxing
  - Garage rent
  - Interest portion of payments
  - Insurance premiums such as fire, theft, collision, liability, et cetera
  - Lease payment
  - License plate
  - Driver's license fee
  - Wages of Chauffer
  - Section 179 deductions, for qualified vehicle(s)

❖ B

- Bad debts – if previously taken into income
- Baseball/softball/soccer team equipment for business publicity
- Board and room to employee:
  - All meals and lodging if for employee's benefit
  - Temporary housing assignment
- Board Meetings
- Bonuses as additional compensation to employees
- Bookkeeping services
- Building expenses, used for business, such as:
  - Repairs to building
  - Janitorial service
  - Painting
  - Interest on mortgage
  - Taxes on property
  - Water
  - Rubbish removal
  - Depreciation of building
  - Heating
  - Lighting
  - Landscaping

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- Burglary losses not covered by insurance
- Business, costs of operating office
- Business taxes-except federal income taxes

- C
  - Cafeteria plan-requires written plan
  - Capital asset sale-losses
  - Car and Taxi fares
  - Casualty damages, such as:
    - Bombardment
    - Fire
    - Storm
    - Hurricane
    - Drought
    - Forest fire
    - Freezing of property
    - Impairment or collapse of property
    - Ice
    - Heat
    - Wind
    - Rain
  - Charitable contributions
  - Checking account bank charges
  - Child care – requires written plan
  - Children's salaries
  - Christmas presents to employees, customers, and prospects for advertising or publicity purposes, or goodwill, or if customary in the trade
  - Collection expenses including attorney's fees
  - Commissions on sales of securities by dealers in securities
  - Commissions paid to agents
  - Commissions paid to employees for business purposes
  - Commissions paid to salesmen
  - Condemnation expenses
  - Contributions (deductible if made to organization founded for the following purposes, subject to some limitations):
    - Religious
    - Charitable
    - Scientific
    - Literary
    - Educational
    - Prevention of Cruelty to children and animals
  - Convention expenses, costs of attending conventions

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- Cost of goods
- Credit report costs

- D
  - Day care facility
  - Depletion
  - Depreciation
  - Discounts allowed to customers
  - Dues paid to:
    - Better Business Bureau
    - Chamber of Commerce
    - Trade associations
    - Professional societies
    - Technical societies
    - Protective Services Associations

- E
  - Education assistance-requires written plan
  - Embezzlement loss not covered by insurance
  - Employee welfare expenses, such as:
    - Dances
    - Entertainment
    - Outings
    - Christmas parties
    - Shows or plays
  - Endorser's loss
  - Entertainment expenses
  - Equipment, minor replacements
  - Equipment purchases
  - Equipment purchases-ma require capitalization and depreciation
  - Equipment repairs
  - Exhibits and displays, to publicize, your products
  - Expenses of any kind directly chargeable to business income, such as:
    - Renting of office space
    - Safe deposit boxes
    - Upkeep of property
    - Books to record income and expenses or investment income
  - Experimental and research expenses

- F
  - Factoring
  - Fan mail expenses
  - Fees for passports necessary while traveling on business

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- Fees to accountants
- Fees to agents
- Fees to brokers
- Fees to investment counsel
- Fees to technicians
- Fire loss
- Forfeited share
- Freight charges

- G
  - Gifts to customers – limit $75
  - Gifts to organized institutions, such as:
    - Charitable
    - Literary
    - Educational
    - Religious
    - Scientific
  - Group term insurance on employees' lives
  - Guarantor's loss

- H
  - Health insurance
  - Heating expense
  - Hospitals, contributions to

- I
  - Improvements, provided they are minor
  - Insurance premiums paid
  - Interest on loans of all kinds for business purposes, such as:
    - On loans
    - On notes
    - On mortgages
    - On bonds
    - On deficiencies
    - On installment payments of automotive, furniture, etc
    - On margin account with brokers
    - Bank discounts on note is deductible as interest
  - Inventory loss due to damages
  - Investment counsel fees

- L
  - Lawsuit expenses
  - Legal costs

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    - In defense of your business
    - In settlement of cases
    - Payment of Damages
- License fees
- Lighting
- Living quarter furnished employees for business benefit
- Lobbying costs
- Losses, deductible if connected with your business of profession, such as:
    - Abandoned property
    - Accounts receivable
    - Auto damage caused by fire, theft, heat, storm, etc.
    - Bad debts
    - Banks closed
    - Bonds
    - Buildings – damaged
    - Burglary
    - Business ventures
    - Capital assets
    - Casualties: fire, theft, heat, storm, etc.
    - Damages to property or assets
    - Deposit forfeiture, on purchase of property
    - Drought
    - Embezzlements
    - Equipment abandoned
    - Forced sale or exchange
    - Forfeitures
    - Freezing
    - Goodwill
    - Loans not collectable
    - Theft
    - Transactions entered into for profits

❖ M

- Maintenance of business property
- Maintenance of office, store, warehouse, showroom, etc
- Maintenance of rented premises
- Management costs
- Materials
- Meals, subject to limitation
- Membership dues
- Merchandise
- Messenger service

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- Moving costs
- Musician expenses

- N
  - Net operating loss – may be carried back to previous year's income for refund and/or forward against future year's income
  - Newspapers

- O
  - Office expenses including:
    - Wages
    - Supplies
    - Towel service
    - Heating and lighting
    - Phones and telegraph
    - Repairs
    - Refurnishing, minor items
    - Decorating
    - Painting
  - Office rent
  - Office stationary

- P
  - Passport fees
  - Pension plans
  - Periodicals
  - Physical fitness center
  - Plotting of land for sale
  - Postage
  - Professional society dues
  - Property depreciation
  - Property maintenance
  - Property repairs
  - Publicity expenses

- R
  - Real estate expenses of rental or investment property, including:
    - Taxes of property
    - Insurance
    - Janitorial services
    - Repairing
    - Redecorating
    - Painting

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- Depreciation
- Supplies
- Tools
- Legal expenses involving leases, tenants, or property
- Bookkeeping
- Property management
- Utilities
- Commissions to secure tenants
- Maintenance – heating, lighting, etc.
- Advertising for tenants
- Costs of manager's unit, if onsite and at employer's convenience

- Rebates of sales
- Refunds on sales
- Rent settlement – cancel lease
- Rental property expense, such as:
  - Advertising if vacant premises
  - Commissions to secure tenant
  - Billboards and signs
- Rent collection expense
- Rents paid, such as:
  - Business property
  - Parking facilities
  - Safe deposit boxes
  - Taxes paid by tenant for landlord
  - Warehouse and storage charges
- Repairing of business property, such as:
  - Alterations, provided they are not capital additions
  - Casualty damages
  - Cleaning
  - Minor improvements
  - Painting
  - Redecorating
  - Repairing of furniture, equipment, machinery and buildings
  - Roof repairs
- Royalties

- S
  - Safe deposit box rental
  - Safe or storage rental
  - Salaries including bonuses, commissions, pensions, management fees
  - Sample room
  - Selling expenses, such as:

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- Commissions and bonuses as prizes
- Discounts
- Entertainment
- Prizes offered in contests
- Publicity and promotion costs
- Rebates

➢ Services, professional or other necessary for conduct of business
➢ Social Security taxes paid by employers
➢ Stationary and all other supplies used
➢ Subscriptions to all trade, business or professional periodicals
➢ Supplies, office or laboratory

❖ T

➢ Taxes, all paid except federal income taxes, such as:
- City Gross receipts tax
- City sales tax
- State gross receipts tax
- State sales tax
- State unemployment insurance tax
- Federal social security tax
- State income tax
- State unincorporated business tax
- Real estate tax
- Tangible property tax
- Intangible property tax
- Custom import or tariff tax
- License tax
- Stamp taxes
- Any business tax, as a rule
- Auto registration tax
- Sale deposit tax
- Membership dues tax
- Gasoline tax
- Admission tax

➢ Telephone and telegraphs
➢ Travel expenses (includes: meals, taxi fare, rail fare, airfare, tips, telephone, telegrams, laundry and cleaning, entertainment for business purposes)

❖ U

➢ Unemployment compensation taxes paid by employer
➢ Uniforms furnished to employees

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- W
  - Wages
  - Worker's compensation fund contributions

Keeping the above corporate expenses in mind and reviewing the IRS publications mentioned above will give you a much better understanding of just how to properly manage the revenues of the corporation.

Significant personal and corporate tax savings can be accomplished through mileage deductions; contributions to IRAs, company pension plans, healthcare reimbursement benefit plans and many other employee benefit programs. With respect to corporate deductions, you must bear in mind that you benefit from the corporation's deductions since it is your private corporation and you control it.

Nevertheless, you must always be vigilant to observe the boundaries between your personal and corporate finances. Never commingle funds or improperly disburse corporate funds for personal benefit. This is necessary to avoid charges that your corporation is an alter-ego being used as a sham for personal benefit. By understanding the difference between corporate expenses and personal deductions and observing proper bookkeeping, accounting and corporate procedures, even a single person corporation should have no problems regarding claims of alter-ego or any attempts to pierce the corporate veil.

Moving Assets into Nevada Charging Order Protected Entities

As the years pass, the extent of your personal wealth shall grow until you will find yourself with domestic assets that cannot be moved offshore or it is not economically practical and these assets may be vulnerable to outside liability. Typically, these vulnerable domestic assets are vacation homes, rental properties, real estate investments, a yacht or an airplane.

Outside liability is also sometimes referred to as back door liability. Outside liability refers to personal lawsuits where you, as an individual, are named as a defendant. Corporations are vulnerable to outside liability because judgment creditors with personal judgments can attach your corporate share and take it from you. If you have a majority interest, they may be able to use the shares to take over your company and liquidate it or do whatever they want with it. We are not concerned about this because our Nevada corporations as operating companies void of any significant assets.

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> ***If a company does not make income distribution and the creditor has only a charging order, the creditor is forced to pay taxes. [Section 77-137 – Internal Revenue Code]***

The best way to secure your vulnerable domestic assets is through the use of Nevada COP Entities. The Nevada LLC and the Nevada LLLP are both COP Entities. However, pursuant to Section 43 of SB 242, Nevada Private Corporations with fewer than 75 shareholders are given charging order protection for any legal actions filed after July 1, 2007. Nevada corporations are the only corporations in the US that have charging order protection.

Section 103(b) of that Act, 15 U.S.C. § 7003(b).

Sec. 43.5. Chapter 78 of NRS is hereby amended by adding thereto a new section to read as follows:

1. On application to a court of competent jurisdiction by a judgment creditor of a stockholder, the court may charge the

– 14 –

stockholder's stock with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the stockholder's stock.

2. This section:

(a) Applies only to a corporation that:

(1) Has more than 1 but fewer than 75 stockholders of record at any time.

(2) Is not a subsidiary of a publicly traded corporation, either in whole or in part.

(3) Is not a professional corporation, as defined in NRS 89.020.

(b) Does not apply to any liability of a stockholder that exists as the result of an action filed before July 1, 2007.

(c) Provides the exclusive remedy by which a judgment creditor of a stockholder or an assignee of a stockholder may satisfy a judgment out of the stockholder's stock of the corporation.

(d) Does not deprive any stockholder of the benefit of any exemption applicable to the stockholder's stock.

(e) Does not supersede any private agreement between a stockholder and a creditor.

Sec. 44. NRS 78.010 is hereby amended to read as follows:

78.010 1. As used in this chapter:

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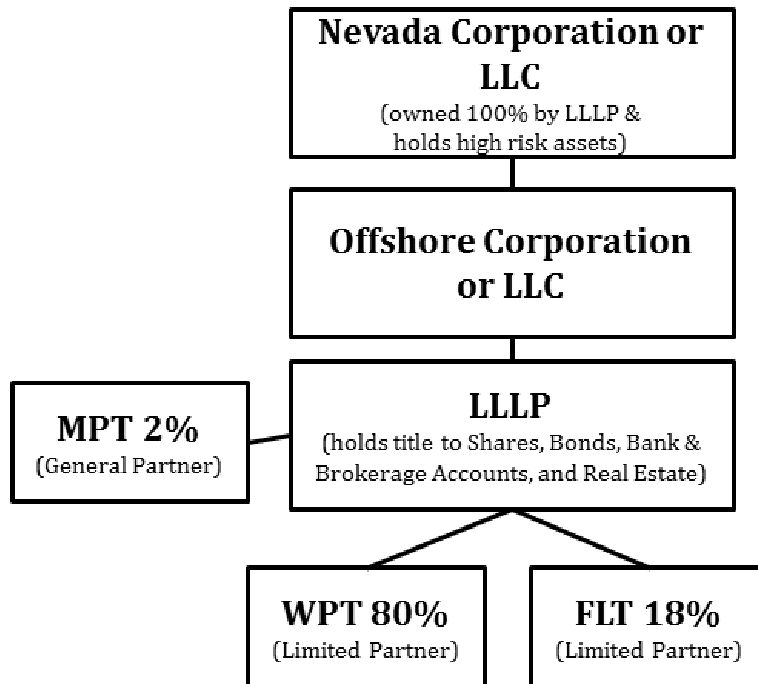
Charging order protection prevents creditors from foreclosing on the debtor's interest in the corporate assets or liquidating the COP entity to seize the debtor shareholder's financial interest. A charging order only allows a creditor to intercept any distributions of cash to the debtor made by the COP entity.

UNDERSTANDING NEVADA LIMITED LIABILITY LIMITED PARTNERSHIPS

A Nevada LLLP consists of one General Partner and one or more limited partners. The same person should not be both a General Partner and a Limited Partner, if there are at least two persons who are partners in the partnership. The General Partner is responsible for the management of the affairs of the partnership, and has unlimited personal liability for all debts and obligations of the partnership.



There are certain assets that <u>cannot</u> be owned by a Nevada LLLP:

- Interest in an S Corporation
- The shares of share in a Professional Corporation
- Qualified retirement plans (QRP)

After the partnership has been established, Mr. Doe may gift away part of his ownership to reduce his liability or the size of his estate, but must stay within IRS guidelines for gifting.

LLLPs provide limited liability protection to their owners (called Partners). Typically, owners are not personally responsible for business debts and liabilities of the LLLP so creditors cannot pursue owners' personal assets to pay

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business debts. Limited Liability Limited Partnerships (LLLPs) are also commonly used for estate strategies. A limited partnership is broken down into the general partners who manage a limited partnership and the limited partners who are the owners of the partnership. LLLPs can purchase stock or be given stock of Nevada corporations. The LLLP can own your corporation shares making it impossible to take your corporation away. The LLLP can be owned by your wealth protection trust (WPT) and your family living trust (FLT).

WHY CHOOSE AN NEVADA LLLP?

ADVANTAGES OF AN NEVADA LLLP

Business owners stand to gain many benefits when they register a partnership as a Nevada LLLP. These benefits are, in many cases, unavailable to sole proprietorships and general partnerships. Creating an LLLP typically provides the business owner with the following advantages:

- **Limited liability protection:** Owners/partners are not held personally responsible for partnership's debts or liabilities.
- **Pass-through taxation:** LLLPs do not pay taxes at the business level. Income and losses are reported on the members' personal tax returns and any taxes due are paid at the individual level.
- **No ownership restrictions:** LLLPs do not face restrictions on the number or type of owners.

Entity Type	Liability Protection	Tax Savings
Sole Proprietorship	None	None
Limited Liability Company	Yes	Possible
Corporation	Yes	Yes
Limited Liability Limited Partnership	Yes	Yes

- **Flexible management:** Members have flexibility in structuring partnership management.

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- **Fewer ongoing formalities:** LLLPs have less annual paperwork than, and do not face the meeting requirements imposed on C corporations and S corporations.
- **Credibility:** LLLPs may be perceived as a more legitimate business than a sole proprietorship,
- **Consent to add owners.** Written consent of LLLP members must be obtained prior to increasing membership in the partnership or adding new members.

Limited Liability Limited Partnership (LLLP) Terms

Limited Partner: One of the co-owners of a business organized as Limited Liability Limited Partnership who (unlike a general partner) does not participate in the management of the partnership and has limited personal liability for the partnerships debts.

General Partner: One of the co-owners of a business organized as a LLLP who has control of the partnership. Actions taken by the general partner are binding upon the other Limited Partners.

LLLP Structure

Partnership Agreement

The partnership agreement lists the capital, profits and voting interests of initial LLLP partners as well as operating rules for the partnership. The partnership agreement may state how often meetings of Limited Partners and General Partners will be held and quorum and voting rules for each meeting. The partnership agreement will also include the state requirements for approving special matters.

Management Structure

The management structure of the Limited Liability Limited Partnership will affect how decisions will be made.

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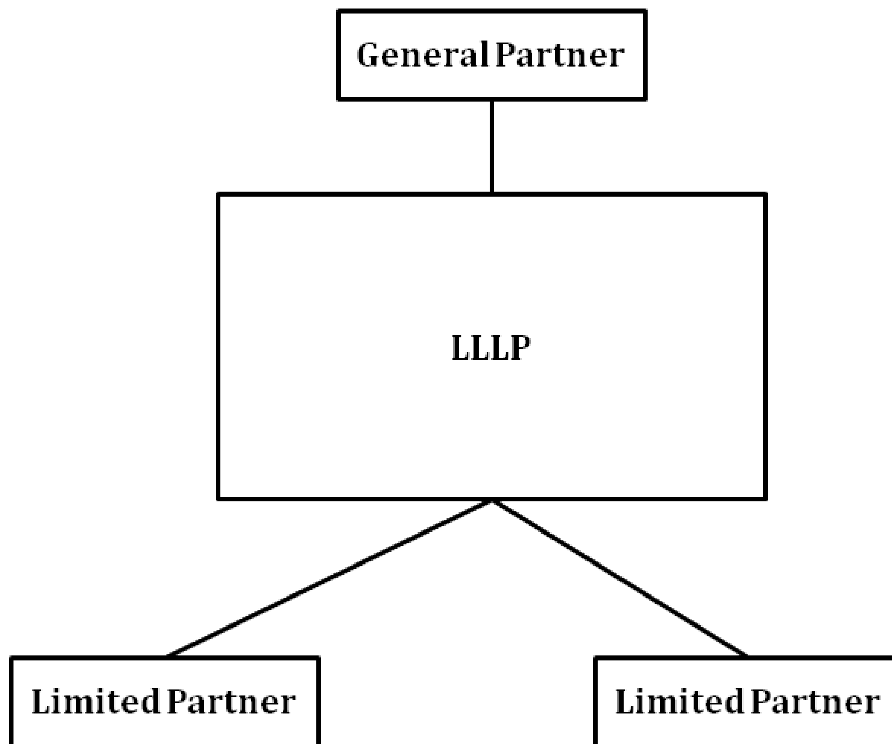
General Partner Roles & Responsibilities

General Partners handle day to day decisions. General Partners can be Limited Partners but it is not required. General Partners can also be independent contractors.

Limited Partner Roles & Responsibilities

Limited Partners typically make the following decisions:

- Amending the LLLPs articles or partnership agreement
- Issuing new units to a new Limited Partner
- Continuing the LLLP after a Partner withdraws
- Dissolving the LLLP



It is Important to File the Annual List of Partners

Once your Articles of Organization have been filed with the SOSN, you have 60 days from the organization date to file the Initial List of Partners with the state. The cost to files this list is $125 annually. Filing the Annual List of Partners on time is required to keep the partnership in good standing with the state. If not

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filed, the partnership will go into default and eventually, revoked status. Late fees are assessed and attached to the normal fees so be sure to file on time!

This List asks for the names of the General Partner of the partnership. Remember that the List of General Partners is a matter of public record**.** Anyone requesting information can access this public information very easily.

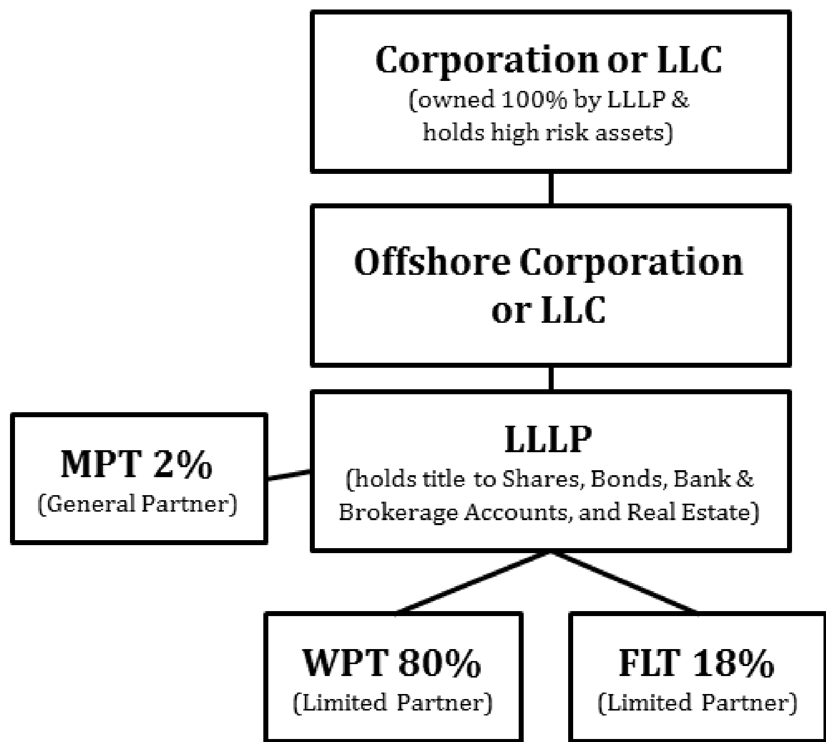
One of the Few State Requirements is to have an Annual Partnership Meeting.

Electing a Nominee Does NOT Mean You are Giving up Control

If you are seeking privacy you can use a Management Privacy Trust (MPT) as the General Partner. Anyone viewing the name of the LLLP would not see your name but that of the MPT. For further privacy you would name a person as the trustee and having that person open up your bank account and apply for the EIN with the IRS. In this way your social security number would not be on any documentation giving you extra privacy and separating you from ownership of the LLLP.

No Inside Liability for Limited Partners

On the other hand, the limited partners have no personal liability. The limited partner only risks the amount that the limited partner contributed and any amounts that the limited partner has pledged to contribute under the terms of the partnership agreement. Consequently, LLLPs are useful as investment vehicles for large projects that require a considerable amount of cash. It is advantageous to the limited partners contributing money to a venture because they have no management responsibilities, share equally in the profits and have no personal liability for the debts of the business.



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In order to maintain the protection against personal liability, a limited partner must not actively participate in management. Nevertheless, limited partners are allowed to vote on certain matters. LLLP agreements often provide that a majority vote of the limited partners is necessary to remove a General Partner or for the sale of assets. The partnership agreement determines what issues the limited partners are allowed to address and vote on at partnership meetings.

A limited partner should not take an active part in the management of the company and the limited partner's conduct must be very carefully circumscribed.

Incorporate Nevada LLLPs into Your Estate Planning

Nevada Limited Liability Limited partnerships (LLLPs) are also commonly used for estate strategies. A limited partnership is broken down into the general partners who manage a limited partnership and the limited partners who are the owners of the partnership. In some instances, LLLPs will purchase the stock or be given the stock in the corporation. The LLLP is owned by your wealth protection trust (WPT) and your family living trust (FLT). The LLLP can own your corporation shares making it virtually impossible to take your corporation away.

Plan for Tomorrow Today

Most individuals hesitate to transfer assets to their children because they do not want to lose control of those assets or they may be concerned as to how those children are going to manage them. By being creative, you can give the assets to the children, for future benefit, without interference from them until your percentage of the assets is released at the time of your death. You can secure your assets for the future with proper planning – so start today. Bridgeway Financial Corporation can assist you with such planning.

Control Everything while Owning Nothing

This is food for thought. Perhaps the Rothschild's, Rockefellers and all of the other elite families of the world learned this early in life. Use corporate entities creatively with a little hard work and watch your wealth grow!

The Principal Purpose of LLLPs

The LLLP is a useful for providing rainy day protection from future liabilities for family wealth. When used as part of a properly designed overall strategy, any significant level of asset protection can be accomplished.

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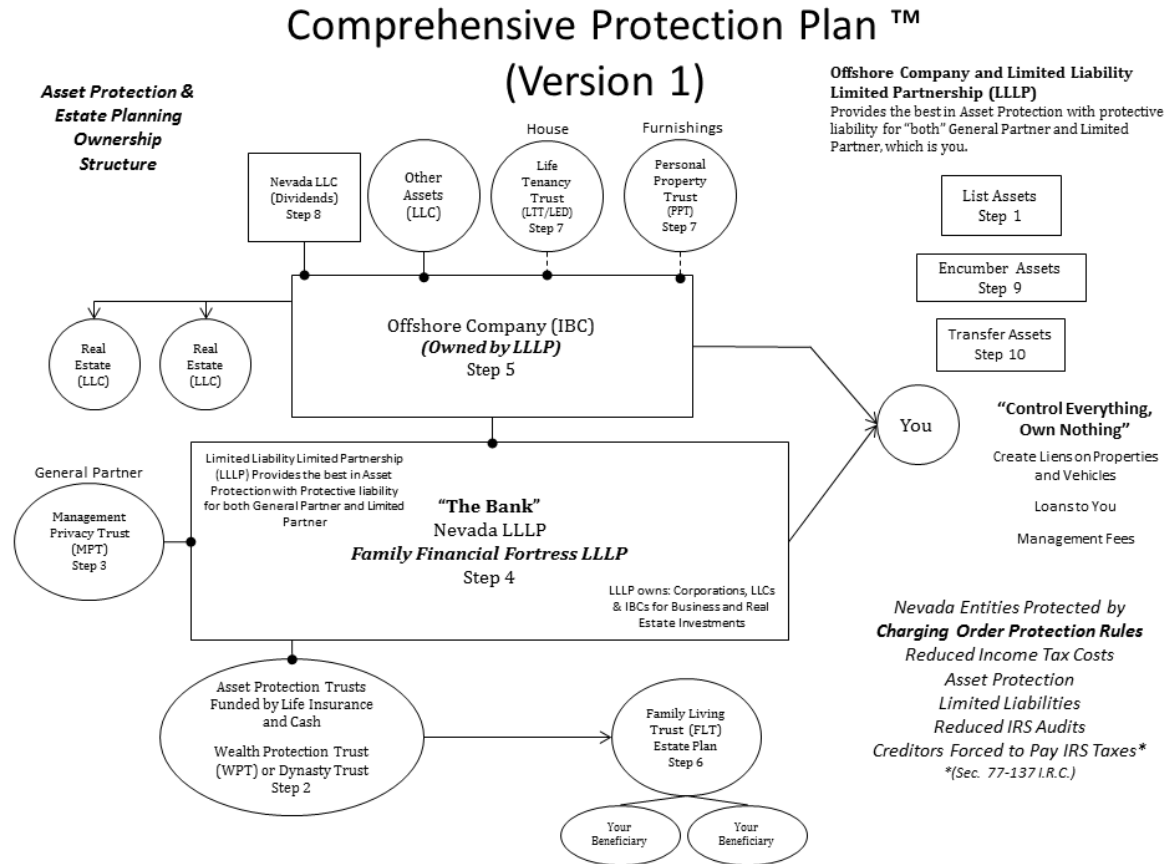
Under the typical arrangement, the LLLP is set up as a vehicle to safely hold family wealth such as real estate and investments. These are low risk passive investments. Therefore, there is minimal risk to the General Partners of any inside liability from the partnership's activities. Typically as General Partners they will own only a 1 or 2 percent interest in the partnership. The remaining interests will be held, directly or indirectly, by the husband, wife, or other family members as limited partners.



Generally speaking, it is not a good idea to make the parents a General Partner because if they are sued for a back door liability the court has jurisdiction over the general manager because it has jurisdiction over the parents as defendants. However, our partnership agreements contain a duress clause which states that any partner involved as a defendant in litigation automatically forfeits their status as a General Partner and must be replaced. We also designate a management privacy trust (MPT) as the General Partner and a wealth protection trust (WPT) to control the LLLP. Beneficiaries can also assign their interests

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effortlessly and anonymously. Of course, if the LLLP has any serious front door liability we designate a corporation as General Partner.

After setting up the LLLP, most of the family assets are transferred into it, including investments, real estate and business interests. High risk investments will be compartmentalized by placing them in LLCs or Corporations owned by the LLLP. When the transfers are complete, husband and wife no longer own the assets. Instead, they own a controlling interest in the LLLP which owns the assets. They have the right to retain partnership profits in the partnership.

Typically when we set up an LLLP we use the formation that allows you to transfer their shares. However, some clients want a financial fortress set up immediately. This can be easily accomplished using an alternate formation. A clause can be inserted that a trustee can only be removed by an appointer. Our partnership agreements also have a duress clause in the partnership agreement that automatically removes any General Partners subject to any kind of administrative, criminal or civil proceeding.

CHARGING ORDER PROTECTION

A LLLP is a COP entity that provides limited partners with charging order protection. A charging order allows creditors to intercept any distributions of cash to the debtor, but it does not allow the creditors to foreclose and take the debtor's ownership interest in the COP entity.

If a company does not make income distribution and the creditor has only a charging order, the creditor is forced to pay taxes. [Section 77-137 – Internal Revenue Code]

A creditor must take the following course of action to enforce a judgment against a COP entity: 1) Obtain a judgment; 2) Charge the interest; 3) Foreclose the charging order; 4) Appoint a receiver; and 5) Partition the entity if possible.

First, the creditor must obtain a judgment, since the charging order is only available to judgment creditors. After obtaining a judgment, the creditor must obtain a charging order. The creditor may also garnish the debtor's right to distribution from the partnership. The partnership may be ordered by the Court to pay the creditor instead of the debtor until the judgment is satisfied. However, the right to payment does not make the creditor a partner and does not give the creditor any voting rights.

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Section 103(b) of that Act, 15 U.S.C. § 7003(b).

Sec. 43.5. Chapter 78 of NRS is hereby amended by adding thereto a new section to read as follows:

1. On application to a court of competent jurisdiction by a judgment creditor of a stockholder, the court may charge the

– 14 –

stockholder's stock with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the stockholder's stock.

2. This section:

(a) Applies only to a corporation that:

(1) Has more than 1 but fewer than 75 stockholders of record at any time.

(2) Is not a subsidiary of a publicly traded corporation, either in whole or in part.

(3) Is not a professional corporation, as defined in NRS 89.020.

(b) Does not apply to any liability of a stockholder that exists as the result of an action filed before July 1, 2007.

(c) Provides the exclusive remedy by which a judgment creditor of a stockholder or an assignee of a stockholder may satisfy a judgment out of the stockholder's stock of the corporation.

(d) Does not deprive any stockholder of the benefit of any exemption applicable to the stockholder's stock.

(e) Does not supersede any private agreement between a stockholder and a creditor.

Sec. 44. NRS 78.010 is hereby amended to read as follows:

78.010 1. As used in this chapter:

If the creditor is unsuccessful in obtaining satisfaction of judgment through the charging order, the creditor may attempt to foreclose on the debtor's partnership interest. The foreclosure is on the debtor's interest in the partnership, not on the LLLP itself or on the COP entity's assets. Contrary to the misinformation spread by internet "asset protection experts" the foreclosure of the interest is not a foreclosure of the limited liability limited partnership's assets. The foreclosure is against the debtor's economic right to distributions.

The difference between a creditor holding a charging order and a creditor foreclosing on the charging order is that the charging order is a temporary remedy, whereas a foreclosure is a permanent remedy. The charging order assigns distributed income to the creditor until the judgment is paid. After the judgment has been satisfied, the debtor regains the right to distributions. By contrast, foreclosure of the interest makes the assignment or garnishment

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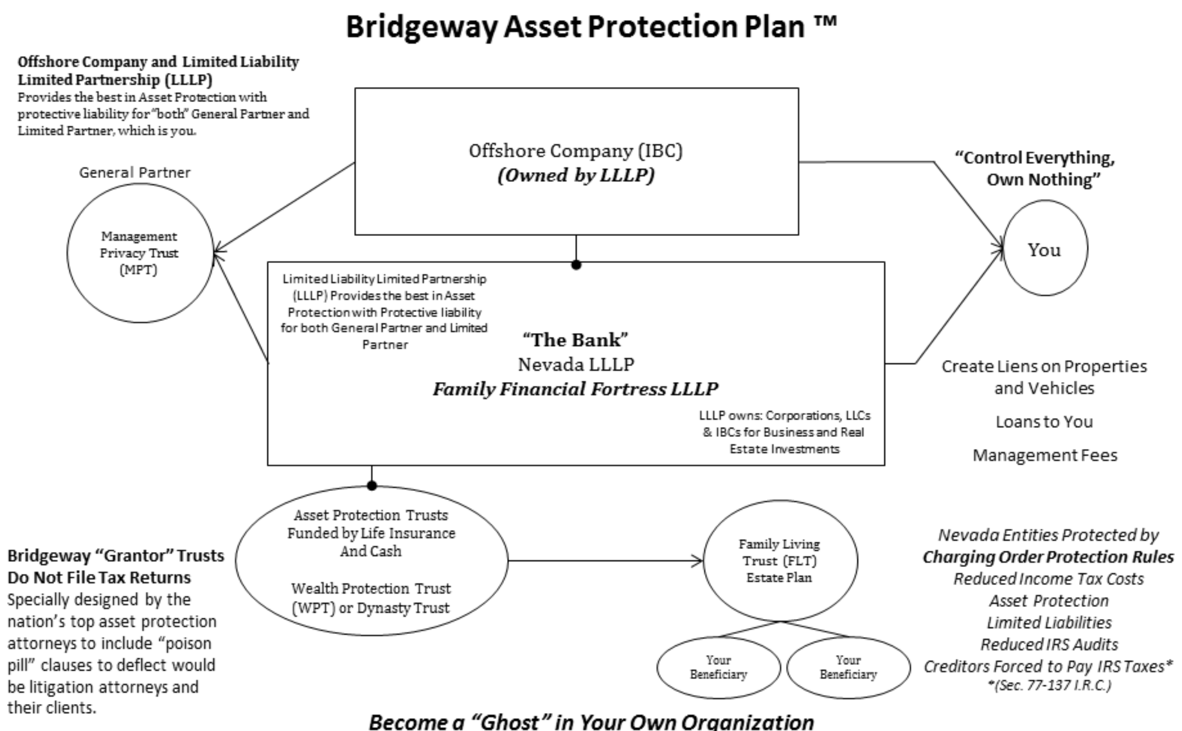
permanent, which means that the creditor becomes the owner of the debtor's distributional interest. A further difference is that the purchaser at a foreclosure enjoys the right to a proportionate share of the partnership's assets upon dissolution, increasing the creditor's chances of having the debt satisfied out of the partnership interest.

A creditor that acquires the debtor's distribution interest through foreclosure may attempt to sell the interest to an interested buyer. However, if the LLLP is controlled by persons friendly to the debtor, the creditor will have a very difficult time trying to sell the foreclosed interest. The creditor usually has no choice but to sell the foreclosed interest to the hostile partners for a fraction of the value of the foreclosure interest.

Creditors are often hesitant to foreclose unless the debtor has a majority interest because, absent a controlling interest, it is unlikely that the creditor will be successful in collecting the judgment. Creditors usually ask the court to appoint a receiver to insure that the LLLP makes distributions to the creditor's interest. The creditor is more likely to obtain a receiver if the creditor has foreclosed upon the majority interest. Appointment of a receiver is unlikely if the creditor only holds a minority interest in the LLLP.



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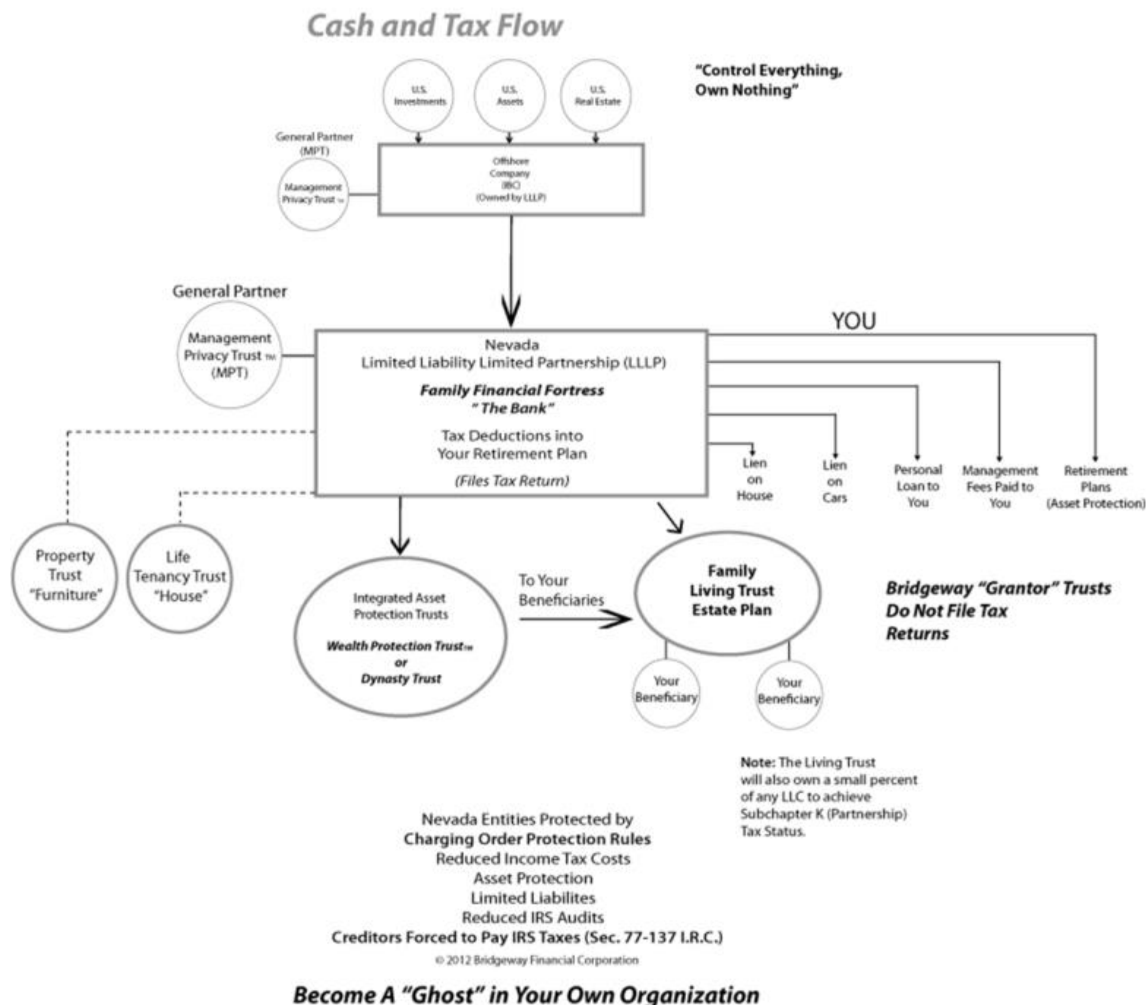
If a creditor is able to foreclose, then the creditor risks receiving distributions of phantom taxes. An LLLP is a pass through entity. All of the partners are responsible for the tax liabilities of the entity on a pro rata basis. It is uncertain whether a creditor will bear this obligation at the charging order stage. At the end of the year, the LLLP's profits or losses are shared via an IRS K-1 form by the partners, proportionally based upon the size of their interests as partners in the partnership. If the General Partner, or a majority of the partners, is sympathetic to the debtor, the partnership may elect not to distribute profits to the creditor. Even though the creditor does not receive any profits, the creditor may still receive a K-1 liability for the taxes. This is why they are called phantom taxes.

In most LLLPs, a creditor may be entitled to certain derivative rights from the entity, depending on how well the partnership agreement for the entity is drafted. The derivative rights may include the right to inspect books and records, request distributions, and request the appointment of a receiver. Our



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clients' creditors have no derivative rights because the partnership agreement we designed denies them any derivative rights.

Charging Orders and LLLPs: If the husband or wife incurs a personal liability and a creditor obtains a charging order, the LLLP would not make any distributions. This arrangement is provided for in our LLLP partnership agreement and is permissible under partnership law. If the LLLP does not make any distributions, the judgment creditor will not receive any payments. The LLLP simply retains all of its funds and continues to invest and reinvest without making any distributions.

The result of this strategy is that LLLP assets can be successfully protected from a judgment against one of the spouses. Had the LLLP arrangement not been used and had husband and wife kept all of their assets in their own names, the judgment creditor would have seized everything. Instead, by using an LLLP all of these assets can be protected.

Estate Planning

An LLLP is an excellent vehicle for use in estate planning. As we stated, entities holding a business, investments and real estate indirectly by an offshore company and then held by the LLLP which is excellent for privacy and asset protection. Because the property is no longer directly owned, it is discounted when the IRS assesses the value of the property as part of the family estate. Discounts range from 30% to 50%. The parents can gift up to $26,000 per year per child by transferring to each child a portion of the parents' partnership interests' equivalent to $26,000 or $1,000,000 lump sum per parent. Estate taxes do not start until the value of an estate is greater than the estate tax exemption which varies from year to year under the current law.

Probate can be avoided by using a management privacy trust (MPT) to hold the General Partnership interests and a wealth protection trust (WPT) to hold the LLLP interests of the parents. This provides financial privacy and the children can be identified as the designated beneficiaries in the WPT or FLT. When a parent dies, the shares in the WPT or FLT will be automatically transferred to the designated beneficiary.

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PITFALLS TO AVOID

The Failure to Engage in Business Activity

There are certain formalities that clients must be advised to avoid. First, the LLLP must actually be engaged in a business activity. With respect to estate taxes, the IRS routinely examines LLLPs to determine whether they have been established as a sham for the sole purpose of avoiding taxes. Likewise, with respect to asset protection, judges will disregard the LLLP if they believe it is a sham and treat the property held by the LLLP as though it is your personal property. Simply placing a family residence and/or a vacation home in an LLLP will not be sufficient to pass muster with the IRS. If the LLLP is used as an investment vehicle to actively engage in foreign exchange (FOREX) trading, day trading, buying and selling share and/or flipping real estate that is sufficient.

Failure to Fund the LLLP

Many people will go to great lengths to form their LLLP, but then never transfer any assets to it. Assets not contributed to the LLLP are not afforded either the tax benefits or asset protection benefits of the arrangement.

Failure to Follow Formalities

Although they are not required to follow as many formalities as do corporations, LLLPs are required to have partnership agreements which must be followed. The failure to follow the partnership agreement can mean that the LLLP could be disregarded by a court and treated as it never existed.

Failure to Maintain the LLLP

LLLPs require the payment of annual fees. The failure to pay these fees will eventually cause the LLLP to be stricken by the Secretary of State. If the entity is stricken, it ceases to exist as far as the state and IRS are concerned.

Non-Business Assets or Activities

LLLPs are business entities and are not meant for personal use. The family residence should not be placed into an LLLP.[66] Personal expenses and normal family expenses et cetera must not be paid from the LLLP. The use of the LLLP for personal purposes could result in the entity being disregarded for tax and asset protection purposes.

Failure to Obtain Valuations

If the LLLP will be used to avoid estate taxes by way of discounting the LLLP interests that are gifted, it is important that the LLLP interests be the subject of a

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valuation by a qualified appraiser. Without an appraisal, the odds of the discounting standing up to IRS scrutiny are poor.

Failure to Diversify

It is better to have several smaller LLLPs than to have one oversized one. You should create at least one or more new LLLPs for every $2 million to $5 million in assets. This keeps the profile of each LLLP lower for both creditors and for any IRS audits.

Tax Treatment of Partnerships

Since a LLLP is a pass through entity, the partnership has no income tax liability. Unlike corporations and irrevocable trusts, a partnership is not a taxpaying entity. As an entity, it files an annual informational tax return setting forth its income and expenses, but the partnership is not required to pay any independent tax on its net income. Instead, each partner's proportionate share of income or loss is declared on a K-1 return and passed through from the partnership to the partner. Each partner claims his share of the profit or loss on his or her own tax return.

Entity Type	Liability Protection	Tax Savings
Sole Proprietorship	None	None
Limited Liability Company	Yes	Possible
Corporation	Yes	Yes
Limited Liability Limited Partnership	Yes	Yes

LLLPs have no double taxation problem. When a business is expected to show a net loss rather than a gain, the partnership format is preferred so that the losses can be used by the partners. LLLPs have traditionally been used for real estate and tax shelter investments in order to pass the tax deductions through to the individual investors. The losses are then used by the partner to offset other income. However, losses from passive activities cannot be used to offset wages or investment income.

LLLPs are also a preferred entity to receive profits from passive investments because there is no self-employment tax (SSI/FICA) on profits passed down to a

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partner via a K-1. The partner will only have to pay federal income tax, but no self-employment taxes. If the passive income were to come through a C corporation a self-employment tax of 15% would be imposed in addition to federal income taxes.

The rules regarding the taxation of partnership activities are lengthy and cumbersome. As a general rule, however, transfers of property into and out of a partnership will not ordinarily produce any tax consequences. Every partnership must file IRS Form 1065, an informational return, regardless of the amount of income or loss. If the partnership does not receive income and does not incur any expenses, the partnership is not required to file a return. A partnership is required to furnish a form K-1 to each partner by the due date of the partnership tax return. The filing deadline is April 15th.

UNDERSTANDING LIMITED LIABILITY COMPANIES

OVERVIEW OF LIMITED LIABILITY COMPANIES (LLC)

A separate legal entity, the LLC is a hybrid between a partnership and a corporation, combining the limited liability advantage of a corporation with the tax status of a sole proprietor or partnership. Owners of the LLC are called members. As a separate legal entity, LLCs may own property, sue, and be sued in the LLC's name. Unless otherwise specified by the articles of organization, LLCs enjoy perpetual continuity.

The LLC has become a powerful tool for accomplishing many asset protection goals. The LLC is a versatile and convenient strategy for owning rental property, operating a business, insulating dangerous assets and achieving financial privacy. The LLC combines and retains all the advantages of the corporate and partnership entities and disposes of their disadvantages.

The LLC is a relatively new legal entity created by statute. It is now recognized in all fifty states. The adoption of the LLC format began in Wyoming in the 1970s with approval in most other states only within the last ten years. The LLC is a legal entity that avoids many of the tax and business problems inherent in the corporate and partnership structure. The intent of the law is to allow individuals to conduct their financial and business affairs in an efficient and convenient manner with limited liability for all the members. In a partnership the General Partner is personally responsible for the debts and liabilities of the partnership.

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The LLC provides the protection from liability of a corporation without the formalities of corporate minutes, bylaws, Directors, and shareholders. In contrast to corporate law, which allows shareholders and Officers to be individually sued if the corporate formalities are not followed, the LLC law specifically bars a lawsuit against a member for the liabilities of the LLC. That is an important distinction to understand. The principal shareholders and Officers of a corporation are routinely named as defendants in a lawsuit against the company. This forces them to incur attorney's fees to defend themselves. Thus, it also renders the corporate shield meaningless from a practical standpoint.

Florida and Colorado are the first two states that no longer recognize this protective shield. Other states are considering the same measures.

A primary goal of the LLC legislation was to change this result by clearly stating that the members and managers of the LLC could not be named in a lawsuit against the company. The law was drawn specifically to provide a vehicle that would provide the owners with the protection from this kind of liability which the corporation was created to provide but can no longer accomplish.

What is a Limited Liability Company (LLC)?

LLCs provide limited liability protection to their owners (called members). Typically, owners are not personally responsible for business debts and liabilities of the company so creditors cannot pursue owners' personal assets to pay business debts.

Why choose an LLC?

Advantages of an LLC

Business owners stand to gain many benefits when they register a company as an LLC. These benefits are, in many cases, unavailable to sole proprietorships and general partnerships.

Creating an LLC typically provides the business owner with the following advantages:

- **Limited liability protection:** Owners/members are not held personally responsible for company's debts or liabilities.

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- **Pass-through taxation:** Typically LLCs do not pay taxes at the business level. Income and losses are reported on the members' personal tax returns and any taxes due are paid at the individual level.
- **No ownership restrictions:** LLCs do not face restrictions on the number or type of members.
- **Flexible management:** Members have flexibility in structuring company management.
- **Fewer ongoing formalities:** LLCs have less annual paperwork than, and do not face the meeting requirements imposed on C corporations and S corporations.
- **Ability to go Offshore:** LLCs can be used as a 'go between' between an IRA and Real Estate Holdings.
- **Credibility:** LLCs may be perceived as a more legitimate business than a sole proprietorship,
- **Consent to add owners:** Written consent of LLC members must be obtained prior to increasing membership in the company or adding new members.
- **Can elect sub-chapter 'S' election:** In addition LLCs can elect a sub-chapter 'S' election to convert earned income to passive income.

Limited Liability Company (LLC) Terms

Membership Ownership: LLC's are owned by members, which are like shareholders in a corporation. Unlike S Corporations, which are limited to 75 shareholders, the LLC can have an unlimited amount of members. Some states even allow one member to own the LLC.

Membership Interest: A member's ownership interest in the LLC is referred to as a 'membership'. It is like stock in a corporation.

Articles of Organization: Articles of Organization are like a corporation's Articles of Incorporation or a partnership's Certificate of Limited Partnership; they are filed with the Secretary of State's office: They usually include: the name of the

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LLC, the principal place of business, the date the LLC will be dissolved, if the business is not perpetual, the appointment of a registered agent for service of process.

Operating Agreement: The operating agreement establishes the rules for the operations of the LLC. It is similar to a corporation's bylaws or a partnership agreement. The operating agreement can control such things as profit and loss and how management powers are divided up amongst members or managers. An operating agreement is essential because things always go smoother when the rules for potential 'issues' are put in writing before the LLC gets started. Unless specifically stated in the original agreement itself, the operating agreement can only be amended with the written consent of all members.

Manager: All members of an LLC can manage the business; management can also be delegated to fewer than all members or to a single member. A manager can be an individual, a partnership, a corporation, or even another LLC. Managers may appoint officers but are not required to do so. The Articles of Organization would specify the scope of the manager's authority, if any.

Default Provision: If the members do not specify their business relationship with each other in the operating agreement, the rules of the state in which the LLC was formed apply by default. Provisions imposed on the members are known as 'default provisions'. In some states, the statutes include default provisions that members deem so important they do not allow them to be changed even by agreement. These are known as 'bulletproof provisions' and 'bulletproof acts'.

Limited Liability Companies	
Advantages	Disadvantages
Pass-Through Tax Treatment: If the LLC is taxed as a partnership, the income and losses of the business flow through to the partners' individual tax returns in accordance with their partnership shares, simplifying the income reporting process. (You lose this benefit is your LLC is taxed as a corporation.) **Charging Order Protection:** If a person with interest in an LLC is involved in a lawsuit for any reason and loses, the judge/jury may award damages to the other party. However, most attorneys will not have their clients accept a lien on distributions because of the potential tax issues. If a creditor takes ownership of a member's interest in the LLC, the members can decide not to distribute profits yet still report a K-1 distribution to the IRS that states the creditor is responsible for the tax obligation of the distribution, even though the profits were never distributed.	**Loss of Pass-Though Tax Treatment:** As mentioned earlier, a one-member LLC may be taxed as a corporation by the IRS, or you may elect to be taxed that way if it works to your advantage. In this case, you must file a separate tax return instead of reporting income on your individual return. (You still benefit from pass-through tax treatment if your LLC is taxed as a partnership.) **Federal Security Limitations:** The LLC is only available to privately owned companies. If a company were to go public, it would have to be a C corporation. With merger laws, it would be relatively easy to convert an LLC to a C Corporation. **State Tax Treatment:** Some states impose income or franchise tax on LLCs. (Nevada does not.)

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LLC Structure

Operating Agreement

The operating agreement lists the capital, profits and voting interests of initial LLC members as well as operating rules for your company. The operating agreement may state how often meetings of Manager and Members will be held and quorum and voting rules for each meeting. The operating agreement will also include the state requirements for approving special matters.

Management Structure

The management structure of the Limited Liability Company will affect how decisions will be made.

- Member Managed LLC: Run by all of its members.
- Manager Managed LLC: Run by one or more persons who are designated as Managers.

Managers Roles & Responsibilities

Managers handle day to day decision making but only Members can make certain decisions. Managers can be Members but it is not required. Managers can also be independent contractors.

Members Roles & Responsibilities

Members typically make the following decisions:

- Reelecting Managers and electing new Managers
- Amending the LLC's articles or operating agreement
- Issuing a new Membership
- Admitting a transferee as a Member
- Continuing the LLC after a Member withdraws
- Dissolving the LLC.

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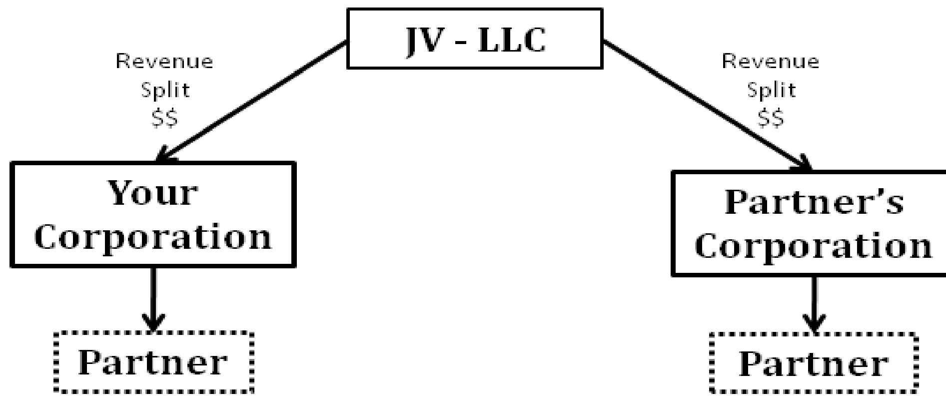
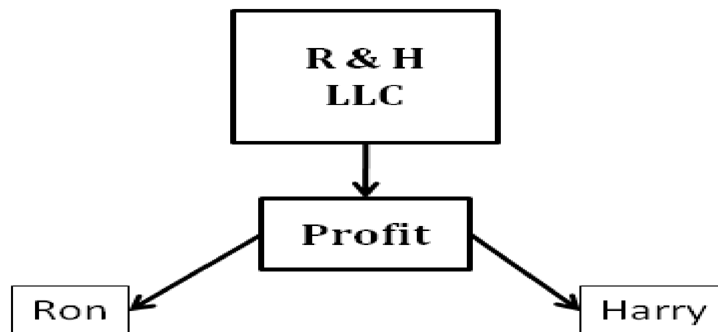
DIAGRAM OF AN LLC PARTNERSHIP OWNED BY TWO CORPORATIONS



Double up of business expenses by using two corporations and creative 'double' insulation for estate, income and asset protection purposes.

DIAGRAM OF AN LLC PARTNERSHIP OWNED BY TWO INDIVIDUALS



THE COMPANY IS NOT YOUR COMPANY: YOUR ROLE AS CONTROLLER

The best way to think about your affiliation with the company is that it is an entity separate and distinct from yourself. In other words, you really do not have a company at all. Refer to the company as "the entity I work for", "the entity I contract with" or "the entity I do business with". Also, DO NOT refer to the entity as "MY Company". Keep this in mind at all times. Do not disclose any information about your control or ownership of the company to individuals with which you are affiliated. Separate yourself from the identity. Be sure to be conscious of the language you use around colleagues and business acquaintances to reflect the relationship to the company that you prefer. Too often many people, because of ignorance or ego, share their personal affairs with others. But

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exposing information may hurt you in the future to keep your affiliation with the company private.

It is Important to File the Annual List of Managers

Once your Articles of Organization have been filed with the SOSN, you have 60 days from the organization date to file the Initial List of Managers with the state. The cost to files this list is $125 annually. Filing the Annual List of Managers on time is required to keep the company in good standing with the state. If not filed, the company will go into default and eventually, revoked status. Late fees are assessed and attached to the normal fees so be sure to file on time!

This List asks for the names of the Members and Managers of the company. Remember that the List of Managers is a matter of public record**.** Anyone requesting information can access this public information very easily.

One of the Few State Requirements is to have an Annual Members Meeting.

Electing an Officer Nominee Does NOT Mean You are Giving up Control

Manager Nominee Services

If you are seeking privacy you can use a Management Privacy Trust (MPT) as the Manager. Anyone viewing the name of the LLC would not see your name but that of the MPT. For further privacy you would name a person as the trustee and having that person open up your bank account and apply for the EIN with the IRS. In this way your social security number would not be on any documentation giving you extra privacy and separating you from ownership of the LLC.

Units & members

Units

A limited liability company is owned by its stockholders or correctly said 'the members'.

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Principal Purposes of LLCs

The LLC generally provides its members the same limited liability that a corporation provides its shareholders. Like shareholders in a corporation, the members of an LLC are not personally liable for the debts or liabilities of the LLC. Unlike a corporation, the LLC cannot be held liable for the debts or liabilities of the members. The LLC is a COP entity.

A future creditor's only remedy from a COP entity is a charging order that allows the creditor to receive any distributions of funds made to the debtor member, but the creditor cannot force the LLC management to make distributions. The creditor cannot access the member's interest in the LLC assets. The creditor does not obtain voting rights and can be held liable for the member's debts. Consequently, the LLC is quickly becoming the entity of choice for small businesses.

Ownership and Control of LLCs

The LLC is owned by members. Any person or entity can be a member in an LLC. LLCs have certificates of membership. The certificate will identify the member the certificate is issued to and it will designate how many membership units and/or what percentage of the LLC the certificate represents. It is up to the members to define how an LLC will be managed. Members can vest all control of the LLC in one or more managers, similar to the Officers of a corporation or the General Partner of a LLLP or the members can provide themselves with the management control.

In an LLC, although any or all of the members can be active managers, their active participation does not make them personally liable for the LLC's debts. General Managers have limited liability in an LLC. However, they may still be held individually liable for any torts or other injuries that may occur during their management activities. This remaining liability can be overcome by retaining an independent contractor to manage the LLC.

A single member LLC (SMLLC) is now allowed in most states. The SMLLC is treated as a disregarded entity for tax purposes. Because of this, the SMLLC can hold a personal residence because the individual can still claim the mortgage interest deduction and the capital gains exclusion. However, with respect to a marital community only one person, either the husband or the wife, not both, may hold title to the home. This is not a problem in community property states that count married couples as a single individual and impute the title to both parties.

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An SMLLC generally is not entitled to charging order protection in most states. At least two members, preferably three, are required to obtain charging order protection and the LLC should be manager managed, never member managed. One person may be able to use a corporation or a trust or another SMLLC in which they are the sole shareholder, beneficiary or member as a second member. Technically speaking, this should be legally adequate, but a judge may or may not be impressed by this strategy. It would be much wiser to use a friend, relative or business associate as a member with at least a 2% interest in the LLC. Two co-members with minimal interests would be better.

Capital Contributions to the LLC

Assets are needed if an LLC is to be a functional business entity, and the initial assets required to start must be contributed by its members. The assets that are required by a particular LLC will depend on the nature of its business. But sufficient assets should always be contributed to an LLC at the time of its formation to operate its business and provide a reasonable chance of the business's becoming successful without additional capital contributions being made to the LLC by its members. If an LLC is undercapitalized, a court may apply the doctrine of piercing the corporate veil to hold the members of the LLC personally responsible for the liabilities of the LLC, depriving them of the shield of limited liability. In addition, members of a multi-member LLC will want to be sure that their fellow members will be contributing their share of the assets required by the LLC.

Assets may be loaned or leased to an LLC by its members. But these assets may not be considered in determining whether the LLC is adequately capitalized because loaned or leased assets are not part of the LLC's capital available to pay its debts and liabilities. Title to contributed assets should be transferred to the LLC. If cash is contributed, it should be put in the LLC's own bank account. Once contributed, assets become the property of an LLC. Each of the members has an interest in the LLC as a member but has no direct interest in its assets. Members need to be aware that creditors of the LLC have a priority claim on all assets.

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The Operating Agreement

The internal affairs of the LLC are governed by three things: 1) the articles of organization, 2) the operating agreement and 3) the statutes and case law of the state where the LLC is formed. In these states, an LLC is created when its articles of organization are filed, and it becomes a legal entity at that time. Shortly thereafter, the LLC will adopt an operating agreement for the LLC. An operating agreement serves four functions:

1. It provides a record that the LLC was properly organized and adequate assets were contributed to it.
2. It provides members and managers with a roadmap for operating the LLC in accordance with legal requirements.
3. It helps smooth the way through disruptive events like the death or disability of a member and protects the integrity of the LLC's ownership.
4. It allows the members of the LLC to write their own rules of operation by modifying statutory default rules that would otherwise apply.

A record of proper organization and contribution of adequate assets may be needed if a creditor of an LLC should seek to pierce the corporate veil of the LLC and satisfy its claims out of the members' individual assets. An operating agreement is a convenient place to create and maintain this record.

Providing rules and procedures for LLC operations can minimize disputes between members and managers and assist them in avoiding actions, such as making excess distributions or commingling member and LLC assets, that could result in their having personal liability to the LLC or to its creditors. This may happen if the LLC has individual members along with entity members.

For a single member LLC the operating agreement can provide evidence of proper organization and a roadmap for operating the LLC. These functions of an operating agreement are important because members of SMLLCs are particularly susceptible to losing their limited liability shield.

Advantages & Disadvantages of LLCs

Advantages of the Limited Liability Company

- The liquidation of an LLC's assets is not a taxable event, whereas with the C Corporation it is taxable at the corporate level and shareholder level.
- An S corporation does not allow for a step-up in the tax basis of the S corporation's assets on the death of a shareholder. This can result in

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shareholder tax liability on liquidation. There are also many restrictions on S corporation shareholders. The step-up in tax basis and restrictions can all be avoided by the LLC.

- S corporations cannot have more than 100 shareholders, and each shareholder must be a natural person who is a resident or citizen of the US. There are no such restrictions placed on an LLC.
- An LLC is more flexible than an S corporation because pass-through losses under an LLC can be allocated separately to members.
- Unlike a C corporation, which often must use the accrual method of accounting, most LLCs can use the cash method of accounting. This means that income is not earned until it is received.
- Members who are active participants in the business of an LLC are able to deduct its operating losses against the member's regular income to the extent permitted by law. Shareholders of an S corporation are also able to deduct operating losses, but shareholders of a C corporation are not.
- The members of an LLC can actively participate as appointed officers in the management of the LLC without losing the limited liability protection
- An interest in the LLC is personal property and a creditor who seizes an LLC interest by way of a charging order cannot automatically reach the assets of the LLC.
- A creditor who seizes an LLC interest does not automatically become a member and is therefore not entitled to exercise management powers with respect to the LLC.
- There are no corporate formalities. Corporations must hold regular meetings of the board of Directors and shareholders keep written corporate minutes and file annual reports with the state. On the other hand, the members and managers of an LLC need not hold regular meetings, which reduce complications and paperwork.
- By default, LLCs are treated as a pass- through entity for tax purposes. This means that LLCs avoid double taxation. An LLC can also elect to be treated as a C or S corporation for tax purposes.

Disadvantages of the Limited Liability Company

- Salaries and profits of an LLC are subject to self-employment taxes, currently equal to a combined 15.3%. With a corporation, only salaries and not profits are subject to such taxes.

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- A C corporation does not have to immediately distribute its profits to its shareholders as a dividend. Because an LLC is not subject to double-taxation, the profits of the LLC are automatically included in a member's income. Whereas, a corporation may retain profits and pay a flat 15% federal income tax without having to pay any self-employment taxes.
- Employees of an LLC who receive fringe benefits, such as group insurance, medical reimbursement plans, medical insurance and parking, must treat these benefits as taxable income. The same is true for employees who own more than 2% of an S corporation. Employees of a C corporation do not have to report these benefits as taxable income.

Asset Protection Advantages of the LLC

Inside Liability Protection:

A member of an LLC is not responsible for claims or judgments against the company. When we are dealing with a rental property or an active business, the potential liability associated with the business is a primary concern. The law specifically provides that the members of the LLC cannot be sued. This means that if the business itself can't pay a creditor, the creditor cannot legally come after any LLC member's house, car, or other personal possessions. Because only LLC assets are used to pay off business debts, LLC owners stand to lose only the money that they've invested in the LLC.

Exceptions to Limited Liability:

While LLC owners enjoy limited personal liability for their business transactions, this protection is not absolute.

An LLC owner can be held personally liable if he or she:

- Personally and directly injures someone.
- Personally guarantees a bank loan or a business debt on which the LLC defaults.
- Fails to deposit taxes withheld from employees' wages.
- Intentionally does something fraudulent, illegal, or reckless that causes harm to the company or to someone else, or
- Treats the LLC as an extension of his or her personal affairs, rather than as a separate legal entity.

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If owners do not treat the LLC as a separate business, a court might say that the LLC is acting as the alter ego of the owners which means that it doesn't really exist. The court will find that the LLC's owners are really doing business as individuals who are personally liable for their acts.

To keep this from happening, make sure the owners should:

- Not conceal or misrepresent material facts or the state of your finances to vendors, creditors, or other outsiders.
- Invest enough cash into the business so that the LLC can meet foreseeable expenses and liabilities.
- Do not commingle funds. Open a separate business checking account using a federal employer identification number. Do not use LLC funds to pay for personal matters and keep personal finances out of LLC accounting books.
- The LLC must have a formal written operating agreement and follow the rules and procedures contained therein. This lends credibility to the LLC's separate existence. Keep immaculate company records.

Outside Liability Protection:

Most states LLC statutes follow the Uniform Limited Partnership Act (ULPA). Property held in an LLC formed in a ULPA jurisdiction usually cannot be seized by a creditor of a member. If there is a judgment or claim against a member the creditor cannot reach the property held in the LLC. As is the case with the LLLP, assets of the LLC are protected from potential claims against a member. The creditor is limited to the ineffective charging order remedy. A judgment creditor that obtains a charging order against a member of the LLC is only permitted to take whatever actual cash distributions are made by the company.

Many state LLC statutes that follow the ULPA prohibit a member's creditors from foreclosing on the member's interest and/or forcing the liquidation of the LLC's assets by dissolution to satisfy a member's personal debts. Under ULPA, a creditor's collection remedies are limited to obtaining a charging order. The charging order can be only used to capture the distribution of dividends and income to the member. The following states have enacted LLC statutes following ULPA guidelines that prohibit foreclosure and liquidation: Arkansas,

If a company does not make income distribution and the creditor has only a charging order, the creditor is forced to pay taxes. [Section 77-137 – Internal Revenue Code]

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Connecticut, Delaware, Idaho, Iowa, Illinois, Louisiana, Maryland, Minnesota, Nevada[67], Oklahoma, Rhode Island, and Virginia.

Section 103(b) of that Act, 15 U.S.C. § 7003(b).

Sec. 43.5. Chapter 78 of NRS is hereby amended by adding thereto a new section to read as follows:

1. On application to a court of competent jurisdiction by a judgment creditor of a stockholder, the court may charge the

– 14 –

stockholder's stock with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the stockholder's stock.

2. This section:

(a) Applies only to a corporation that:

(1) Has more than 1 but fewer than 75 stockholders of record at any time.

(2) Is not a subsidiary of a publicly traded corporation, either in whole or in part.

(3) Is not a professional corporation, as defined in NRS 89.020.

(b) Does not apply to any liability of a stockholder that exists as the result of an action filed before July 1, 2007.

(c) Provides the exclusive remedy by which a judgment creditor of a stockholder or an assignee of a stockholder may satisfy a judgment out of the stockholder's stock of the corporation.

(d) Does not deprive any stockholder of the benefit of any exemption applicable to the stockholder's stock.

(e) Does not supersede any private agreement between a stockholder and a creditor.

Sec. 44. NRS 78.010 is hereby amended to read as follows:

78.010 1. As used in this chapter:

The Uniform Limited Liability Company Act (ULLCA) treats an LLC as a General Partnership and allows liquidation by dissolution. Some authors in the asset protection field recommend that a person who intends to operate a business in a ULLCA state can elect to form the LLC in a state that follows the ULPA model and register in their home state as a foreign LLC. This strategy assumes that pursuant to the choice of state law doctrine, the laws of the state where an entity is formed will govern issues concerning the administrative affairs of the business entity. It is assumed that by forming the LLC in a state that follows the ULPA prohibitions against foreclosure and liquidation, the law of the state of formation should govern the issue of liability and the member's creditors should not be able to foreclose or liquidate the LLC's assets to satisfy that member's personal debts.

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However, this strategy is erroneous because liquidation is not necessarily a matter of administrative affairs, in some states it could be viewed as a creditor's remedy. Procedures for creditors' remedies are often governed by the law of the jurisdiction in which the creditor attempts to enforce its judgment. If the creditor's rights are enforced in a state whose charging order statute allows a foreclosure of an LLC interest, then the member's interest could be foreclosed by the creditor notwithstanding the contrary law of the state of formation. An LLC formed in a ULPA state that files as a foreign company in a ULLCA state may be subject to the appointment of a receiver, foreclosure upon a member's interest and/or liquidation by dissolution pursuant to the provisions of the ULLCA act with respect to business conducted in the foreign jurisdiction. The foreign jurisdiction's laws may be used as controlling authority regarding the creditor's rights. Some of the states that have adopted the ULLCA have enacted it without the dissolution provisions. Those states are: Colorado, Delaware, Utah and Washington.[68]

The ULLCA has been adopted in the following states: Alabama, Hawaii, Illinois, Montana, South Carolina, South Dakota, US Virgin Islands, Vermont and West Virginia. Do not establish an LLC in any of these states. The LLC laws are constantly changing such that everyone should have the laws in their state checked, by an attorney, regarding LLC statutes pertaining to a judgment creditor's rights to receivership, dissolution and/or foreclosure on LLC property to satisfy the debt of a member.

Creative Uses of Limited Liability Companies

There is virtually no business enterprise for which an LLC would be inappropriate, unless the company is to be publicly traded or there are so many members of the LLC that it will not qualify for partnership tax treatment. Real estate, oil and gas ventures, any operating business, businesses with foreign investors, businesses seeking venture capital and joint ventures between established enterprises are just a few of the ventures that may benefit from doing business through an LLC.

LLCs owned by self-directed IRAs are a useful vehicle for real estate speculation. Since outside creditors of LLC members typically can get only a charging order against that member's LLC interest, LLCs provide an excellent component in an asset protection plan.

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Maintenance Requirements

An LLC is not required to maintain formal minutes and resolutions. Record keeping requirements can be minimized without a threat that the members will be sued individually for a liability of the company. Contrast this treatment with that of a corporation. If the proper formalities are not followed, the corporate protection will be pierced and the owners will have liability for company obligations. The LLC law is specifically intended to remedy this problem by providing that the entity cannot be pierced because of a failure to maintain any of the corporate type documents.

Annual maintenance requirements of an LLC are relatively simple. Most states require a report listing the LLC's general manager or members and require an annual filing fee. An annual tax return is required. The IRS form will depend upon the taxing method the LLC selects. In states that tax company profits a state tax return will be required.

Taxation of Limited Liability Companies

The LLC has tremendous tax flexibility in choosing its method of taxation. The members can elect to have the LLC taxed as a C Corporation or S Corporation or Partnership. The LLC does have some clear advantage over a corporation because of freedom from corporate formalities and flexibility in taxation.

Unlike a corporation, an LLC is not considered separate from its owners for tax purposes, unless it elects to be treated as a corporation for tax purposes. Instead, it is what the IRS calls a pass-through entity, like a partnership or sole proprietorship. This means that business income passes through the business to the LLC members, who report their share of profits or losses on their individual 1040 income tax returns.

While an LLC itself does not pay taxes, a co-owned LLC must file IRS Form 1065with the IRS each year. This form is the same one that a partnership files

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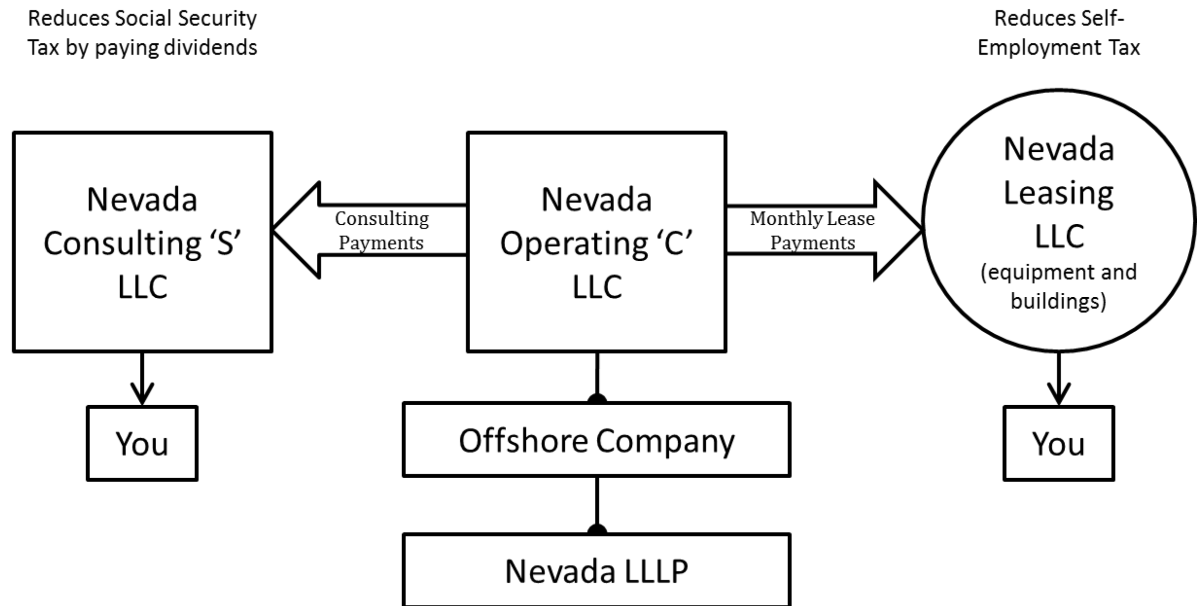
and it sets out each LLC member's share of the LLC's profits or losses. The IRS reviews the 1065 and K-1 returns to make sure LLC members are correctly reporting their income.



Passive income that is received by an LLC treated as a partnership is passed to the member via IRS 1065 and K-1 reports. The member is not required to pay self-employment taxes on passive income received through an LLC. Therefore, the LLC is a great vehicle to place investments and rental properties.

It is very important to note that failure to file on time will result in a civil fine of $50 per month, per Member or Limited Partner which can cause thousands of dollars in needless fines for failure to file the IRS 1065 on time for an LLC or LLLP.

Example of Tax Savings

Charging off income against a 'C' elected LLC for both tax reduction and limiting liabilities for the managers by using a New Mexico LLC as the nominee acting manager.

In the above example Officers have limited liability or no involvement. Income is drawn out on the right through leasing back assets and income on the left is drawn out by approved Officers through billable commissions using an 'S' elected LLC so that the owners can take advantage of the wages/dividends mix. The 'C' elected LLC retains the net income at the low 15% tax level and if correctly set up separate tax advantages are allowed for all entities.

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CORPORATE TAXATION

The IRS classifies corporations for tax purposes. The primary classifications are C elected LLCs and S elected LLCs. Professional LLCs are taxed at higher rates. Non-profit LLCs may be taxed unless they are approved as charities via 28 USC. sec. 501(c)(3) or one of several other statutory authorities for charitable exemptions. The following is a concise analysis of the fundamentals you need to know about S, C and professional LLCs.

LLCs as taxable entities:

C elected LLCs: Taxed at Separate tax rates

Advantages:

- Lower Tax Brackets
- Fiscal Year Planning
- 100% of Medical, Dental, Vision Deductions
- Section 179 Deductions on Equipment for the Business (currently $100,000)
- Meals, Travel, Lodging, Entertainment
- Life, Insurance, Disability Insurance
- Pension Plans

Disadvantages:

- Separate tax return requirements with a possibility of double taxation
- Minutes, Meetings and Resolutions can be new and cumbersome

S elected LLCs: Considered a pass through entity for federal taxes

Advantages:

- Avoids double taxation
- Not subject to personal holdings tax or accumulated earnings tax
- Profits and losses flow through to individual shareholders. Losses can offset income in the current year
- No corporate tax on liquidation or sale of corporate assets

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Disadvantages:

- Members are subject to tax on income (even if funds are not distributed)
- Limited to 75 members
- Generally only persons or select trusts may be shareholders
- Members must be revealed to the IRS
- Must be a calendar year taxpayer
- Limited fringe benefits

Professional or Service LLCs: Required in many states for service professionals (i.e. physicians, dentists, architects, attorneys, et cetera)

Taxation requirements:

C elected LLCs

- Required to file a Form 1120 regardless of the amount of income or loss. It must file even if it stops conducting business.
- Required to make estimated tax payments
- Tax Rates:
    - $0 to $50,000 15%
    - $50,001 to $75,000 25%
    - $ 75,001 to $100,000 34%
    - $100,001 to $335,000 39%
    - $335,001 to $10,000,000 34%

Professional Service C elected LLCs

- Required to file a Form 1120 regardless of the amount of income or loss. It must file even if it stops conducting business
- Required to make estimated tax payments
- Tax Rates— 35% flat tax rate

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S elected LLCs

- Required to file a Form 1120S regardless of the amount of income or loss. It must file even if it stops conducting business. An S elected LLC's profit or loss is passed through to shareholders and reported on the member's Schedule K-1
- Filing deadline: By the 15th day of March
- Estimated tax: Members are responsible for payment of estimated tax on their tax returns

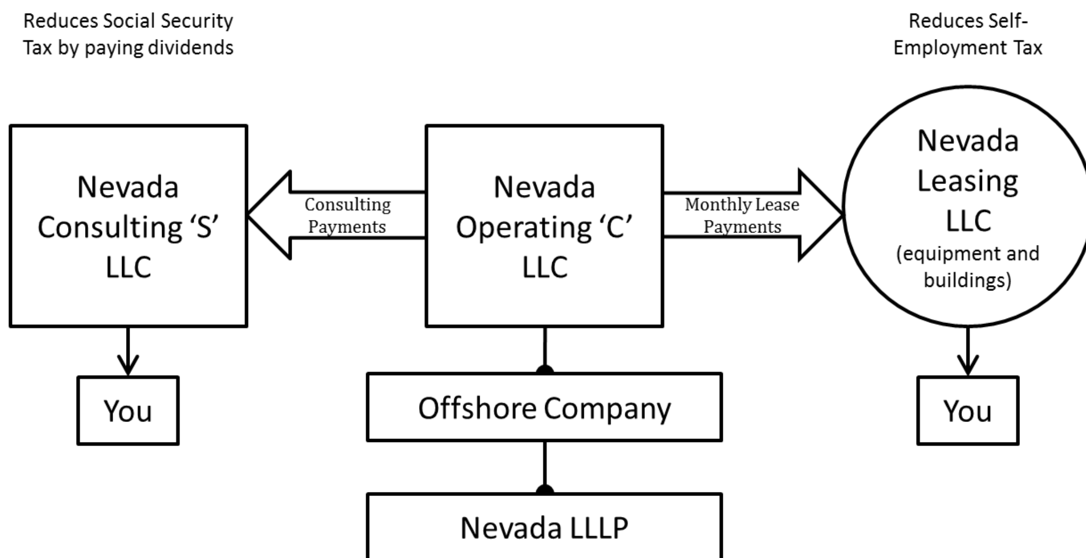
The doctrine of choice of law requires that the internal affairs, voting, management, et cetera, and the liability of the owners for an LLC will be governed by the state where the business is formed, and not the state where it does business. Many states follow the choice of law doctrine and will look to the state of incorporation as the appropriate choice of law pertaining to piercing the corporate veil. Hence, even if the case is heard in another state a motion can be filed that issues pertaining to members or managers liability be determined by the laws of the state of Nevada because that was the state of incorporation.

Practical Uses of Nevada LLCs

There are two primary reasons I recommend Nevada LLCs for use as privacy entities and as tax saving entities. Generally speaking, these are two different concepts and cannot be mixed.

Example of Tax Savings

Charging off income against a 'C' corporation for both tax reduction and limiting liabilities for Officers and Directors.



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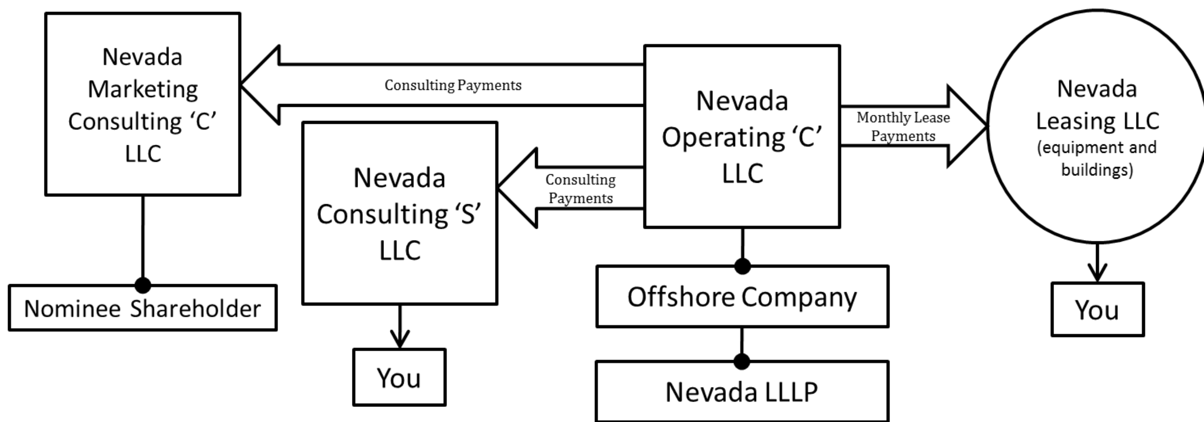
In the previous example, appointed or elected Officers have limited liability or no involvement at all and can appoint a nominee within their firm to stand in place of President with a pre-signed letter of resignation.

Income is drawn out on the right through leasing back assets and income on the left is drawn out by Officers and Managers through billable commissions or fees using an 'S' elected LLC so that the owners can take advantage of the wages/dividends mix. The 'C' elected LLC retains the net income at the low 15% tax level and if correctly set up separate tax advantages are allowed for all entities.

To further enhance a lower tax bracket a <u>personal</u> 'C' corporation can be utilized alongside the personal 'S' corporation. This strategy avoids the apportionment connection of the 'C' corporate entities sharing the 15% low tax rate on the first $50,000 of net taxable profits.

Again, the main operating 'C' corporation is owned by the LLLP which in turn is owned by the WPT. All other entities are owned as follows:



The advantages are as follows:

- Operating 'C' elected LLC has a tax base rate of 15% on the first $50,000 of net taxable income.
- A Nevada marketing/consulting (second 'C' corporation) company can be owned so that a second tax base rate of 15% on the first $50,000 of the net taxable income can be allowed thereby doubling up the low tax rate available to 'C' entities. Many LLCs hold what is known as a 'signed off' stock certificate to accomplish a future takeover of the company with all

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of its holdings and such a company provides asset protection and invisibility to litigators and creditors since that ownership remains concealed.

- A Nevada consulting 'S' elected LLC personally owned will allow for the wage and dividend mix on all income to the owners thereby reducing the 15.3% social security or self-employment taxes on income that would otherwise be taxed.
- A Nevada leasing LLC personally owned will allow all lease payments to flow from the operating 'C' corporation to the owners thereby eliminating the 15.3% social security or self-employment taxes on income that would otherwise be taxed.

UNDERSTANDING CHARITIES, FOUNDATIONS AND NONPROFITS

ASSET PROTECTION THROUGH FOUNDATIONS

Under law, a corporation is an "artificial person," and therefore, completely separate from the people who own and operate it. This provides protection to the owner, unlike an individual or sole proprietorship, where the owner bears full and complete financial responsibility for all actions of the company.

A corporation's debts and taxes are separate from those of its owners because it is viewed as an independent entity. As an asset protection and privacy note, Nevada does not share confidential information with the IRS about corporations and limited partnerships registered in the state.

If your family is active in philanthropy then, by the same theory of protection as for a corporation, an Endowment Foundation is beneficial in protecting your assets in how you choose to give. How so? Simple: by protecting your money and assets with a Family Endowment Foundation, you have more to give to a charitable foundation by not being taxed when your family foundation is properly established.

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The Council on Foundations[69], a membership organization that supports grantmakers in various aspects of foundation management, defines a family foundation as an organization whose funds are derived from members of a single family. In addition, at least one family member must continue to serve as an officer or board member of the foundation and as the donor.[70]
While "family foundation" is not a legal term and has no precise definition, the Council on Foundations actually states that there are many reasons to start family foundation.[71]

FAMILY ENDOWMENT FOUNDATIONS

A foundation, by definition, is a legal categorization of nonprofit organizations that will typically either donate funds and support to other organizations, or provide the source of funding for its own charitable purposes.[72]

A Family Endowment Foundation is a private, nonprofit, tax-free 501(c)(3) charity which you create; it earns money tax-free, acquires assets, provide director's fees, and support the charities and causes you choose. You can make investments where you choose in real estate, high-yield portfolios, offshore investments or other passive investments.

As of 2010, approximately half of all private foundations were family foundations. Furthermore, of those family foundations, nearly one-third were established after 2000.[73] This alone signifies that families are becoming more aware of the need to protect their assets so that they may practice philanthropy in a more feasible manner. Family foundations not only allow families to protect what they've worked so hard to earn, but also to give more to charities of their choice.

While family foundations range greatly in asset size from a few hundred dollars to more than $1 billion, the estimated total of all family foundations is $246 billion.

The Excitement of Foundations:

- Contribute to other 501(c)(3) charitable organizations.
- Nominate employees to conduct genuine charitable activities for their foundation.
- Provide for perpetual advisory leadership for their foundation activities.
- Conduct other activities within the parameters of regulations and IRS Code Section 501(c)(3).
- Serve at local nonprofit organizations and distribute grants to them to supplement any salary they may pay to you.
- Create a scholarship or grant-making program to help those not related to you who are in need.

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However, sixty percent of family foundations hold less than $1 million in assets. In addition, family foundations gave away approximately $21.1 billion in 2008, and over half of family foundations gave away $50,000 in 2010. Given those numbers, you may realize that a Family Endowment Foundations can be a great tax reduction tool for charity, if established correctly.[74]

Your foundation can and must donate a minimum of 5% of its assets to the charity of your choice each year, including one you may have created. Donations can be cash, personal assets and real estate that you wish to legally protect. By donating them to your foundation, you are releasing them from your personal ownership and therefore they become separate from other assets you have personally acquired.

You can also set up the foundation to continue to make donations and thrive years after you've passed. In years to come as the family foundation is passed down, the charities the foundation donates to may change but the "why and how" of what started the family foundation will preserve the family's philanthropic attitude.

By creating a Family Endowment Foundation, you can act as the director of the gifts and assist in making "sound business" practices in the foundation. As also with a corporation, a business plan should be conceived and "sound business practices" in accounting, leadership, and teamwork should be instituted, although the foundation is nonprofit 501(c)(3).

Like a corporation, a foundation always has a board of directors and sometimes, they are paid through the foundation if you so choose to set up your foundation in this manner. If you are the founder of the family foundation, you are able to set up the board of directors for the foundation as you see fit. You can act as the Chairman of the Board and appoint your spouse, children, siblings, and so on as you wish to the

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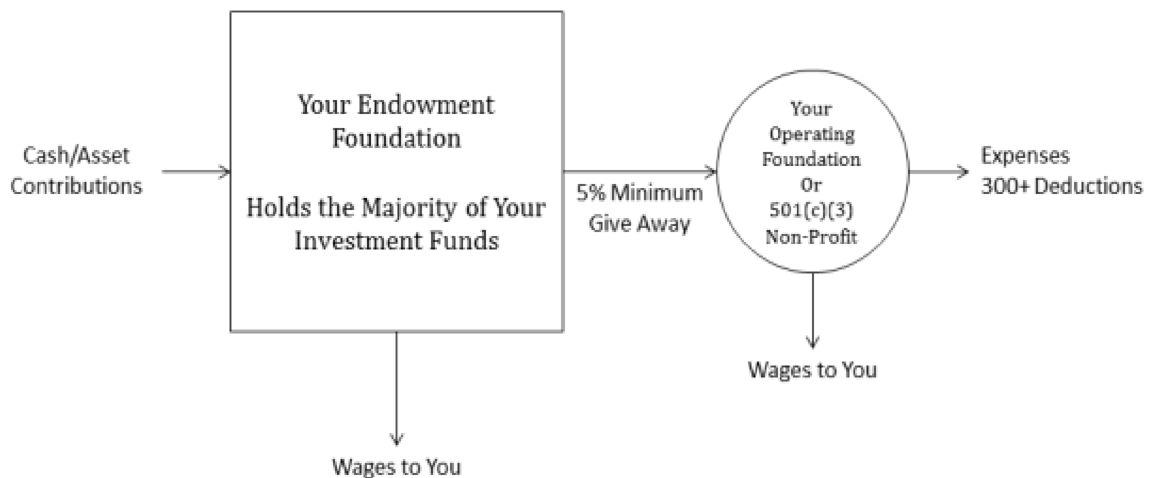
remaining seats on the Board. Because the Board of Directors for your Family Endowment Foundation is not overseeing corporate matters and is self-appointed, the Board is regarded as a "board-only" organization.

In addition to being able to gift more through an endowment foundation, those participating are also learning valuable lessons and connecting with people they may not have otherwise, plus deriving the tremendous satisfaction of philanthropic activities.

While there are social and business aspects to an endowment foundation, there are also tax advantages. When forming a foundation, the link between an individual and the use of the money disappears. As the founder you may:

- Contribute to other 501(c)(3) charitable organizations.
- Nominate employees to conduct genuine charitable activities for their foundation.
- Provide for perpetual advisory leadership for their foundation activities.
- Conduct other activities within the parameters of regulations and IRS Code Section 501(c)(3).
- Serve at local nonprofit organizations and distribute grants to them to supplement any salary they may pay to you.
- Create a scholarship or grant-making program to help those not related to you who are in need.



501(c)(3) & Nonprofit Organizations

A 501(c)(3) is more typically referred to as a "nonprofit organization," and is also tax-exempt. The IRS provides 29 types of nonprofits that are exempt from some

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or all federal income taxes. The name "501(c)(3)" comes from the fact that IRS Code sets out requirements for attaining special tax exemptions in Sections 503 through 505. Many states will also refer to Section 501(c) of the IRS Code to outline their exemptions from state taxation as well.

As is the same with a "for-profit" organization, a nonprofit, or "not-for-profit" organization must also file a statement of corporate purpose with the Secretary of State, pay a fee, create articles of incorporation, conduct regular meetings, and fulfill other obligations to maintain a "corporate" status[75], much like a Nevada company. Additionally, to be tax-exempt, a nonprofit organization must be incorporated under the state law in which they are established. Furthermore, a nonprofit organization must apply for tax-exemption through the IRS in two steps: obtaining a Federal Employer Identification Number (FEIN), obtained upon incorporating, and by filing Form 1024 with the required fee.

However, nonprofits cannot operate for profit, including distributing income to shareholders. The funds acquired by nonprofits must stay within the corporate accounts to pay for "reasonable" salaries, overhead costs, and activities of the organization. If the income of the nonprofit is used for the personal benefit of any individual or an excessive salary is derived from a nonprofit, the organization can lose its nonprofit status.

The nonprofit organizations that are exempt from taxes are those which operate exclusively for the benefit of the general public. While nonprofits may charge money for their services, public contributions to the organization are tax-deductible on individual taxes returns. However, a private foundation is a nonprofit organization that devotes most of its resources to the active conduct of its tax exempt activities. A Family Endowment Foundation would typically fall under the "private foundation" categorization.

International Endowment Foundations

An International Family Endowment Foundation can be your work engine for investments. However, you must protect it. All investments are tax free from your Foundation. All you have to do to establish an International Endowment Foundation is simply set up an offshore company such as an International Business Corporation through your Foundation. By investing through the Family Endowment Foundation, you may possibly get double-digit returns on your offshore investments.

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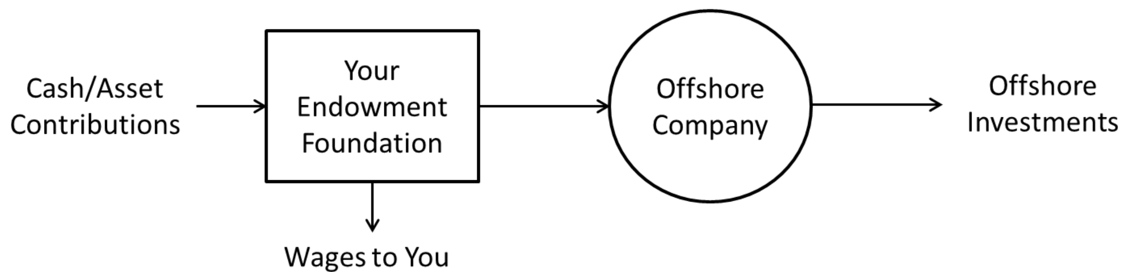

Who should have an IBC? Anyone wanting to protect their assets or investments, such as those in a Family Endowment Foundation. IBCs provide the maximum security for asset protection and offers a corporate structure, which is familiar and comfortable for many. Offshore companies that Bridgeway Financial Corporation structure the most for their clients are those in the Cayman Islands. There are no income taxes, capital gains taxes, or corporate, estate, profit, sales, value added, gift or inheritance taxes. There are also no taxation agreements with other countries and no tax treaty with the US.

Tax-Exemption

Due to its tax-exempt status, it is imperative that any type of nonprofit keeps in compliance with state and federal law to maintain its status.

One of greatest benefits in donating to an endowment foundation you own is that it can reduce your taxes up to 30%. By creating a Bridgeway International Endowment Foundation™, you can effectively donate assets you already own such as real estate, savings, cash, investments, etc., while effectively lowering taxes, creating asset protection, and make tax-free investments anywhere in the world.

However, what some clients may not realize is that if funds are mismanaged, or improperly “self-dealt,” the IRS can immediately penalize 100% of your funds.

A Bridgeway Offshore Company is everything you need to operate legally with complete asset protection for your International Family Endowment Foundation. Offshore protection is quick and very affordable!

Gifts and payments from your foundation may be of two different types:

1. You may make gifts to national or community charities, schools, churches, and so on, as qualified by the IRS under section 501(c)(3).

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2. Under supervision, you may actually begin a charitable program of your own design.

Additionally, you may make gifts to charities, churches, projects, etc., in other countries, but direct contributions to charitable activities in other countries are generally not tax deductible. If you arrange to make these donations through your foundation, however, they are deductible.

HOW TO HOLD REAL ESTATE

Before discussing why you should be using LLC partnerships for your investment real estate, we need to examine entity-type terminology first.

1. LIMITED LIABILITY COMPANIES (LLCs): An LLC is an incorporated business entity filed under state law, in which all owners called "members" have limited legal liability. It is a hybrid entity that combines some of the major legal advantages of corporations and the excellent tax advantages of general partnerships. The owners and managers in an LLC are called members and managers.

   Legal Status: The legal rights and obligations of members are governed by the applicable state LLC statutes (like corporations). The first LLC law in the United States was enacted in 1977 in Wyoming. Presently all 50 states and the District of Columbia have enacted LLC statutes and many states have modeled their statutes after Wyoming. Most states allow single owner (member) LLCs. As with corporations, LLC laws vary from state to state.

   Tax Status: As a separate legal entity, an LLC can be taxed as a sole proprietor, a partnership or a corporation. But for real estate ownership, an LLC should elect to be taxed as a partnership and thereby be governed by the favorable tax benefits of partnership tax law.

2. PARTNERSHIPS: A partnership is an association of two or more legal persons (or entities) joined together in a business.

   Legal Status: In a general partnership each partner is both jointly and severally liable for all debts of the partnership, except for nonrecourse debts. General partnerships are inexpensive and simple to form. There are

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generally no state filings. They can be done informally and verbally. Because of liability exposure, general partnerships are not recommended. Therefore, the use of an LLC (Limited Liability Company) or LP (Limited Partnership) is advised.

Tax Status: Partnerships are governed by Subchapter K of the Internal Revenue Code. They are separate tax entities and file IRS form 1065. But partnerships do not pay taxes as an entity. Instead, income, deductions, losses & credits pass through to the partner's individual tax returns, via a partner K-I form. They are termed as "pure flow-through entities." Partnerships became attractive when the 1986 Tax Reform Act disallowed the tax free liquidation of corporations, known as the "General Utilities" doctrine. As pure flow-through entities, partnerships have enormous tax benefits for real estate including tax free liquidations far superior than corporations.

3. LLC PARTNERSHIPS: An LLC partnership is both a legal entity and a tax entity with at least two members. In most cases the LLC partnership is the ideal entity of preference for real estate ownership.

   Legal status: On the legal side, it has the corporate structure giving its owner-members limited liability protection while protecting member personal assets.

   Tax status: On the tax side it is a partnership with the favorable tax benefits of partnership tax law including a very low IRS audit profile

4. LIMITED PARTNERSHIPS (LPs): An LP is a separate legal entity formed under state limited partnership statutes. Tax wise, an LP is a pass-through entity and files partnership tax forms and has almost all of the same partnership tax advantages. But, unlike LLC members or other partners, limited partners are subject to passive loss limits and are therefore *not* entitled to currently deduct rental properly losses against other types of income.

5. CORPORATIONS: A corporation is a legal, artificial person that is separate, distinct and apart from the owners.

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Legal status: All corporations are created by filing incorporation papers with the secretary of state (the state of the corporation). Corporations give its shareholders limited liability protection.

Tax status – All corporations start out as *C corporations.* The "C" is a federal "tax" status of the corporation which is governed by SubChapter C of the Internal Revenue Code which states that all income and losses of a C Corporation stay within the corporation and a C corporation has its own tax rate schedule and pays its own corporate taxes and is therefore taxed separately as an entity with a tax rate between 15 to 39%. C corporations file IRS Form 1120. Corporations start as a C corporation, but may make a written timely election (form 2553) to be classified as an S corporation. The "S" is a federal "tax" status of the corporation which is governed by SubChapter S Rules of the Internal Revenue Code. Unlike C corporations, S corporations do not have their own tax rate schedule and do not pay their own corporate taxes. Instead, income and losses pass through to the shareholder's individual tax returns via a shareholder K-l schedule somewhat similar to partnerships. S corporations offer the same limited liability as a C corporations, yet do not have the potential disadvantage of double taxation. An S corporation files IRS Form 1120S. Overall, corporations are designed for businesses *not* involving the ownership of real estate and have costly disadvantages for real estate.

REASONS NOT TO USE CORPORATIONS FOR REAL ESTATE

When referring to a partnership the term "partner" includes a member of an LLC or more specifically of an LLC partnership. Such reasons not to use corporations pertain to both rental keepers and resale flippers. LLC partnerships avoid the following corporate disadvantages:

1. IRS AUDITS: Corporations are audited more than partnerships. For instance, corporations are targets on the issue of reasonable compensation (discussed in number 4 below). By default, partnerships (IRS Form 1065) are one of the least audited entities. With partnerships there are no issues of reasonable compensation (number 4 below).

2. COSTLY DEALER STATUS: Corporations are designed for active ordinary income businesses. Using a corporation C or S for quick-sale flips is an

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admission of costly dealer status and impairs dealer-avoidance planning.

Partnerships can consolidate flippers with keepers in one LLC partnership and is one the most effective ways to avoid dealer status.

3. PAYROLL FILINGS: Corporations are subject to more payroll filings because corporate officers and directors are employees and must receive a reasonable W-2 salary.

   Partnerships are flow-through entities where partners do not have to be paid a W-2 salary. In fact, a partner cannot be an employee for federal income taxes, Reg. 1.707-I(c). The partnership can pay the partners straight distributions or draws without salary withholding or payroll filings. Such distributions are tax neutral in that that they are not deductible by the partnership and are tax-free to the partner, IRC 731. If a partner requires earned income for the basis of making retirement plan contributions, the partners could receive such earned income without W-2 salaries. Here the partnership could pay a deductible "guaranteed payment" which is earned income and the basis for making retirement plan contributions. A guaranteed payment is a deductible straight fee for specific services rendered by the partner to the partnership in their capacity of a partner (like a 1099 payment). It is not paid as a salary via a W-2. Thus, payroll reports do not have to be filed. However, to the partner, a guaranteed payment is subject to income taxes and Social Security taxes. But again, guaranteed payment is earned income and the basis for making retirement plan contributions. IRC 707(c). Guaranteed payments are optional and not required as with corporate salaries.

   If the partnership wants to take advantage of corporation fringe benefit deductions, known as CEO Benefit Plans, you can make the corporation a minority non-voting partner.

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4. IRS SCRUTINY OVER "REASONABLE COMPENSATION" TO "C" OR "S" CORPORATION SHAREHOLDER-EMPLOYEES. Reasonable compensation essentially means that the combined amount of wages and fringe benefits cannot be disproportionate in relation to the value of the work being performed. Whether compensation is considered reasonable will depend on a number of factors such as: duties performed, job responsibility, the nature and complexity of the business, etc. It's a controversial area with the IRS. Any part of the total compensation that is not considered by IRS to be reasonable could be re-characterized in an unfavorable manner resulting in additional tax liabilities. For a C corporation, such IRS re-characterization would be less salary but more dividends resulting in potential double taxation. [See *Mayson Manufacturing Co. v. Commissioner,* 49-2, USTC 9467, 6th Cir.; *Estate of Wallace,* 95 TC 37, 1990; *Westbrook,* TC Memo 1993-634, 66TCM, 1823; and other cases where the taxpayer lost on this issue}. For an S corporation, such IRS re-characterization would be more salary resulting in more employment taxes. [See *Joly.* TC Memo 1998-361, 85AFTR 2d 2000-1234, 6th Cir; *Davis,* TC Memo 1997-80*:* *Eugene Ziobron Inc.* v. U.S., 80 AFTR 2d 97; *Veterinary Surgical Consultants.* 117 TC No.14. *Yeagle Drywall,* 3rd Cir. and other cases where the taxpayer lost on this issue]. As it can be seen, corporate reasonable compensation could be a hot issue with the IRS but not with partnerships.

   Partnerships: By default, a partner cannot be an employee. Thus, partnership payments to partners are not subject to any issues of reasonable compensation and therefore not subject to any related IRS scrutiny. This is so whether the partnership payments are by way of straight Section 731 distributions or Section 707(c) guaranteed payments (discussed under number 3 above).

5. LIMITS ON DEDUCTING LOSSES: One of the unique virtues of real estate investments is that a property can be showing a “paper" tax loss yet still be financially profitable with positive cash flow.

   Corporations have limits on fully deducting rental property tax losses. With a corporation, tax losses do not pass through to the individual, but are locked within the corporation as a totally separate tax entity. A corporation can be a costly choice eliminating the combination of tax

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losses and positive cash flow.

EXAMPLE: Assume a property is held in a C corporation and it generates $20,000 of tax losses. If the owner is in a 31% tax bracket, they would lose $6,200 of tax savings! S corporations also have limits on claiming rental property tax losses. Tax losses such as rental property losses are limited to the shareholder's basis in the S corporation's stock, which does not include third party debt, such as a mortgage, IRC 1366(d); *Maloof,* TC Memo 2005-75; *Frankel,* 61 TC 343, 1973: *Allen,* 55 TCM 641, 1988(and other cases).

Such basis only includes the monies invested by the shareholders themselves such as a down payment for real estate. This could be a significant pitfall for leveraged real estate showing considerable tax losses.

EXAMPLE: An investor forms an S corporation to acquire a rental property for a price of $200,000 with $10,000 down and a $190,000 mortgage. The investor contributes as capital the $10,000 down monies to the corporation, which becomes the investor's stock basis. The corporation then acquires the property and obtains the $190,000 mortgage. The stock basis does *not* include the $190,000 mortgage, even if the investor is personally liable on the note. Suppose at the end of the tax year, the property shows a tax loss of $25,000. The investor can only deduct $10,000 as a tax loss up to the stock basis of $10,000. The remaining $15,000 loss must be carried over until there is enough shareholder basis. The result is a loss of current tax savings which could have been reinvested. By default, partnerships bypass corporate loss limitations on rental losses. Again, partnerships are *pure* flow-through entities where losses could he passed through to the individual partner's 1040, I Re 702(a). Partners can increase the basis in their partnership interest by mortgages and other types of partnership liabilities (recourse or non-recourse) to reflect increases in partnership liabilities and thus increase their ability to deduct partnership losses, IRC 752(a). As illustrated, an S corporation cannot do this (or could only do so with advanced planning).

6. TAXABLE REFINANCING: S corporation distributions of tax free borrowed money could end up being taxable income because of the above basis

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limitations of not including third party debt. That is, the rule in number 5 above which could make a tax free refinance…taxable. Generally, when a property is refinanced with a cash takeout, the loan proceeds are tax free. But an S corporation's distribution of the refinance proceeds to the shareholders this may not be so. The excess of this distribution over the corporate earnings & profits and the shareholder's stock basis, which does not include the loan amount, is taxable gain, IRC I368(b).

Partnership distributions of borrowed money to partners are not taxable because partnerships are flow-through entities where such distributions are not taxable, IRC 73 I; IRC 70I; IRC 702. Plus, the basis in a partnership interest is increased by mortgages and other types of partnership liabilities, IRC 752(a).

TAX ALERT: Numbers 5 and 6 above demonstrate that corporations are not flow-through entities and thus have restrictions especially with real estate ownership. With real estate, there is so much opportunity to accomplish transactions tax free. This is best accomplished in a partnership *pure flow-through* entity, including an LLC partnership. On the other hand, C or S corporations impair the effecting of real estate transactions in a tax saving manner.

7. TAXATION OF DISTRIBUTED PROPRETY: With corporations, there is taxation on distributions of appreciated property deeded from the corporation to the shareholder even though no cash is realized. With a C corporation, there is potential double taxation, first to the corporation in the amount of the gain (difference between property's fair market value and basis), IRC311(b). Plus, C corporations do not have lower capital gain rates. And secondly, to the shareholder as a "dividend in kind" in the amount of the property's fair market value (limited by corporate earnings and profits), IRC301. This could unnecessarily cost tens or thousands of dollars, especially with today's high appreciated real estate prices. Double income is phantom income as there no receipt of cash. With an S corporation there is no double taxation, but there is taxation to the corporation in the amount of the gain (difference between property's fair market value and basis), IRC 311(b). Such gain would be passed from the S corporation to the individual shareholder's 1040 as non-cash phantom

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taxable income.

By default, partnerships are pure flow-through entities, such distributions of appreciated property from the partnership to the partners are tax free, IRC 731.

8. TAXATION ON ENTIRE CORPORATE LIQUIDATION: With corporations, there is taxation on the liquidation of the entire corporate entity with appreciated real estate even though cash may not be realized. Upon the corporate transfer of liquidated appreciated assets to the shareholders including real estate there will be the same dreaded tax consequences as in number 7 above. With real estate you need tax free exit strategies. You will not get this with corporations.

   By default, partnerships are pure flow-through entities, such transfers of liquidated appreciated property from the partnership to the partners are tax-free, IRC 731.

9. TAXATION ON CORPORATE CONVERSION TO AN LLC: With corporations, conversion of the corporation with appreciated assets to an LLC will result in tax liabilities even though cash may not be realized. There will again be the same costly tax consequences as in number 7 above. Thus, the tax cost of liquidating any corporation with appreciated assets is often so high that conversion to an LLC is often not a viable choice. You therefore need to plan your tax free exit strategy in *advance* by not putting real estate in corporations in the first place.

   By default, an existing partnership (general or limited) with appreciated assets (such as real estate) *can* convert to an LLC, income tax free [RR 84-52, RR 95-37, IRC 721, PLR 9623016]. The resulting LLC docs not even have to obtain a new federal ID number. ALERT: There may be local transfer taxes on such conversions or transfers to LLCs. Be sure to call Bridgeway Financial Corporation on the correct way to structure your LLC and real estate transfer.

10. Transfers of appreciated property to a corporation is taxable if the contributing shareholder is not in control of the corporation immediately

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after the transfer, IRC351 (a); Regulation 1.351-1 (a). This could be a tax dilemma where there will be a more than an 80% change in owners after the incorporation.

By default, with partnerships there will never be taxable gain on the transfer of debt* free appreciated property to the partnership even if the contributing partner is not in "control" of the partnership immediately after the partnership formation, IRC 721. (*Where there is debt on the property, see number 11, next.)

11. Transfers to a corporation of property whose debt* exceeds the property's adjusted tax basis do not increase the basis of the shareholder's stock, IRC 358(a) and the shareholder ends up with a zero stock basis. (*High debt exceeding a property's basis often stems from recent cash out refinancing). For an S corporation, a low stock basis, including a zero basis, means less limits on deducting entity losses and for corporations, a larger gain on the sale or disposition of the corporate stock. Plus in this scenario where property is transferred to the corporation and the debt exceeds the property's adjusted tax basis, there is taxable gain to the shareholder transferring the property with no planning opportunity to avoid such taxable phantom gain.

    By default, with partnerships (including LLCs) the partner receives an increase in the basis of their partnership interest by including their allocable portion of debt, including the debt assumed by the partnership entity when it received the contributed property, IRC 752(a). No such benefit is available for corporate shareholders. Also, where property is transferred to the partnership and the debt exceeds the property's adjusted tax basis, there could be taxable gain to the partner transferring the property. But there are planning opportunities for the partner to avoid or reduce such taxable gain, IRC752. No such planning is available for corporate shareholders.

12. With corporations, involving the transfer of property with debt to the corporation, if the transfer of the debt lacks a *business purpose* or has a *tax avoidance* motive, *all* such debt will be treated as phantom taxable gain to the shareholder transferring the property, whether the debt exceeds the

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property basis or not, IRC357(b). What constitutes lacking in business purpose or a tax avoidance motive is complex and cannot be discussed here. The point to be made is that this provision could result in costly phantom income and is totally unnecessary by using partnerships. By default, with partnerships (including LLCs), no such provision or "tax trap" exists, IRC 752.

NOTE: Numbers 10, 11 and 12 involve some complex provisions. Even if you do not fully understand what is being said here, the bottom-line is that these are costly traps for real estate ownership in corporations, but not with partnerships or LLCs as partnerships, or limited partnerships.

13. INABILITY OR DIFFICULTY IN ACCOMPLISHING A 1031 EXCHANGE IN THE EVENT OF A SHAREHOLDER SPLIT-UP: A stock interest in a corporation does not qualify for a 1031 tax free exchange, IRC 1031 (a)(2)(B). Although the corporation as an *entity* can do a 1031 exchange of real estate. If the corporation distributes property out of the corporation to the shareholders so that they could go their separate ways there will be tax liabilities as discussed in 7 and 8 above.

    A partnership as an *entity* can also qualify for a 1031 exchange. But in the event of a partner split-up, a partnership or LLC *interest,* such as a 50% ownership, does not qualify for a 1031 exchange, IRC 1031(a)(2)(D). However, unlike shareholder split-ups with corporations, tax free planning could be done by converting the non-qualifying partnership interest into a tenant-in-common interest which does qualify for a 1031 exchange or distributing the property out of the partnership to the partners as qualifying tenants-in-common, Rev. Rule 73-476. Such appreciated property distributions (with built-in gains) are tax free from partnership to partners, IRC 73 1. With the distributed property the qualifying co-tenants can then do the 1031 rollover into separate replacement property while other co-owners can opt not to do the 1031. Doing this with corporations would result in tax liabilities as previously discussed in 7 and 8 above.

14. THE PURCHASER OF A STOCK INTEREST IN A “C” OR “S" CORPORATION CANNOT GET A STEP-UP IN BASIS FOR THE APPRECIATED REAL ESTATE

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WITHIN THE CORPORATION: Instead of purchasing property directly from an entity, purchasing an ownership interest in the entity, such as corporate stock or a partnership interest has several significant advantages – no local transfers fees, limited liability for asset protection purposes, no increased property tax assessments and it's totally private. However, one buyer disadvantage is generally a lower tax basis in the property. For example, assume the property in the corporate entity is worth $2,000,000 and has a tax basis of $100,000. If the purchaser buys the property directly from the corporation for $2,000,000, then $2,000,000 will be their basis. But if they buy the corporate stock for $2,000,000 the purchaser's basis in the property will be that of the corporation $100,000. This means a big loss in tax savings because of much less depreciation deductions and/or a much larger gain upon the sale or disposition of the property. For an S corporation, upon the death of a shareholder, there is no step-up in basis for the assets within the S corporation, including any real estate.

Partnerships: By election, with the purchase of a partnership interest, including an LLC membership interest, the buyer is entitled to the higher $2,000,000 basis by making a special partnership election under IRC 754. This means the preservation of the tax savings and the above mentioned non-tax benefits of purchasing an interest in a partnership or LLC. This also pertains to the death of a partner, unlike an S corporation.

15. NO SPECIAL INCOME/LOSS ALLOCATIONS: With corporations, income or losses must be apportioned strictly in accordance with the exact percentage of shares owned with no variations of special allocations to different shareholders.

    Partnerships: With planning, income, gains & losses can be allocated to partners in a proportion that differs from their partnership percentage ownership where partners in high brackets can be allocated more losses or less income, and vice versa for partners in low brackets. Such special allocations must be done under the provisions of IRC 704(b), but they could be done only with a partnership, including an LLC partnership.

16. IRS ISSUES WITH INSIDER LOANS: With corporations, loans to

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shareholders and officers are ways to take out tax-free money out of corporations. But such "insider" loans could be subject to IRS scrutiny including the following: The loan must be evidenced in writing with arm's length loan documents, interest charged, a payment schedule, payments actually made, security for the loan, corporate resources to make the loan, individual capacity to repay the loan, conduct of the parties, etc. Otherwise, the IRS may re-characterize the loans as a taxable dividend or taxable salary. Such IRS re-characterization could be avoided with the proper documents and formalities. But all of this is not necessary with a partnership.

By default, with partnerships there really are no such issues because there are no dividends with a partnership and partners are not required to be paid salaries, IRC 731. Partnerships distributions of borrowed money are not taxable because partnerships are *pure* flow-through entities, IRC 70I; IRC 702; IRC 731.

Other Drawbacks Of S-Corporations:

1. Termination of an S corporation status freezes the deductibility of unused carry over losses.
2. S corporations *cannot* have as shareholders such as IRAs, corporations, partnerships and non-resident aliens otherwise it will lose S status to a C corporation.
3. An S corporation can have only one class of stock ownership.
4. Because of the above, shareholder debt that resembles equity too closely could be treated as a second class of stock causing loss of S corporation status to a C corporation.
5. If a profitable S corporation has passive income that exceeds 25% of gross income for three consecutive years, there will be loss of S corporation status to a C corporation.
6. There is the need to properly and timely make the "S" election and continually comply with the various federal and state requirements to preserve "S" status.

By default, partnerships including LLC partnerships have none of the above drawbacks. Moreover, a few states tax S corporations but not LLCs.

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Other Drawbacks Of C-Corporations:

1. No lower capital gain rates
2. Depreciation recapture from straight-line deprecation taxed at higher rates
3. Numerous penalty taxes (such as accumulated earnings tax)

By default, partnerships including LLC partnerships have none of the above drawbacks. Moreover, most all states tax C corporations more than LLCs.

CONCLUSION: The above includes almost 30 reasons why not to use corporations as a primary entity for real estate ownership and instead use LLC partnerships for both rental keepers and resale flippers.

When You Use Corporations, Use In Conjunction With LLCs, Not In Place Of LLCs

Corporations are designed for businesses not involving the ownership of real estate. The primary tax benefits of C corporations arc certain fringe benefit deductions and the use of a fiscal year.

For S corporations the "S" stands for small business and that's what S corporations are for small businesses, not real estate. The primary benefit of S corporations is the reduction of employment taxes (including Social Security) for active businesses.

If an investor wants to take advantage of the benefits of corporations for their real estate investments, they should use the corporation in a secondary position as opposed to a primary entity. For example, if an investor wanted to benefit from certain C corporation deductions, instead of making the C corporation the primary entity owner of the real estate or a management company, make the C corporation a minority non-voting member of a real estate LLC, with a low ownership percentage. An S corporation could also be a low-ownership-percentage general partner in an LP used for dealer property. In summary, for real estate investments, you use corporations for their benefits *in conjunction* with LLCs (or LPs), and not in place of LLCs (or LPs).

Possible Drawbacks Of LLCs With Solutions

All vehicles of asset protection and tax reduction have pitfalls and LLCs are no exception. However, the following drawbacks are minimal when compared to

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corporations and essentially superficial.

1. LEGAL -Because LLCs are relatively new, they have not yet been fully tested with actual legal disputes as corporations or limited partnerships. The LLC statutes of all 50 states and the District of Columbia all recognize LLCs as legal entities separate and distinct from its member-owners. These statutes also grant the corporate shield of limited liability for its member-owners. Moreover, according to Wyoming state statute number 17~15-113, "Neither the members or owners of an LLC are liable under a judgment, decree, or order of a court, or any other manner for a debt, obligation, or liability of an LLC". Many states follow this statute which is a clear statement of limited liability.

   One attorney for a top law firm in Philadelphia says this: *"He has not heard of anyone having trouble with the piercing of the 'corporate 'veil of LLCs. In fact, more and more people are using LLCs as asset protection devices."* Moreover, LLCs are not that new anymore; they are almost 30 years old in the United States and over 100 years old outside of the United States, with Germany as their birthplace in 1892. The limited liability shield of LLCs is based primarily on corporation law which has many decades of long standing precedent in the United States. Properly structured LLCs give limited liability for asset protection purposes.

2. LEGAL/TAX - State costs. A number of states impose franchise fees on LLCs as well as some annual taxes. However, corporations can have the same costs and sometimes more so. However, you have to consider the legal and tax benefits you get from these entities.

3. TAX - LLC members side stepping passive loss limits for real estate professional status with less than 500 annual hours of material participation. The IRS has not officially clarified this issue. In their IRS Market Segment Specialization Program Guide on Passive Activity Losses, the IRS has taken the position that, like limited partners, all LLC members or even managers must materially participate with 500 hours a year, or about 10 hours a week, to deduct an unlimited amount of rental property losses as an active real estate professional. If this were so, a member could not meet the lesser hourly tests for material participation and therefore

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would be ineligible for real estate professional status allowing for the full deduction of rental losses without passive limits.

TAX POINTER: But this is still not an official position and IRS audit manuals do not have the force or effect of law. According to tax expert and national lecturer, *Vern Hoven,* CPA, MST, an argument can be made that the severe restrictions placed on limited partners by the passive loss rules was to prevent taxpayers from deducting losses from activities in which they were not involved with, LLC members who participate in the operation of an LLC should be entitled to deduct losses that they are responsible for.

If an LLC member is uncertain of this, then they should try to meet the yearly 500 hour test of material management participation in order to totally bypass passive loss limitations. But the benefits of LLCs far exceed any drawbacks

LLC-Partnerships - Summary Of Superb Benefits

LLC-partnerships have all of the legal benefits of a corporation, yet all of the excellent tax advantages of a general partnership, yet avoid the legal disadvantages of a general partnership and avoid the tax disadvantages of corporations and LPs as follows:

On The Legal Side:

1. Limited liability for ALL owners: LLCs have the corporate characteristic of limited liability for *all* of the owners-members. An LLC does not need an individual or entity, such as a general partner, who is personally liable for debts and NO LLC member is personally liable. This is unlike a limited partnership where there must be at least one general partner personally liable for all debts. This causes the necessity of additional cost and paperwork to incorporate the general partner. This is not necessary with an LLC.

2. No Loss of Limited Liability By Participating in Management: Unlike a limited partner, any LLC member can exercise control over daily management decisions without the fear or actuality of losing their protected, limited liability status. Because LLC members can participate in management, they can bypass passive loss limits by

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"actively" or "materially" participating in property management.

3. LLC's Do Not Have The Statutory Restrictions of S corporations: LLCs are free from the qualification constraints imposed on S corporations. The LLC members can be corporations, partnerships, estates, pension plans, IRAs and non-resident aliens. An LLC can have more than one class of "membership interest" similar to stock.

On The Tax Side:

(1) Very Low IRS Audit Risk. Two or more member LLCs file a partnership tax return (1065), which is one of the least audited IRS returns.
(2) Much Less IRS Controversy. Partnerships do not have the controversial issues of "reasonable compensation" or" constructive dividends," as corporations do.
(3) Avoid Being Dealer. An LLC partnership by demonstrating investment intent with the consolidated entity approach, is a highly effective way of avoiding costly dealer status.
(4) No Salary Requirements and Payroll Filings. Partnerships do not have to pay salaries to partners and thus avoid payroll filings. Optionally, guaranteed payments could be paid to create earned income for valuable retirement plan contributions.
(5) No Issues of "Reasonable Compensation" that could lead to IRS scrutiny or full blown annoying audits and costly litigation.
(6) No Corporation Limits For Deducting Losses. With LLC partnerships, tax losses are not locked in and pass through to the owners without corporate limits.
(7) LLC Members Can Side Step Passive Loss Limitations. Unlike limited partners, LLC members can participate in management and they can bypass passive loss limits by "actively" or "materially" participating in property management.
(8) Tax Free Cash Distributions. Distribution of funds including borrowed money from an LLC partnership will not result in tax.
(9) Tax Free Appreciated Property Distributions. No gain is recognized to a member partner upon the distribution of property, even if it is appreciated property with built-in gains where the value is higher than its adjusted basis.
(10) Tax Free Appreciated Property Contributions. Appreciated property can usually be contributed to the partnership, totally tax free. There are no

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tricky tax traps with basis issues as with S corporations.

(11) Tax Free Liquidations. A partnership can be fully liquidated at no income tax cost, single or double.

(12) Tax Free Conversions To LLC's. General or limited partnerships can convert to LLC's, free of income taxes.

(13) Tax Free Sales Via 1031 Tax Free Exchanges. LLC partnerships, splitting up, can much better accomplish a 1031 tax free exchange to defer capital gains taxes, with the planning strategies previously discussed in this section.

(14) Higher Tax Basis For Purchase of Partnership Interest. With the purchase of a partnership interest (including an LLC membership interest), the buyer-partner is entitled to a higher property lax basis by making a special election under IRC 754. This also includes a higher tax basis upon the death of a partner.

(15) The Flexibility of a Partnership by Allocating Income and Losses to the Members in a Manner That Best Suits The Members' Tax Needs. For example, a member in a high tax bracket may want allocated to them less of any net income or more of any net losses; or vice versa for a low bracketed member. These special allocations could be done in compliance with the *partnership* rules of IRC 704 (b).

(16) No Partner Loan Issues. With partnerships there are no issues of loans to partners as taxable dividends or salaries, as with corporations.

The intended benefits of LLC's offer the best of several worlds:

A. The corporate shield of limited liability for *all* of the owners
B. Control over management decisions for *all* of the owners
C. All of the optimum tax advantages of a general partnership

FORMING AN LLC-PARTNERSHIP – LEGAL & TAX SIDE

On The Legal Side: LLCs file "articles of organization" similar to a corporation's articles of incorporation with the Secretary of State. The LLC owners ("members") are usually governed by an "operating agreement" similar to a corporation's bylaws which specify the management rights of each owner.

On The Tax Side: Electing the tax status of an LLC (IRS Form 8832*). While it is a distinct *legal* entity, for tax purposes an LLC is not a distinct tax entity, until you decide.

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Under simplified "check the box regulations", these regulations (Reg. 301.7701) permit a simple choice of tax entities as follows:

Number of LLC Members:		**Tax Entities and IRS Forms to File**
Single-member owned LLCs	(1)	As sole proprietors on IRS Schedule C or E
Two or more member LLCs	(2)	As a partnership on IRS Form 1065
Any number of LLC members	(3)	As a corporation on IRS Form 1120

Notes to the previous:
The entity choice is done by filing IRS Form 8832, which has its own straight forward instructions.

(1) By default, a single member LLC is a legal entity but one that is disregarded for tax purposes. That is, on the tax side it has no entity existence. It's a legal entity but not a tax entity. Therefore, a single member LLC does not have to file Form 8832. A single member LLC files Schedule C for a business not involved in the ownership of real estate and Schedule E for investment real estate. But both Schedule Cs and Es are audit prone schedules and thus should be avoided. Moreover, a single member LLC does not get charging order protection for a membership interest

Active businesses, not involved in the ownership of real estate, should use corporations which are audited less than Schedule Cs for real estate, instead of Schedule E, use LLC partnerships (Form 1065) as per this section, or in some cases limited partnerships (also Form 1065).

(2) Also by default, a two or more member LLC is a partnership filing the low audited Form 1065. Therefore, a two or more member LLC docs not have to file form 8832 election. However, for a two or more member partnership, file the 8832 anyway so there is no uncertainty both on a federal and state level. On Form 8832 you check off the following two boxes: Part 1: Type of election, checkbox "a", Initial classification by a newly-formed entity. Part2: Form of entity, checkbox "b", *"A domestic eligible entity electing to be classified as a partnership."*

(3) When an LLC is electing to be a C corporation, regardless of the number of

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members, Form 8832 must be filed. If S corporation status is desired, other special elections must also be made on IRS Form 2553. Refer 10 the instructions of form 2553 as well as any required state S corporation elections. For further reference of 8832 filings see the instructions to form 8832 or Treasury Regulation 301.7701 or call the Bridgeway Financial office and speak to a qualified CPA.

**LEGAL TIP: You should still do the legal formation of a two or more member LLC because a single member LLC does not get charging order protection for a membership interest, except in Nevada.

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CHAPTER 10: THE SIXTH LINE OF DEFENSE

THE SIXTH LINE OF DEFENSE: OFFSHORE ENTITIES FOR ASSET PROTECTION

The ultimate asset protection strategies are the offshore strategies because you are placing assets outside the jurisdiction of the US Courts. This is a Prelitigation Jurisdictional Planning (PJP) strategy. PJP is a strategy whereby you place entities, managers, records, assets, financial accounts, trustees, and/or trusts outside the jurisdictional reach of the courts where you anticipate any frivolous future lawsuits or threats to your assets may be initiated.

Offshore PJP strategies are designed for your nest eggs. Operational business funds or personal assets needed to pay personal expenses should not be a part of a PJP strategy. Offshore planning works best with retirement funds, long term investments and portfolio plans. It should be limited to surplus profits that can be sent offshore and left offshore except perhaps, for occasional profit taking. Offshore real estate and business investment also are good candidates for a PJP strategy. Offshore strategies are useful for self-direct IRAs, acquisition of vacation property, some forms of ecommerce, for individuals that desire to work tax-free offshore and for investment funds.

Offshore is usually thought of as only viable for the rich and famous because asset protection trusts are not practical unless one has at least a million dollars to stash for a rainy day. Although asset protection trusts remain expensive, many offshore banks now offer their elite managed accounts with initial deposit requirements as low as $25,000. Even persons just getting started in accumulating wealth can benefit by moving their self-directed IRA offshore, by investing worldwide through an IBC (International Business Company), by buying a vacation home offshore or by working tax-free offshore.

We prefer to set up our IBCs in the country of Nevis because the costs of organization and maintenance are inexpensive and it has excellent privacy laws and it is a jurisdiction that does not recognize foreign judgments. We recognize that Belize and Panama are good locations to maintain business offices and operations.

Judgments of US courts are not recognized offshore. Even if the judgment of a US lawsuit should somehow target your offshore entity, the courts in offshore havens do not recognize US court judgments.

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In case of unanticipated future risks of improvidence, PJP tactics will make litigation extremely difficult for unforeseen creditors because of the diversity of jurisdictions. PJP makes it difficult for creditors to identify, subpoena and depose witnesses. Subpoenas will have to be obtained in other countries to access records or witnesses. Depositions will have to be held in other countries. It will be difficult to get management to comply with discovery requests and court orders if the Officers or managers reside in another state or another country. Civil actions may have to be filed in multiple jurisdictions.

No asset protection plan is bullet proof. Even offshore PJP strategy has its vulnerability: if one still resides in the US. This means the one can be ordered to recover offshore assets or face contempt of court. Therefore, a bullet proof offshore strategy requires one to either reside offshore and/or obtain dual citizenship or retirement citizenship in case an unforeseen financial setback and/or a runaway jury verdict and/or set up an asset protection plan structure.

Consequently, I encourage my clients to carry sufficient insurance to adequately compensate an injured party. A wise business person will always be reasonable and responsible. Remember the adage: 'bears get fed, bulls get fed, but pigs get slaughtered'. The goal of PJP is to encourage early settlements within insurance policy limits. PJP strategy combined with adequate insurance coverage encourages quick and reasonable settlements of disputes and protects one from runaway jury verdicts and frivolous litigation. Encouraging a reasonable settlement within insurance policy limits will also protect the insured from a contempt of court hearing in a post judgment collection proceeding.

THE BELIZE INTERNATIONAL BUSINESS CORPORATION (IBC)

OVERVIEW OF IBCS

An IBC is an offshore company formed under the laws of an offshore jurisdiction. IBCs are not permitted to engage in business within the jurisdiction where incorporated. Offshore financial centers which have allowed the formation of IBCs, or similar entities, include Antigua, Bahamas, Belize, British Virgin Islands, Cayman Islands, Dominica, Gibraltar, Nevis, Panama and the Seychelles, among many others.

The characteristics of an IBC will based upon the laws of the jurisdiction where it is incorporated, but an IBC will usually include:

- Exemption from local corporate taxation and stamp duty provided that the company engages in no local business.

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- Annual resident agent's fees and company registration taxes are required on an annual basis.
- Confidentiality and anonymity provided for the beneficial owner of the IBC.
- Wide corporate powers to engage in different businesses and activities.
- The ability to issue bearer corporate shares is available in some jurisdictions.
- Nominee Officers and director services are lawful.
- Officers and Directors of the IBC do not usually need to be residents of the jurisdiction where the IBC is incorporated.

IBCs are offshore companies that are most commonly used by professionals for offshore banking, for international trade, for investment activities and for asset protection. Offshore companies can be involved in buying and selling goods and services, holding bank accounts and operating businesses. IBCs are also commonly used for the ownership of real estate and land; for ownership of intellectual property, licensing and franchising; personal service by individuals working overseas and offshore ebusiness. These are just some examples. The offshore IBC may be used in many other ways to save on taxes and depends only on your imagination

IBCs are often used by investors looking for offshore opportunities. All of the US securities markets collectively account for about only 10-15% of the world market and most of the more lucrative investment opportunities are offshore. For example, recently none of the top ten money markets were from the US. Shares and mutual funds offshore are out-performing the US market. However, due to the Securities Exchange Commission's (SEC's) burdensome regulations, offshore brokerage services will not do business with US corporations or US citizens. In order to open an offshore brokerage account, you must form an IBC. Most brokerage

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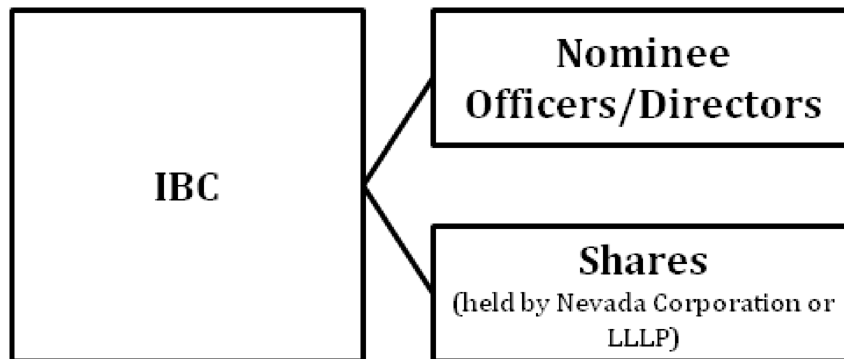
services will accept a corporate account application for an IBC even if the sole shareholder is a US citizen.

WHY INCORPORATE AN IBC IN BELIZE?



Belize is situated on the Caribbean seaboard of Central America, with the Mexican border on its North and the Guatemalan border on the West and South. With only a two hour flight from Miami, Houston, Dallas, Atlanta, Charlestown, and New Orleans and Los Angeles, Belize is very convenient for doing business. Belize has been Independent since 1981 and is the home of approximately 250,000 people of diverse ethnic background. Belize is known for its political and economic stability and its legal system is based on English Common Law and local statute. Its currency is the Belize dollar which is pegged to the US dollar at a rate of BZ$2 to US$1. English is the official language; however, Spanish is widely spoken. In the past, Belize's financial system was driven by the exportation of logwood and mahogany and of late on agriculture, but it soon became obvious that diversification of the economy was essential for its survival, and in particular the development of offshore financial services, which were launched in 1990.

The IBC is a tax-free and exchange control-free company incorporated under the laws of Belize. All its profit earning activities must be conducted outside Belize. A foreign company also has the option to continue under the law of Belize as an IBC and would still have all the benefits provided by law. IBCs incorporated in Belize are often used by high net worth individuals to lease and own property, for estate planning, tax optimization and asset protection. Belize IBCs are also used by international companies in cross border transactions.

English is the primary language and Belize also has a convenient time zone with an excellent telecom system. Belize banks and businesses keep the same hours as US enterprises. This makes communications with your banker or registered agent or mail service easy.

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The IBC Registry in Belize is fully modernized and can accomplish company incorporation in less than one hour. The registry has incorporated over 35,000 companies to date, and affords new companies the uniqueness of names due to availability.

A fundamental feature of the IBC in Belize is how the law was specially designed to make Belize IBCs flexible. Only one director and one shareholder are necessary and the IBC may have bearer shares or registered shares, voting or non-voting shares. The authorized share capital may or may not have a par value. The IBC may conduct any business that is not prohibited under the laws of Belize except for banking, insurance, trust management and collective investments, which require a license. The IBC may also purchase its own shares and redeem its own shares.

We were concerned about moving our assets to a foreign country. But we just moved ownership to our IBC. The actual assets are still here.

Although the Belize IBC must conduct all its profit earning activities outside Belize, it may lease an office in Belize, obtain the services of Belize professionals and trust companies, keep its company records and hold meetings in Belize, operate an account with a local Banking institution, hold shares in another Belize IBC and own vessels registered in Belize.

Finally, one of the most important features that makes Belize so attractive is confidentiality. We are currently living in an era where there has been a significant increase in scrutiny, regulations and increase in taxes. Belize law has provided provisions to make certain that the freedom of the individual and the sanctity of private commercial transactions are available. To register a company in Belize proper due diligence is carried out by the registered agents in compliance with The Money Laundering Act and Code of Conduct in Belize. A company may choose to have nominee Directors or nominee shareholders; however, the only document presented for public filing at the registry is the memorandum and articles of incorporation. There is no requirement for public disclosure or annual filing of accounts under the act. The Financial Intelligence Unit of Belize (FIUB) and the International Financial Services Commission of Belize (FSCB) are the only two organizations that have access to IBCs confidential information upon request.

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Based upon representations from our contacts in Belize, the FIUB and FSCB have only released financial information to a foreign authority one time and the company whose records were disclosed was engaged in criminal activity. Only the head of the FIUB has authority to make the decision to release information.

In conclusion, Belize's geographic location, convenient time zone, political and economic stability, common law legal system, educated, competent and accessible professionals, English speaking work force, up to date modern electronic communications and tax advantages makes doing business in Belize easy, convenient, affordable and professional. These attributes of Belize provide the perfect balance, as it relates to confidence, integrity and reliability in Belize's dynamic offshore service sector.

Understanding Belize IBCs & How They Work

The International Business Companies Act 1990 of Belize created a special category of company known as an IBC. The law was enacted to permit asset protection and tax minimization planning at competitive rates. Some of the attributes of the Act are:

- IBCs have total exemption from all forms of local taxation including stamp duty.
- Speedy and simple registration.
- Only one subscriber is required, thereafter one shareholder and one director are required.
- There are limited filing requirements, mainly a certificate of incorporation, and memorandum and articles of association.
- No exchange control.

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- IBCs can be registered in any language and company names may be registered in the language of origin.
- Limited Life Companies are available.

The IBC Act was introduced in 1990 to implement competitive offshore legislation for Belize IBCs which was subsequently amended to reflect the changes required to provide efficient Belize offshore services.

Re-domicile to Belize

Many IBCs from other offshore jurisdictions are moving to Belize.

Time to incorporate

Belize incorporation is very efficient and an IBC can be incorporated by the Belize government within one to two business days. But it takes about ten to fourteen days before we can ship the original documents with the IBC corporate record book and full documentation to you by USPS.

Rules on confidentiality

The documents for Belize offshore Incorporation do not carry the name or identity of any individual shareholder or director. The names or identities of the shareholders or Directors do not appear in any public record. Shareholder and/or director nominee services are allowed to ensure confidentiality.

Share Capital of a Belize Company

- Shares may be issued in any currency
- Shares may be paid for in cash or through the transfer of other assets or for other consideration
- Shares can be issued with or without par value
- The register of the shares of Belize corporations must be kept up to date and may be maintained anywhere in the world at the Directors' discretion
- The register must be available for inspection by the shareholders

Shareholders and Directors

- There is no requirement for meetings of shareholder or director
- If meetings of shareholder and/or director are desirable, the meetings can be held by telephone or any other means of electronic communication.
- Meetings can be held anywhere in the world

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- There is no requirement for a resident secretary
- Only one director and shareholder is required for company formation
- The IBC may have one person as the sole shareholder and director
- Shareholder and director can be a natural person or a corporate body
- Shareholder and director do not have to be residents of Belize

Taxation in Belize on IBC Profits

According to the IBC Act of 1990, offshore companies are exempted from all forms of taxes and stamp duties.

Financial statements and other records

- There is no requirement for a Belize IBC to keep any financial statements, accounts or records
- IBC records and accounts do not have to be held or filed with the authorities. If the shareholders, Directors or Officers decide to maintain such records or accounts, these may be held anywhere in the world

Doing business with Belizean companies and residents

Belize IBCs are restricted from doing business with Belizean residents or Belize corporations except where:

- It makes or maintains professional contact for services needed from solicitors, barristers, accountants, bookkeepers, trust companies, management or secretarial companies, investment advisors or similar persons or entities carrying on business within Belize
- Shares, debt obligations or other securities of the company are owned by any person resident in Belize or by any Belizean IBC or any other locally incorporated company
- It holds debt obligations, shares or other securities in a Belize IBC or any other locally incorporated Belizean corporation
- It prepares or maintains books and records within Belize
- It holds within Belize, meetings of its Directors or members
- It holds a lease on property for use as an office from which to communicate with members or where books and records of the company are prepared or maintained

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Minimal Corporate Formalities

- The first director of the company is appointed at the organizational meeting of the Belize corporation
- The register of shares has to be kept and up to date
- A registered agent and a registered office are required
- Annual fees are due to be paid by the 31st of July, starting from the second year of incorporation and each subsequent year thereafter
- The Belize IBC cannot derive any income from activities in Belize

Business activities outside Belize

Belizean IBCs are not restricted from carrying on any legitimate business and investment activity whatsoever, with the exception of bank, insurance or trust businesses which require a special license.

US Taxation of Offshore IBC Companies

Prior to 1996 offshore companies were useful for accumulating tax free profits based on offshore investments. However, during the Clinton administration in the latter part of the 1990s, legislation was enacted to close the door on the use of IBCs in tax haven jurisdictions to avoid or defer taxation. Under current law, any foreign corporation that is controlled by US persons is designated a controlled foreign corporation (CFC). Every year at tax time, corporate income is imputed to the US shareholders even if it has not been distributed to the US shareholders. Income can no longer be held in the CFC and invested to accumulate tax free profits. Every year the CFC's profits are calculated, a constructive dividend is apportioned to each shareholder pro rata, and the shareholder is taxed on the corporate profits even if they are not distributed to the shareholder.

> ***The setup of an IBC is easier than you expect it to be. It is quick, easy and painless.***
> ***~ Thomas Adams, ESQ, JD***

A CFC is a foreign corporation in which more than 50% of the shares are owned by US shareholders. A US shareholder is a US person who holds more than 10% of the share of a CFC. A person is a US citizen, US resident or US entity et cetera. Our clients usually own a Nevada Corporation that is the sole shareholder in an IBC. Consequently, the US Shareholder of the IBC is the Nevada Corporation.

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Form 5471 Requirements

Form 5471 is an annual tax return that is required to be filed by CFC US shareholders. If one controls an IBC through a Nevada corporation, the corporation will be required to file Form 5471 with its annual corporate 1120 tax return. You and your spouse may also need to file a Form 5471 with their 1040 individual tax return if the you or your spouse is listed as an officer or director of the CFC or if they chose to own the CFC directly, without using a Nevada Corporation as shareholder. It does not matter if they used nominees. If you and/or your spouse are a CFC shareholder, you will have to file a Form 5471 with their individual 1040 return on April 15th.

The penalties for failure to file the return are severe and it is not necessary that the corporation have any profits for the penalties to apply. A return must be filed even if there is no income to report. Complete details of the applicable penalties are provided in the instructions to Form 5471, but in general, the penalty is $10,000 per year for failing to file the form. In addition, if the form is not filed, your personal income tax return is deemed to be incomplete and the statute of limitations does not begin to run until the information required by Form 5471 is submitted.

BFC can handle the preparation and filing of tax returns and reports for US persons who are share-holders in CFCs. If an IBC shares are held by a Nevada Corporation and they are using our nominee Officers, we require that your offshore tax reports be prepared by an experienced offshore accountant because we are required to sign the returns.

A USCFC shareholder will not have to file Form 5471 every year if Form 8832 is filed within 75 days following incorporation of the IBC and an election is made to be treated as a disregarded entity.

Form 8832

Form 8832 is filed in order to elect to treat a single owned foreign corporation as a disregarded entity, or a two or more member owned foreign corporation as a partnership, for tax purposes. This means that the income of the foreign corporation will simply be included in the Form 1120 of a domestic corporation that is the sole owner of the CFC, or on the Form 1040 of an individual who is the sole owner of a CFC. When you elect to become a disregarded entity, the burdensome Form 5471 is no longer required to be filed annually.

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Form 926 Rules

Transfers of assets to a foreign corporation are now to be reported on Form 926, even if it is not appreciated property. Transfers of cash may not be required to be reported on this form. These regulations change frequently. According to the instructions for Form 926, you should check the regulations under section 6038B to determine whether transfers of cash are required to be reported at the time of your transfer.

The Form 926 instructions offer other exceptions to this rule, so anyone who is transferring share or securities to a foreign corporation should confer with an offshore tax accountant. Even sophisticated investors should review the instructions and related tax code sections and regulations before concluding that reporting on this form is not actually required. The report is required to be included with the taxpayer's income tax return.

Failure to file this form may subject the transferor of the property to a penalty of 10% of the FMV of the property, but not more than $100,000 - unless the IRS can show that the failure to file was intentional.

Form 8521 Rules

Form 8521 is used to report the income of a passive foreign investment company (PFIC). A PFIC is a foreign corporation where the percentage of ownership is more than 50% of the assets held for the production of investment income, or where 75% or more of the gross income comes from passive investments. CFC rules take precedence if the corporation is also classified as a CFC.

Form TD F 90-22.1

Any US taxpayer who has any authority or interest in any foreign financial account is required to file Form TD F 90-22.1 on or before June 30th of the year following the taxable year. It's a very brief form, requiring only one page to report a single foreign account and only two pages to report as many as a half dozen foreign accounts. The penalties for failing to file Form TD F 90-22.1 are extremely severe.

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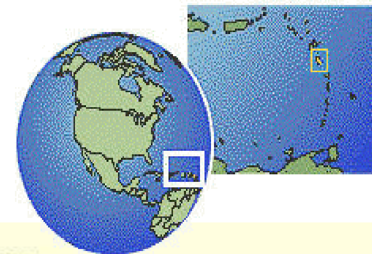
NEVIS LLCS

THE ABCS OF LLCS

The Nevis LLC has characteristics of both a corporation and an LLC. It has limited liability like a corporation that protects members from liability for company debts and obligations. It also provides members with charging order protection similar to an LLC. The primary distinction between an LLC and a standard company such as a domestic C corporation is that the LLC is a tax-neutral vehicle because it is taxed as a partnership, rather than as a corporation. Thus, using an LLC can eliminate tax at the corporate level. In this regard, it is somewhat like an S corporation but without all the restrictions and disadvantages. The obligation for any taxes that would otherwise be owed by the company bypasses the company itself and attaches directly to the members. Members are to LLCs what shareholders are to corporations. Other companies, as well as individuals and trusts, can be members of an LLC. There are no limits on the number of members or the classes of members that an LLC may have. The important issue is that each member is responsible for his, her or its own pro-rata share of any overall tax obligation and that the LLC has no tax obligations.

Joel Johnson found himself under attack by several collection agencies that had succeeded in getting judgments against him and his partners in Federal Court. That US Federal Judge had no power to seize the liquid assets of his offshore entity.



Nevis was the first offshore tax haven to enact LLC statutes. The statues greatly enhance this protection with outstanding privacy advantages. Nevis LLC owners and managers are not registered anywhere, which provides for complete secrecy.

Nevis has strong privacy laws to prevent the registration, filing or disclosure of the members or managers of a

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Nevis LLC. Therefore, there are not any initial or annual director filings in Nevis. Thus, the identity of the owners and managers are not attainable by any outside agency, short of serious criminal activity such as drug-related issues and terrorism. Therefore Nevis LLCs offer greater privacy than those of any country in the world. A Nevis LLC may keep records at any location on the globe.

AN OVERVIEW OF THE ISLAND OF NEVIS

Location: St. Kitts & Nevis are located in the northern part of the Leeward Islands in the eastern Caribbean, 19 degrees north of the equator, separated by a channel two miles wide. To the east of Nevis is the Atlantic Ocean and on the west is the Caribbean.

Size: St. Kitts is 23 miles long and 5 miles across at its widest, encompassing an area of 68 square miles. The island's point of highest elevation is Mt. Liamuiga (pronounced as Lee-a-mweega) at 3,792 feet. Nevis, the smaller island, lies to the south and is approximately 7 miles in diameter, covering a total of 36 square miles.

Climate: Yearly average temperature is 79 degrees Fahrenheit; annual rainfall averages 55 inches; humidity is low, and constant northeast trade winds keep the islands cool.

St. Kitts and Nevis embody a kind of lush tropical paradise usually associated with the South Pacific. The atmosphere there is an intoxicating blend of sunlight, sea air and abundant vegetation. At the center of St. Kitts stands the peak of Mt. Liamuiga, a dormant volcano covered by dense tropical forest. And on Nevis, the ground rises upward into a cloud forest filled with elusive green vervet monkeys and brilliant tropical flowers. For anyone who enjoys stunning natural beauty, St. Kitts and Nevis cannot fail to exceed expectations.

And yet nature is only a small part of the wonder of these small, relatively undiscovered destinations. Long ago, St. Kitts and Nevis were the pearls of the British Caribbean, rich and enormously important islands that were celebrated throughout Europe. Nevis, the 'Queen of the Caribbees,' possessed unimaginable wealth from its super-productive sugar industry, while on St. Kitts the impregnable fortress of Brimstone Hill stood as the Gibraltar of the West Indies. In this venerable history is plenty of romance as well, for it was on Nevis that the dashing young Horatio Nelson met, courted, and wedded Fanny Nisbet, all the while attending to the whirling social life of the island's prosperous plantation estates.

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Today these islands are esteemed more for their long stretches of sugary sand than for their sugar cane. Basseterre and Charlestown, the islands' capitals, are among the most captivating and picturesque of the Caribbean's colonial harbor towns. The law there holds that no building there may be taller than the surrounding palm trees, and on both St. Kitts and Nevis natural preservation is a major value. Activities include outstanding hiking through the islands' rain forests, golfing on internationally ranked golf courses, fishing, boating and diving or snorkeling through underwater reefs and unexplored wrecks. There is also an exceptional wealth of historic points of interest, including restored fortresses, haunted plantations, and ancient petro glyphs. In the midst of all of these attractions are many of the finest and most welcoming plantation inns in the Caribbean. Still largely undiscovered despite their extraordinary beauty, their remarkable history, and their unmatched charm, St. Kitts & Nevis offer a rare opportunity to visit the 'Secret Caribbean.'

Asset Protection Benefits

A Nevis LLC allows one to shield company assets from the member's creditors. An LLC member's creditor's remedies are limited to a charging order only as well as the following asset protection benefits:

- A Nevis LLC enables you to protect your assets and funds from government agencies, creditors, and lawsuits.
- As an owner, you are not exposed to personal liability.
- As an owner, you can participate in management without becoming personally liable for the company's debts.
- A Nevis LLC is particularly advantageous for asset protection purposes since there are no shares that can be attached by a court of law.
- Members are not liable for obligations of the company.

> ***Two months after I created my offshore entity, I got hit with a big lawsuit for something that wasn't my fault. Instead of spending a lot of time and money defending the suit, I had my lawyer explain to their lawyer that I didn't own anything. And it was all over!***

Nevis's courts do not recognize foreign judgments. Hence, a creditor will be required to re-litigate and prevail on the issues of liability and damages in a Nevis court, before initiating a post judgment collection action in Nevis. In order to file a civil action in Nevis, one must file a civil bond of $25,000 to $50,000.

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Contingency fee retainers are not allowed. Therefore, the plaintiff will have to pay attorney fees in order to initiate litigation in Nevis. The prevailing party is entitled to costs and fees incurred by litigation and the burden of proof in a civil action is beyond reasonable doubt. Unlike the US, Nevis is not a plaintiff friendly jurisdiction.

Other Benefits of Nevis LLCs

- LLCs provide a mechanism by which managers can limit the authority of non-managing members.
- LLCs have no limitation on the number of members.
- There are no limitations on ownership of an LLC.
- A manager can have 100% control of the company.
- The manager of the LLC does not need to have any ownership and yet can control the entire company and all of its assets.
- Any person or business entity of any nationality can own the LLC.
- Nevis does not impose corporate tax, income tax, withholding tax, stamp tax, asset tax, exchange controls or other fees or taxes on assets or income originating outside of Nevis.
- Members of LLCs may be individuals or business entities of any nationality or domicile.
- Members may amend their articles of organization, merge, or consolidate with other domestic or foreign LLCs or other business entities.
- Members of the offshore company may assign their interests to other parties unless restricted otherwise. Nevis permits single member LLCs.
- Management of the companies may be by the members or by managers designated by the members.
- There are no share limitations and can issue preferred interests analogous to preferred share of corporations.
- It is an excellent vehicle if used by a group of investors for a joint venture investment. In this respect it functions as if it was an LLC, but with all the added liability protection features and advantages of a corporation.
- It can be set up within 24 hours and has low initial cost and low annual fees.

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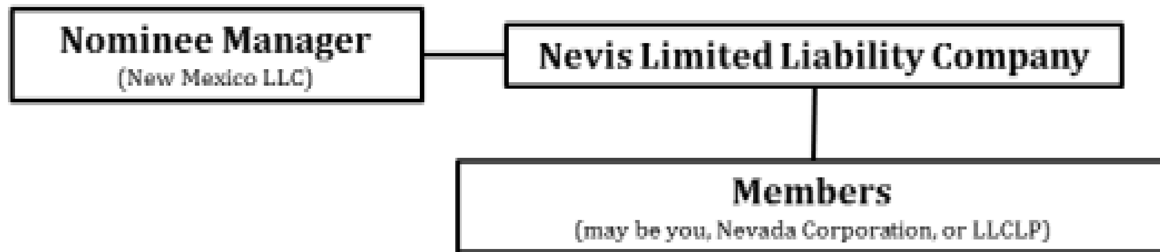
Why Form an LLC in Nevis?

Nevis (LLC) ordinance/laws are considered by most legal experts to provide the ultimate in benefits, particularly to US/Canadian citizens. Nevis Business Corporation law (modeled on Delaware corporate law) was originally passed into law in 1984. The Confidential Relations Act of 1985 created superior privacy protection propelling Nevis into a world-class financial business and banking center. In the opinion of most legal experts the 1995 Nevis LLC Ordinance amendment to the 1984 law is now the worldwide model for all jurisdictions licensing Limited Liability Companies. There is, in the opinion of most offshore professionals, no better jurisdiction in the world to form and operate an LLC. The statute/ordinance/law is the best, the location of Nevis is the best, and the political and economic infrastructure and lifestyle make Nevis the best in the world for establishing and operating a Nevis licensed LLC.

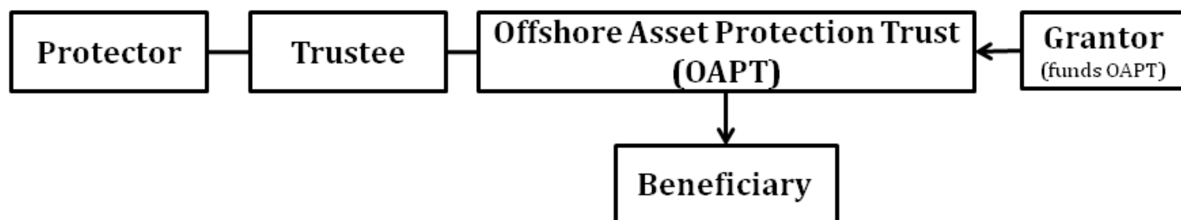


Offshore Asset Protection Trusts (OAPTs)

As we stated earlier, offshore asset protection trusts provide excellent asset protection, but they are not cost efficient unless one has at least one million dollars (preferably two million) or more to secure in the Offshore APT.

The Offshore Asset Protection Trust (OAPT) is an offshore trust formed in an offshore jurisdiction that has trust and civil procedure laws that are hostile to creditors of trust grantors and beneficiaries.

The OAPT costs $25,000 to $50,000 to create with yearly maintenance fees of $4,000 to $5,000 plus $1,000 to $1,500 to make requests of funds.



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The grantor is the person who funds the OAPT. The Trustee is the person who administrates and manages the OAPT. The protector is a person selected by the grantor to watch over the trustee, advice the trustee and if necessary replace the trustee if the trustee's performance is not satisfactory to the protector. The beneficiary or beneficiaries are the persons who benefit from the trust and may receive distributions or other benefits from the OAPT at the discretion of the trustee.

Advantages of the OAPT

- The grantor may set up a self-settled trust where the Grantor is also the beneficiary. This is not allowed in most states.
- The trustee is outside the jurisdiction of the US Courts.
- The OAPT exists outside the jurisdiction of the US Courts and may be located in a jurisdiction that does not recognize US judgments.
- The OAPT may be set up in an offshore jurisdiction that has a very short statute of limitations period within which a creditor may challenge a transfer of funds as a fraudulent transfer.
- The OAPT trusts may contain duress and flight clauses that make it difficult if not almost impossible for a creditor to ever reach the assets of the OAPT.

Disadvantages of the OAPT:

- US judges do not like OAPTs because they exist outside the jurisdiction of the Court. Consequently, the court may require the grantor to return the offshore assets to the US or face incarceration pursuant to the Court's contempt powers.
- OAPTs have a bad reputation because they have been used by drug traffickers to clean drug money and by scam artists to clean funds obtained by means of securities fraud and internet scams.
- It is difficult for the Grantor to control the trustee through the protector. One must be very careful when selecting the person or company that will be providing trustee. Be sure they will abide by the spirit and intent of any statement of wishes written by the grantor and will be responsive to the advice given by the protector.

Panama Foundations

The Panamanian Foundation is formed by the filing of a charter, and is treated as a separate legal entity. As an entity, it can hold title to assets in its own name like

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a corporation. It can make discretionary disbursements of funds to the founder or beneficiaries, similar to a trust.

Panamanian law permits the appointment of one or more protectors to oversee the three or more members of the foundation council. The members of the council are required to apply the foundation's assets for the benefit of its beneficiaries or some beneficial purpose as set out in the charter. The foundation structure must have a minimum of three council members who are natural persons or a corporation that has three natural persons as Directors. The names and addresses of the council members is public record. Nominees may be used as council members. The foundation is mostly controlled by its regulations which are not required to be registered with the government or publicly disclosed.

The foundation charter must contain:

- the name of the foundation
- identification of the initial funding which must be at least $10,000
- the names and addresses of the council members
- the purpose of the foundation
- identification of the beneficiaries
- the percentage of their interest
- the founder may be a beneficiary
- the domicile of the foundation
- identification of the resident agent
- specification of the duration of the foundation

Panama has a three-year statute of limitation for fraudulent transfer challenges to contributions to the foundation. Once past the three-year limitation, assets are probably safe from creditors. The assets placed inside a Panamanian foundation are its sole and separate property and cannot be seized to satisfy any personal judgments or obligations of the founder or the foundation's beneficiaries. Assets inside a Panamanian foundation cannot be attached in order to satisfy any claims against the founder, including judgments for divorce, lawsuit and other liabilities.

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Since there are no shares of ownership in a Panamanian foundation, the founder does not own the foundation. However, the IRS is not going to treat the foundation as a charity or US private foundation because the Panama foundation is not required to follow the stringent rules and regulations applied to US charities or foundations. It will be viewed as either a foreign partnership, trust or disregarded entity. If the founder controls the foundation through a nominee council, the founder will be treated as the sole proprietor. If the founder is a beneficiary or receives disbursements, the foundation will probably be treated as a trust. Essentially the foundation is legally in uncharted waters and, therefore is a legal nightmare.

The Panama foundation must be used covertly because <u>it will not withstand scrutiny</u> by the IRS in tax court or in the US District Courts. Covertly using the foundation will be risky because the failure to file various reports that will pertain to the foundation will bear fines, penalties and possible criminal violations. If US taxes are not paid on profits where required by law, one may be prosecuted for tax evasion and assessed penalties and interest. Moreover, it is difficult to determine what the reporting requirements are because it is difficult to determine how the foundation shall be treated under the US tax laws. Likewise, it may be hard to determine what the tax obligations are for the same reason.

Furthermore, this is going to be an extremely expensive structure because you will need a resident agent, three nominee council members, a protector to advise the council members and an offshore corporation to hold accounts and do business for the Panama foundation, along with all the expenses that are required to maintain an IBC. There will also be annual renewal fees for both the foundation and the IBC and resident agent fees. Hence, I do not recommend Panama Foundations.

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MANY USES OF OFFSHORE ENTITIES

- Use an offshore company (IBC) to file first position liens against assets and property.
- By titling your property into an offshore entity, you can transfer real estate, cars, boats, and other property more easily by selling or transferring your stock in the entity, instead of re-titling the property when it is sold.
- You can use an offshore entity account to segregate riskier investments from your other safer investments.
- Segregation and privacy of assets from an ex-spouse, ex-business partner, or creditor
- For those who want to establish a prenuptial agreement.
- For those who want to protect retirement funds in case of bankruptcy.
- Provides for the transmission of assets to the next generation in an efficient and discreet fashion.
- An offshore entity can be used to purchase securities and precious metals worldwide that are not available to US citizens.
- An offshore entity, in conjunction with nominee Directors and Officers, can allow you to conduct business transactions for your benefit, whenever you would prefer to remain anonymous.
- By transferring assets out of harm's way, different types of insurance costs can be substantially reduced.
- For developers or investors who own problem properties or other volatile assets or businesses.
- When used with your existing entity, there can in some cases, be a lowering of your company's state taxes.
- Corporate debit and credit cards are easier to secure.
- Some types of offshore entities are free from the heavy State and Federal regulations that can drive up the cost of doing certain types of business.

WHY GO OFFSHORE?

Here are some quick, short answers:

1. Privacy: Investigators cannot find your offshore assets; the bank secrecy act on the Island of Nevis is impenetrable.

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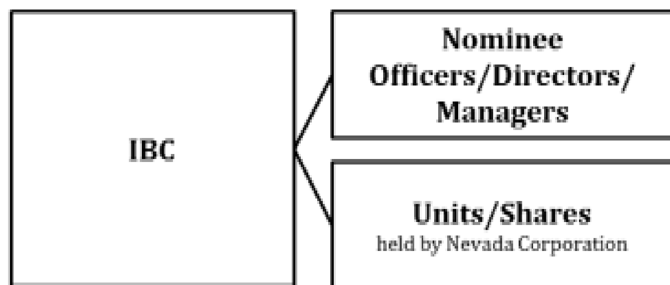
2. US judgments are not recognized offshore; the courts of Nevis do not recognize US Court judgments against an entity incorporated in their jurisdiction.
3. US Federal Courts have no jurisdiction; US Federal Court judges have no power or authority outside the US borders. IRS liens are not recognized offshore. Seizure warrants from the US Customs Service are not recognized offshore.
4. Invisible Corporate Ownership: An offshore entity can issue bearer shares and nominee officers allowing its owners to be completely anonymous.
5. Elimination of Government Interference: A Nevis corporation can conduct business anywhere in the world without interference from the Nevis government. The annual renewal fee to keep the corporation is good standing is nominal.
6. Reduction or Elimination of Taxes: The Island of Nevis will not tax your corporation. Proper planning allows for the reduction of any US taxes.
7. Additional Investments Opportunities: Many international stock offerings and mutual funds cannot be sold to US citizens, but they can be sold to an offshore entity with an offshore brokerage account.
8. There are many uses for an Offshore Entity:
   a. The entity may have offshore debit or credit cards that are honored worldwide at all banks and ATM machines.
   b. The entity may loan you or your business money and protect certain assets with a mortgage or lien granted as security for the loan.
   c. It may own certain vehicles, boats, second homes allowing you to segregate these assets from other riskier assets.
   d. With planning, it can protect you from the financial fallout of a divorce.
   e. With planning, it can protect you from the financial fallout of an economic collapse.
   f. Visiting your offshore location is always informative and fun. And for some it serves as a second home or retirement hideaway.



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THE NEVIS INTERNATIONAL BUSINESS COMPANY

An International Business Company (IBC) is a corporation that is referred to as a company, usually in a tax haven, that is authorized to do business worldwide excluding the country of incorporation.

For our purposes, we use IBCs formed on the Island of Nevis. They are an independent nation/state. Specifically, we have offices in Charlestown, staffed by local paralegals and attorneys that form and service Nevis IBCs.

An IBC is an international operating company as opposed to a domestic company such as a Nevada Corporation. The operating structure of an IBC is very similar to the structure of a Nevada Corporation with shareholders, Directors, Officers and bearer shares.

WHAT CAN AN IBC DO?

1. Engage in commerce.
   An IBC can promote and market goods and services worldwide except as may be restricted under the company act of the country of formation. Generally speaking, a Nevis IBC may have an office and a bank account in Nevis, but if it does more than this at the local level it will be treated as a local company and taxed accordingly.

   Many people first learned about the use of IBCs with the advent of the internet when offshore entities launched online gambling and adult websites from offshore locations.

2. An IBC may act as a leader.
   An IBC can make money by loaning money to individuals or other corporations. Conversely, it can borrow money. Many of my clients protect the equity they may have in their US properties by borrowing from an IBC and recording a mortgage on the applicable US property with the IBC as the lender/mortgagee.

3. An IBC can own real property. An IBC can take title to property anywhere in the world, unless there are local restrictions. For instance, take title to properties in the US in the name of an IBC using a nominee officer to insure complete privacy.

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4. An IBC may enter into lease agreements.
   An IBC may enter into almost any kind of lease agreement for real property interests, automobiles or equipment anyplace in the world.

5. An IBC can open a brokerage or bank account.
   In the US, most banks or brokerage firms will require a W8 Certificate of Foreign Status form generated by the Internal Revenue Service to be filed with the application to open an account. This is necessary because the IBC has no Employer Identification Number (EIN) in the US. A copy of that form is available at www.IRS.gov.

6. An IBC may act as a trading company.
   With the explosion of commerce on the internet, many people are using IBCs to take orders from customers, do invoicing, complete fulfillment and drop ship orders. Profits are then realized in the offshore location that may have a more favorable tax structure.

Generally speaking, an IBC may engage in any lawful activity not restricted by the country of incorporation or the jurisdiction in which it desires to operate. This would include consulting services, marketing, financial and legal services or other professional services.

Features of an IBC

1. There is no requirement for a formal annual meeting of Directors or shareholders. All meetings can by informally fulfill by email or telephone and ratified after the fact.
2. Multiple classes of stock may be issued and there is an option for bearer shares.
3. The company may operate with one person filling all the positions for Officers and Directors or a manager.
4. There is no limitation or restrictions upon the nationality, citizenship or residency of its Officers, shareholders or Directors.
5. There is no requirement that any Officer or Director by a shareholder.
6. There is no requirement to publicly file the names of the Directors, Officers or shareholders of the company.
7. There is no requirement to file financial statements of annual tax returns.

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8. The IBC is not subject to Exchange Control Legislation.

Nevis does limit the IBC with regard to the following activities:

1. An IBC cannot carry on business with residents of Nevis
2. It cannot own any interest in real property located in Nevis. However, it may lease office space anywhere on Nevis.
3. It cannot carry on banking or trust business.
4. It cannot carry on an insurance or re-insurance business.

The Nevis bank secrecy laws have served as the model adopted by almost all of the offshore havens. Nevis relies on two industries for their income: tourism and financial services. Therefore, it is in their own self-interest to protect their customers' privacy and assets to maintain their status as one of the most desirable offshore events.

In the past few years, the offshore business has become very competitive. Small islands like Dominica and others have begun actively soliciting US citizens for their offshore business hoping to generate revenue for their countries. The Nevis government is sensitive to this fact and has worked to enforce and strengthen their laws protecting people's privacy.

Commonly Asked Offshore Questions

Q: Is there work offshore?

A: Yes, many third world or emerging countries are in dire need of people who have technical, teaching, and sales skills. If you can operate, program, or repair a computer, your skills are needed. There is also a big demand for teachers who can teach children and those who can teach English to children and adults.

Q: Is Switzerland still a good place for a secret account?

A: No, Switzerland has too many contacts with the US allowing the US Federal Government to force them to divulge information on any of their accounts. For instance, UBS PaineWebber refers to the Union Bank of Switzerland that has bought the brokerage firm placing them under the purview of all US Federal regulatory agencies.

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Q: Can I legally have dual citizenship?

A: Yes, you can have dual citizenship. The best way to do it is to repatriate in the land of your forefathers, which can be done through the assistance of the branch of their US embassy.

Q: How can I find out about or check out offshore people and their business connections?

A: The best way to check someone out is to make contact with a local banker, attorney or embassy officer who knows the local politics and people. You can also research these people on the internet.

Q: Are any foreign bank accounts insured?

A: Foreign banks are not usually insured like the FDIC insures US banks. There is a scam floating around called the International Deposit Indemnity Corporation (IDIC) that purports to insure deposits of banks in Grenada, Nauru and other offshore areas. This is not a real thing and does not afford protection of your accounts. Our company opens accounts at a brokerage house in the Caymans that carries private insurance with the Lloyds of London covering up to $20 million per account.

Q: Can I avoid US taxes by moving out of the US?

A: No, US citizens are required to report and pay taxes on any income they generate worldwide. Ignore offshore promoters selling trust, family limited partnerships and foundations with the promise you no longer have to pay income taxes. They are a sham and against the law.

Q: What is the best way to transfer money from the US into a foreign account?

A: Our Company provides these services by wiring funds from a corporate escrow account to the client's offshore corporate account giving our clients total anonymity.

Q: Can I safely buy property outside the US?

A: Real estate is a major investment and one that should be done right the first time. Be sure that you have a clear title, which usually entails all related family members signing off on the deed. Get a competent local attorney to do your due diligence and title work. A local banker in the offshore haven you have selected will usually give you a reference.

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Q: Do I have to show ID to open a brokerage account?

A: Yes, you will need to produce a notarized copy of your passport and a bank reference letter.

Q: Are the 'offshore opportunity seminars' offered by various groups legitimate and can I be safe in investing with people offering products through them?

A: No, most of them are scam artists or lawyers looking to make a fast buck.

Q: Are foreign banks and brokerage houses secure from seizure by a US Federal judge or collection agency?

A: Yes, in its simplest terms, US courts do not have jurisdiction outside the US. Of course, if they learn of a debtor's offshore account that can make a legal claim in the host country to try to recover the funds, but by then any savvy debtor will have moved his money to a different jurisdiction.

Q: Does my credit history follow me outside the US?

A: Yes, the internet allows anyone worldwide to ascertain the credit history of anyone.

Q: Are foreign banks or brokerage houses required to report any activities of an IBC to the US Government?

A: No

Q: What countries grant citizenship and how?

A: There are several ways to obtain the citizenship of a foreign country. One is to be a descendant of a family member of that country. Most foreign countries, especially Ireland, Germany and Italy, are happy to welcome you home. You can contact the nearest embassy of that country and ask them their policy and procedure for repatriating your citizenship to your native land.

If you would rather have a new native land, then you can pick one of several countries that offer citizenship to financially solvent people who deposit anywhere from $50,000 to $100,000 in their high interest bearing bank accounts, or show the ability to financially support themselves and create opportunities for less fortunate natives.

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Q: Should I apply for a passport if I do not have one?

A: This is a good idea. We do not know the future of our economy. An application and instructions are available at: http://travel.state.gov/passport/passport_1738.html

OFFSHORE FINANCIAL RESOURCES

ANGUILLA

Caribbean Commercial Bank
PO Box 23
The Valley, Anguilla
Phone: 1-264-497-2571
Fax 1-264-497-3570
www.ccb.ai
ccbaxa@angui11anet.com

National Bank of Anguilla, Ltd
PO Box 44
The Valley, Anguilla
Phone: 1-264-497-7096
Fax: 1-264-497-2296
www.nbaoffshore.ai
nbabankl@anguillanet.com

Scotiabank Anguilla, Ltd.
PO Box 250
The Valley, Anguilla
Phone: 1-264-497-3333
Fax: 1-264-497-3344
www.anguilla.scotiabank.com

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ARUBA

ABN Amro Bank, NV
Caya Gilberto F Betico, Croes 89
PO Box 391
Oranjestad, Curacao, Aruba
Phone: 31-0-20-628-93-93
www.abnamro.com
www.abnamro.com/email
Aruba Bank, NV
Caya G F Betico, Croes 41
PO Box 192
Oranjestad, Curacao, Aruba
Phone: 297-8-21550
Fax: 297-8-29152
www.arubabank.com
customersupport@arubabank.com
info@arubabank.com

First National Bank of Aruba
Caya Gilberto F Betico, Croes 67
PO Box 184
Oranjestad, Aruba
Phone: 297-8-32214
Fax: 297-9-21756
www.rbtt.com/ar/business
firstcr@setarnet.aw

AUSTRIA

Bank Austria AG
Am Hof 2
Vienna (A-1030), Austria
Phone: 43-1-71191 ext 6512, 6521
Fax: 43-1-71191 ext 6155
www.bankaustria.at

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Bank of Arbeit & Wirtschaft Aktiengesellschaft
Seitzergasse 2-4, PO Box 171 (1101)
Vienna (A10 11), Austria
Phone: 43-1-534530
Fax: 43-1-53453/2840
www.bawag.com

Centro Internationale Handelsbank Aktiengesellschaft
Tegetthoffstrasse 1
Vienna (A-10 15), Austria
PO Box 272
Phone: 43-1-515200
Fax: 43-1-5134396
www.rcb.at

Citibank International PLC
Lothringerstrasse 7, PO Box 90
Vienna (A-10 15), Austria
Phone: 43-1-717170
Fax: 43-1-7139206
www.citibank.com
www.citicorp.com

Creditanstalt AG
Schottengeasse 6, PO Box 72
Vienna (A-10 10), Austria
Phone: 43-1-531312
Fax: 43-1-53131/47566
www.creditanstalt.co.at
ipc@creditanstalt.co.at

Die Erste Osterreichische Sparkassen AG (First Austrian Bank)
Graben 21
Vienna (A-10 10), Austria
Phone: 43-1-53100-0
Fax: 43-1-533100-22272
www.erste-bank.com

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BAHAMAS

The Central Bank of the Bahamas
PO Box N4868
Nassau, New Providence Island, Bahamas
www.centralbankbahamas.com

Deutsche Bank
Claughton House
PO Box N-3247
Nassau, New Providence Island, Bahamas
Phone: 1-242-325-4108
www.deutsche-bank.com

Cititrust (Bahamas), Ltd.
Thompson Boulevard, Oakes Field
PO Box N-1576
Nassau, New Providence Island, Bahamas
Phone: 1-242-302-8787
Fax: 1-242-302-8699
www.citibank.com

Lloyds TSB Bank & Trust (Bahamas), Ltd.
King & George Streets
PO Box N1262
Nassau, New Providence Island, Bahamas
Phone: 1-242-302-3000
Fax: 1-242-322-8719
www.lloydstsb-offshore.com

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Scotiabank (Bahamas), Ltd.
Scotiabank Building
Rawson Square
PO Box N7518
Nassau, New Providence Island, Bahamas
Phone: 1-242-356-1400
Fax: 1-242-322-7989
www.scotiabank.com
scotiacb@batelnet.bs

SG Hambros Bank & Trust (Bahamas) Limited
West Bay Street
PO Box N-7788
Nassau, New Providence Island, Bahamas
Phone: 1-242-302-5000
Fax: 1-242-326-6709
www.sghambros.com

The Royal Bank of Scotland International (Nassau)
Bahamas Financial Center, 3rd Floor
Shirley & Charlotte Streets
PO Box N3045
Nassau, New Providence Island, Bahamas
Phone: 1-242-322-4643
Fax: 1-242-325-7559
www.rbsint.com
rbscot@bahamas.net.bs

BARBADOS

Bayshore Bank & Trust (Barbados) Corporation
Lauriston House, Lower Collymore Rock Drive
PO Box 1132
Bridgetown, Barbados
Phone: 1-246-430-5348
Fax: 1-246-430-5335
www.bayshorebank.com

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Central Bank of Barbados
Spry Street
PO Box 1016
Bridgetown, St Michael, Barbados
Phone: 1-246-436-6870
Fax: 1-246-427-9559
www.centralbank.org.bb
cbb.libr@caribsurf.com

The Chase Manhattan Bank, NA
Neil & Broad Streets, PO Box 699
Bridgetown, Barbados
Phone: 809-6-1100
www.chase.com

DGM Bank & Trust, Inc.
International Trading Centre, 3rd Floor
Warrens, St Michael, Barbados
Phone: 1-246-425-4940
Fax: 1-246-425-4944
www.dgmbank.com
question@altabank.com

The Royal Bank of Canada (Barbados), Ltd.
Building #2, 2nd Floor
PO Box 986
Chelston Park, Collymore Road
Bridgetown, St Michael, Barbados
Phone: 1-246-429-4923
Fax: 1-246-429-4928
www.rbcprivatebanking.com
www.royalbank.com

Scotiabank
Broad Street
PO Box 202
Bridgetown, St Michael, Barbados
Phone: 1-246-431-3100
Fax: 1-246-8574
www.scotiabank.com

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BERMUDA

The Bank of Bermuda, Ltd.
Bank of Bermuda Building
6 Front Street
PO Box HM 11
Hamilton HM AX, Bermuda
Phone: 1-441-295-4000
Fax: 1-441-295-7093
www.bankofbermuda.com

The Bank of NT Butterfield & Son, Ltd.
Bank of Butterfield Building
65 Front Street
PO Box HM 195
Hamilton, HM AX, Bermuda
Phone: 1-441-295-1111
Fax: 1-441-292-4365
www.bankofbutterfield.com
contact@bntb.bm

Bermuda Commercial Bank, Ltd.
Bermuda Commercial Bank Building
44 Church St
PO Box HM 1748
Hamilton, HM GX, Bermuda
Phone: 1-441-295-5678
Fax: 1-441-295-8091
www.bermuda-bcb.com
bcbit@ibl.bm

BRITISH VIRGIN ISLANDS

VP Bank (BVI), Ltd.
3076 Sir Francis Drake's Highway
PO Box 3463
Road Town, Tortola, British Virgin Islands
Phone: 1-284-494-1100
Fax: 1-284-494-1199
www.wpbankbvi.com
info.bvi@vpbank.com

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Cayman Islands

Alexandria Bankcorp, Ltd.
PO Box 2428
George Town, Grand Cayman
Cayman Islands, British West Indies
Phone: 1-345-945-1111
Fax: 1-345-949-1122
www.alexandriabancorp.com
Bancorp@candw.ky

Altajir Bank
Sigma Building, Smith & Hospital Road
PO Box 691-GT
George Town, Grand Cayman
Cayman Islands, British West Indies
Phone: 1-345-949-8655
Fax: 1-345-9489-7946
www.ansbacher.com

Banco Bilbao Vizcaya
Westwind Building
PO Box 1115
George Town, Grand Cayman
Cayman Islands, British West Indies
Phone: 1-345-949-7790
Fax: 1-345-949-9086
www.bbva.com
bbvgc@candw.ky

Banco Bilbao Vizcaya Argentina Brasil SA
British American Centre, Building 3
2nd Floor, Jennett Street
George Town, Grand Cayman
Cayman Islands, British West Indies
Phone: 1-345-949-7690
Fax: 1-345-949-7679
www.bbva.com
bbvgc@candw.ky

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George Town, Grand Cayman
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Fax: 1-345-949-7743
www.millenniumbcp.pt
investors@bco.pt

Banco Do Estado Do Rio Grand Do Sul, SA
British American Centre, First Home Tower
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George Town, Grand Cayman
Cayman Islands, British West Indies
Phone: 1-345-949-6604
Fax: 1-345-949-4834
www.banrisul.com.br

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36C Bermuda House, British American Centre
PO Box 513 GT
George Town, Grand Cayman
Cayman Islands, British West Indies
Phone: 1-345-949-9898
Fax: 1-345-949-7959
www.bankofbermuda.com/office/cayman.htm

Bank of Butterfield International (Cayman), Ltd.
Butterfield House, 68 Fort St
PO Box 705
George Town, Grand Cayman
Cayman Islands, British West Indies
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Fax: 1-345-949-7004
www.bankofbutterfield.bm
contact.bntb.bm

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Cayman Islands, British West Indies
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www.barclays.com

Caledonian Bank & Trust, Ltd.
Caledonian House, Ground Floor, Mary Street
PO Box 1043
George Town, Grand Cayman
Cayman Islands, British West Indies
Phone: 1-345-949-0050
Fax: 1-345-949-8062
www.caledonian.com
info@caledonian.com

First Caribbean International Bank
PO Box 68 GT
25 Main Street
Grand Cayman, KY1-1102
Cayman Islands, British West Indies
Phone: 1-345-949-7300
Fax: 1-348-949-7179
www.firstcaribbeanbank.com

Cayman International Bank & Trust Company, Ltd.
20 Jennett Street
PO Box 887
George Town, Grand Cayman
Cayman Islands, British West Indies
Phone: 1-345-949-8655
Fax: 1-345-949-7946
www.ansbacher.com

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Cayman National Building, 200 Elgin Avenue
PO Box 1097
George Town, Grand Cayman
Cayman Islands, British West Indies
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Fax: 1-345-949-7506
www.caymannational.com

Deutsche Morgan Grenfell (Cayman), Ltd.
Elizabethan Square
PO Box 1984
George Town, Grand Cayman
Cayman Islands, British West Indies
Phone: 1-345-949-8244
Fax: 1-345-949-8178
www.deutsche-bank-24.de

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Ansbacher House, 3rd Floor
PO Box 10220 APO
George Town, Grand Cayman
Cayman Islands, British West Indies
Phone: 1-345-945-4175
Fax: 1-345-945-4185
www.itau.com

Lloyds Bank International (Cayman), Ltd.
CIBC Financial Center, 3rd Floor
PO Box 694
George Town, Grand Cayman
Cayman Islands, British West Indies
Phone: 1-345-949-7854
Fax: 1-345-949-0090
www.lloydstsb-offshores.com

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Cayman Islands, British West Indies
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www.rbcprivatebanking.com

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Scotia Centre
Cardinal Avenue and Airport Industrial Park
PO Box 689
George Town, Grand Cayman
Cayman Islands, British West Indies
Phone: 1-345-949-7666
Fax: 1-345-949-0020
www.scotiabank.com

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Edward Street
PO Box 694
George Town, Grand Cayman
Cayman Islands, British West Indies
Phone: 1-345-949-2127
Fax: 1-345-949-7904
www.ustrust.com

CHANNEL ISLANDS

Bank of America (Channel Islands)
Durell House, 28 New Street
PO Box 120 (JE4 8QE)
St Helier, Jersey, Channel Islands
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Fax: 44-1534-878546
www.bankofamerica.com

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St Peter Port Guernsey, Channel Islands
Phone: 44-1481-711521
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www.bankofbutterfield.com

Chase Bank & Trust Company, Ltd.
Chase House
Grenville Street, PO Box 289
St Helier Jersey JE4 8QB, Channel Islands
Phone: 444-1534-626262
Fax: 444-1534-626301
www.chase.com

Citibank, Ltd.
PO Box 104
38 The Esplandade
St Helier, Jersey, JE4 8QB, Channel Islands
Phone: 44-1534-608000
Fax: 44-1534-608190
www.citibank.com

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PO Box 26
St Helier, Jersey, JE4 8NR Channel Islands
Phone: 44-1534-616100
Fax: 44-1534-616222
www.offshore.hsbc.co.je

HSBC Middle East
One Grenville Street
PO Box 315
St Helier, Jersey, JE4 8UB Channel Islands
Phone: 44-1354-606512
Fax: 44-1534-606149
www.hsbc.com

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Lloyds TSB Bank Limited
Lloyds TSB House, 25 New Street (JE4 8RZ)
PO Box 160 (JE4 8RG)
St Helier, Hersey, Channel Islands
Phone: 44-1534-503000
Fax: 44-1534-503047
www.lloydstsb-offshore.com

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New Business Centre
7 Bond Street
PO Box 195
St Helier, Jersey JE4 8RS
Phone: 44-1534-282828
Fax: 44-1534-282730
www.natwestinternational.com

Royal Bank of Canada (Channel Islands), Ltd.
PO Box 48
Canada Court
St Peter Port GY1 3BQ, Guernsey
Channel Islands, UK
Phone: 44-1481-723021
Fax: 44-1481-710958
www.rbcprivatebanking.com

Royal Bank of Canada (Jersey), Ltd.
PO Box 194
19-21 Broad Street
St Helier, Jersey, JE4 8PR, Channel Islands
Phone: 44-1534-28300
Fax: 44-1534-283801
www.rbcprivatebanking.com

COOK ISLANDS

ANZ – Australia and New Zealand Banking Group, Ltd.
1st Floor, Dev Bank Building
Po Box 907
Avarua, Rarontonga, Cook Islands
Phone: 682-21750
Fax: 682-21760
www.anzbank.com

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Hong Kong

Australia and New Zealand Banking Group, Ltd.
One Exchange Square, Suites 3101-05
9 Connaught Place Central, Hong Kong
Phone: 852-2843-7111
Fax: 852-2868-0089
www.anzbank.com

Bank of America (Asia), Ltd.
17/F Devon House
979 King's Road, Hong Kong
Phone: 852-2597-2888
Fax: 852-2597-2500
www.bankofamerica.com.hk

Bank of China
14/F Bank of China Tower, 1 Garden Road Central
PO Box 19, Hong Kong
Phone: 852-2826-6688
Fax: 852-2810-5963
www.boc.cn

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10 Des Voeux Road Central
GPO Box 31, Hong Kong
Phone: 852-2842-3200
Fax: 852-2845-9333
www.hkbea.com

Citicorp International, Ltd.
47-78/F Citibank Tower, Citibank Plaza
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Hong Kong
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Fax: 852-2508-0043
www.citibank.com

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One Queens Road Central
GPO Box 64, Hong Kong
Phone: 852-2822-1111
Fax: 852-2810-1112
www.hsbc.com.hk

ISLE OF MAN

Bank of Scotland (Isle of Man), Ltd.
Bank of Scotland House, Prospect Hill
PO Box 19 (1M99 1WE)
PO Box 135
Phone: 44-1624-623-074
Fax: 44-1624-625-677
www.bankofscotland.co.uk

Barclay's Bank PLC
International Premier Banking
Eagle Court 25 Circular Road (1M99 1WE)
PO Box 135
Phone: 44-1624-684-343
Fax: 44-1624-684-313
www.internationalbanking.barclays.com

Barclay's Financial Company (Isle of Man), Ltd.
PO Box 9, Barclay's House, Victoria Street (1M99 1AJ)
Douglas, Isle of Man
Phone: 44-1624-684-567
Fax: 44-1624-684-593
www.barclays.com

Barclay's Offshore Banking Services
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PO Box 48 Douglas, Isle of Man
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Douglas, Isle of Man, British Isles
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Douglas, Isle of Man
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PO Box 113 (1M99 UN)
Douglas, Isle of Man
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Fax: 44-1624-627-508
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Centrum Bank
Heligkreuz 8 (FL-9490)
PO Box 1168
Vaduz, Liechtenstein
Phone: 423-235-85-85
Fax: 423-235-86-86
www.centrumbank.com

LGT Bank in Liechtenstein Aktiengesellschaft
Herrengasse 12
PO Box 85 FL-9490
Vaduz Furstentum, Liechtenstein
Phone: 423-235-11-22
www.lgt.com

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Neue Bank AG
Kirchstrasse 8 (FL-9490)
Vaduz, Liechtenstein
Phone: 423-236-0808
Fax: 423-232-9260
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PO Box 885
Vaduz, Liechtenstein
Phone: 423-235-66-55
Fax: 423-235-65-00
www.vpbank.com

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PO Box 581 (L-2180)
Luxembourg – Kirchberg (L-1855), Luxembourg
Phone: 352-42-49-42
Fax: 352-42-49-49-49
www.abnamro.lu

Banque De Luxembourg, SA
14 Boulevard Royal
PO Box 221 (L-1022)
Luxembourg City (L-2249), Luxembourg
Phone: 352-49-92-41
Fax: 352-46-26-65
www.banquedeluxembourg.com

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www.bgl.lu

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PO Box 51 (2093)
Luxembourg City (L-2093), Luxembourg
Phone: 352-46461
Fax: 352-46464141
www.bgl.lu

Chase Manhattan Bank Luxembourg SA
5 Rue Plaetis
PO Box 240 (L-2012)
Luxembourg City (L-2338), Luxembourg
Phone: 352-462-685
Fax: 352-224-590
www.chase.com

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69 Route d'Esch (L-1470)
PO Box 2205 (L-2953)
Luxembourg City, Luxembourg
Phone: 352-45901
Fax: 352-4590-2010
www.dexia-bil.lu

Kookmin Bank Luxembourg
11 A Boulevard du Prince Henri
Luxembourg City (L-1724), Luxembourg
Phone: 352-466-555
Fax: 352-466-566
www.money.kbstar.com

PANAMA

Chase Manhattan Bank
Edif Plaze Chase, Avenida Aquilino de la Guardia
Apartado Postal 9A-76
Panama City, Panama
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Avenida Federico Boyd y Calle 51
Edif PH Scotia Plaza, Campo Alegre
Apartado Postal 7327
Panama City (5), Panama
Phone: 507-263-6255
Fax: 507-263-8636
www.scotiabank.ca

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Swiss Tower, Calle 53 Este, Marbella
PO Box 61 (9A)
Panama City, Panama
Phone: 507-206-7000
Fax: 507-206-7100
www.ubs.com

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Scotiabank – Bank of Nova Scotia
10 Collyer Quay
#15-01 Ocean Building
Singapore City, (049315), Singapore
Phone: 65-535-8688
Fax: 65-532-2240
www.scotiabank.com

SWITZERLAND

ABN Amro Bank (Switzerland), Ltd.
12 Quai General-Guisan
PO Box 3026
Geneva CH-121 1/3 Switzerland
Phone: 41-22-819-7777
Fax: 41-22-311-7209
www.abnamro.com

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Banco Bilbao Vizcaya Argentaria
Newmuhleaqi 6
PO Box 7530
Zurich (CH-8023) Switzerland
Phone: 41-1-268-9111
Fax: 41-1-568-9391
www.bbva.es

The Chase Manhattan Bank
63 Rue due Rhone
PO Box 476 (CH-1204)
Geneva (CH-121 1/3) Switzerland
Phone: 41-22-735-3640
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CH-1204 Geneva, Switzerland
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Fax: 41-22-28-85-17
www.citibank.com

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Weinbergstrasse 59
PO Box 4931
CH-8022 Zurich, Switzerland
Phone: 41-1-269-4500
Fax: 41-1-269-4535
www.habibbank.com

Kredietbank, SA
7 Boulevard Georges-favon
PO Box 334
CH-121 1/1 1 Geneva, Switzerland
Phone: 41-22-311-6322
Fax: 41-22-311-5443
www.kbl.com

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Zurcher Kantonal Bank
Bahnhofstrasse 9
PO Box 715 CH-8010
Zurich (CH-8001) Switzerland
Phone: 41-1-220-1111
Fax: 41-1-221-6539
www.zkb.ch

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CHAPTER 11: UNDERSTANDING TRUSTS

A trust is an agreement in which assets are held and managed by one person for the benefit of another. Certain elements are necessary to create a legal trust, including a grantor, trustee, beneficiary, and trust property and trust agreement. Domestic trusts are another means of controlling property without owning it.

Elements of a Trust

The grantor is the person who establishes the trust by providing property and, thereby, creates a trust. This person may also be referred to as the grantor, donor or settlor.

The trustee has legal ownership of the property transferred to the trustee by the person establishing the trust. The trustee holds legal title to the property for the benefit of the trust. Financial accounts, automobiles and real estate must be re-titled in order to be owned by the trust. For a living trust, legal title is transferred, during life, to: 'John Smith, Trustee of the Smith Family Trust, under declaration of Trust dated January 15, 2004.' A trustee has a fiduciary duty to manage the property and see that it is used only for the purposes established by the grantor in the trust agreement. Trust assets are invested and/or managed by the trustee for the benefit the beneficiaries.

A beneficiary is the person who is to receive the benefits or advantages of a trust. In general, any person or entity may be a beneficiary including individuals, corporations, associations or units of government. Sometimes, the grantor also wears the hats of trustee and beneficiary. Generally, however, if one is both the grantor and trustee, one cannot be the only beneficiary.

The trust agreement is a contract that expresses the understanding between the grantor and trustee. It generally contains a set of instructions that describe the manner in which the trust property is to be managed and

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invested, the purposes for which the trust was created, the benefits that are to be bestowed upon the beneficiaries and the duration of the agreement. Trust agreements should always be expressed in writing and notarized, but in some states they may also be established by oral agreement or even implied. The grantor usually has considerable latitude in setting the terms of the trust. However, a trust involving real estate must be in writing.

The trust property is donated to the trust by the grantor. The trust property is referred to as the trust principal, trust corpus, trust res or the trust estate. In many cases, the trust can remain unfunded for quite a while after its creation. To be valid, a trust must hold some assets to be administered. The trust estate may be either real or personal property. Trust property may also include some future interest such as the right to the proceeds from a life insurance policy of the insured. Property enters the trust estate by transfer to the trustee, commonly called a gift in trust.

Location of a Trust

The location of the trust is generally determined by the residence of either the grantor or the trustee. When deciding where to establish a trust, you should note that each state has different laws governing the operation of trusts and trustees' powers. Sometimes due to changing laws and circumstances it may be necessary to relocate a trust. This is called a change in situs or location. Whether or not relocation is possible and how it may be accomplished will be a matter of state law.

One should also give consideration to the types of property and the location of property that will be donated to the trust. No matter what the situs of the trust may be real estate is subject to the jurisdiction of the state where the real estate is located. This is called in rem jurisdiction. On the other hand, passive investments like shares, mutual funds, foreign currency, bonds and other financial accounts can be maintained in the situs of the trust simply by having the investments held by a broker or financial institution in the same state where the trust is located. Hence, a grantor who resides in Michigan could establish a trust in Nevada and establish bank and brokerage accounts in Nevada.

This is very important to note because some clients may live in states that are hostile to a particular type of trust. For example, Washington State is hostile to domestic asset protection trusts because they are self-settled trusts. This is a trust where the grantor is also a beneficiary. Washington State declares them to be void from the beginning as though they never existed. This is a problem for real estate, but not for financial accounts. As explained in the previous paragraph, a domestic

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asset protection trust to be used to hold and protect investments could be set up with its situs in Nevada even though the grantor/beneficiary resides in Washington State.

Duties and Obligations of a Trustee

The trustee may be an individual or an institution. In either case, the trustee holds legal title to the trust estate and is given broad powers over maintenance and investment. This responsibility carries fiduciary duties and that the trustee act in good faith in the compliance with the trust agreement. In general, a trustee must:

- Act in accordance with the express terms of the trust agreement
- Act impartially and administer the trust for the benefit of all of the trust beneficiaries
- Maintain complete and accurate accounts and records
- Administer the trust estate with reasonable care, prudence and skill, considering both the safety of investments and the amount of income the investments produce
- Perform the necessary bookkeeping and taxpayer duties, such as filing tax returns for the trust on time and paying the required taxes

The trustee must administer the trust property only for the benefit of the designated beneficiaries in compliance with the trust agreement. The trustee should not use trust principal or income for personal gain. A trustee is prohibited from self-dealing with trust funds such as:

- Borrowing money from the trust
- Using the trust assets as collateral for personal debt
- Buying from the trust
- Selling his or her own property to the trust
- Using the trust assets as collateral for personal debt

When selecting a trustee you should consider the potential trustee's competence and experience in managing business and financial matters. You should also consider the potential trustee's willingness to serve. Individuals and/or corporations may serve as trustee. Banks usually offer trust managers to provide administrative, counseling and tax services. Most banks charge a fee for trust services, but will not want to manage small trusts.

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In the alternative, an individual, who is a relative, family friend or business associate, may serve as trustee. Unlike an institution, an individual may be willing to serve for little or no fee. Quid pro quo often works well were one is trustee for a friend's, relative's or associate's living trust and this person reciprocates as trustee on your living trust. Having an insider for a trustee may insure a trustee more in touch with the personal needs of the beneficiaries. However, you should make certain that the individual has sufficient experience to properly manage the trust property.

The Grantor's Power to Revoke

Trusts can be revocable or irrevocable. To revoke means to take back or cancel. Thus, a grantor may change the terms or cancel a revocable living trust. Upon revocation, the grantor resumes ownership of the trust property.

On the other hand, a revocable living trust is used when the grantor does not want to lose control of the trust property, is uncertain of how well the trust will be administered, or is uncertain of the proper duration for the trust. With a properly drafted revocable trust, you may:

- Add or withdraw some assets from the trust during your lifetime
- Change the terms and the manner of administration of the trust
- Retain the right to make the trust irrevocable at some future time

The assets in this type of trust will generally be includable in the grantor's taxable estate, but may not be subject to probate.

An irrevocable living trust may not be altered or terminated by the grantor once the agreement is signed. There are two distinct advantages of irrevocable trusts:

- The income may not be taxable to the grantor
- The trust assets may not be subject to death taxes in the grantor's estates

However, these benefits will be lost if the grantor is entitled to 1) receive any income; 2) use the trust assets; or 3) otherwise control the administration of the trust in a manner that is inconsistent with the requirements of the Internal Revenue Code.

Types of Trusts

Many kinds of trusts are available. Trusts may be classified by their purposes, by the ways in which they are created, by the nature of the property they contain, and

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by their duration. One common way to describe trusts is by their relationship to the grantor's life**.** In this regard, trusts are generally classified as either living trusts, inter vivos trusts or testamentary trusts.

Living trusts are created during the lifetime of the grantor. Property held in a living trust usually is not subject to probate. Probate court is where a court-supervised process validates a will and transfers property pursuant to the will. In most states, because the property contained in a living trust is not subject to probate, it does not need to be disclosed in the court record and confidentiality may be maintained. Living trusts are primarily used because they allow the grantor's property to avoid probate. The advantages are that it is quick, easy and one avoids attorney fees and court costs.

The re-titling of assets into the trustee's name, discussed above, does not occur until after death and probate, if the trust is established in a will. Property transfers into a living trust involve paper work and the process may be a little bit discomforting for those with an aversion to paperwork. By using a testamentary trust, one avoids the paperwork and leaves it for someone else to bother with them after one's death.

Another way of classifying trusts pertains to whether the grantor retains the power to terminate or modify the trust. A revocable trust is a trust that may be terminated or modified at any time for any reason by the grantor. A trust can also be irrevocable. Therefore, a deceased grantor is unable to change the terms of a trust created under a will, so testamentary trusts are always irrevocable. However, before death, the grantor can change the Will, including the testamentary trust. On the other hand, if a trust is irrevocable, the grantor can never terminate or change it, or withdraw assets, even in an emergency. An irrevocable trust is an independent entity under the law.

Trusts may also be classified based upon the purpose or goal the trust is designed to achieve. There are literally hundreds of different types of trusts that have been created to accomplish specific goals. Each kind may vary in the degree of flexibility and control it offers. In this chapter we only discuss those types of trusts that our company finds useful for business planning, estate planning, tax planning and/or asset protection purposes.

LIVING TRUSTS

A living trust is a legal document that, just like a Will, contains instructions for what you want to happen to your assets when you die. But, unlike a Will, a living trust

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avoids probate at death, can control all of your assets and prevents the Court from controlling your assets at incapacity.

When you set up a living trust, you transfer assets from your name to the name of your living trust, which you control – such as "John & Jane Doe, husband and wife to John & Jane Doe, trustees under Trust dated Month/day/year".

Legally you no longer own anything; everything now belongs to your trust, so there is nothing for the courts to control when you die or become incapacitated. The concept is very simple but this is what keeps you and your family out of the court system.

Contrary to what you've probably heard a Will may not be the best plan for you and your family primarily because a Will does not avoid probate when you die. A Will must be verified by the probate Court before it can be enforced.

Also, a Will can only go into effect after you die, it provides no protection if you become physically or mentally incapacitated. So the court could take control of your assets before you die – a concern of millions of older Americans and their families.

Fortunately there is a simple and proven alternative to a Will, the revocable living trust. It avoids probate and lets you keep control of your assets while you are living, and even if you have become incapacitated, and after you die.

Probate is the legal process through which the court sees that, when you die, your debts are paid and your assets are distributed according to your Will. If you do not have a valid Will, your assets are distributed according to state law.

PROBATE

Probate can be expensive. Legal fees, executor fees and other costs must be paid before your assets can be fully distributed to your heirs. If you own property in other states, your family could face multiple probates, each one according to the laws in that state. Because these costs can vary widely, be sure to get an estimate.

It takes time, usually nine months to two years. During part of this time, assets are usually frozen so an accurate inventory can be taken. Nothing can be distributed or sold without court and/or executor approval. If your family needs money to live on they must request a living allowance, which may be denied.

Your family has no privacy during probate. Probate is a public process, so any interested party can see what you owned and whom you owed. The process invites

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disgruntled heirs to contest your Will and can expose your family to unscrupulous solicitors.

Your family has no control! The probate process determines how much it will cost, how long it will take, and what information is made public!

Joint Ownership

Joint ownership does not avoid probate, it usually just postpones it. With most jointly owned assets, when one owner dies, full ownership does transfer to the surviving owner, or if both owners die at the same time, the assets must be probated before it can go to the heirs.

Watch out for other problems. When you add a co-owner, you lose control. Your chance of being named in a lawsuit and of losing the asset to a creditor is increased. There could be gift and/or other tax problems and since a Will does not control most jointly owned assets, you could disinherit your family.

Control of the Assets

You keep full control of the assets by using a trust. As trustee of your trust, you can do anything you could do before – buy/sell assets, change or even cancel your revocable trust. You even file the same tax returns. Nothing changes but the names on the titles.

Transferring Assets into a Trust – Wealth Protection Trust

You need to change title on real estate and other titled assets into a LLLP owned by a WPT or WPT by itself. Living trusts transfer jewelry, clothes, art, furniture and other personal assets that do not have titles.

Also, beneficiary designated on some assets, like insurance, should be changed to your trust so the court cannot control them if a beneficiary is incapacitated or no longer living when you die.

If you and your spouse are co-trustees, both can act and have instant control if one becomes incapacitated or dies. If something happens to both of you, or if you are the only trustee, your handpicked successor trustee will step in. If a corporate nominee trustee is your trustee or co-trustee, they will continue to manage your trust for you.

Age, marital status and wealth do not really matter. If you have titled assets and want your loved ones to avoid court interference at your death or incapacity, consider a revocable living trust. You may also want to encourage other family

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members to get this done so you will not have to deal with the courts at their incapacities or death.

Unlike a Will, a trust does not have to die with you. Assets can stay in your trust, managed by the person or corporate trustee you have chosen, until your beneficiaries reach the age at which you want them to inherit or to provide for a loved one with special needs.

TRUST IN A WILL

A Will can contain certain wording to create a testamentary trust to save on estate taxes, care for minors, et cetera. But because it is part of your Will, this trust cannot go into effect until after you die and the Will is probated. So it does not avoid probate and provides no protection at incapacity.

EXPENSE

A living trust is not expensive when compared to all the costs of court interferences at incapacity at death. How much you pay will depend on how complicated your plan is.

THE BENEFITS OF A LIVING TRUST

- Avoids probate at death, including multiple probates if you own property in other states
- Prevents Court control of assets at incapacity
- Brings all your assets together under one plan
- Provides maximum privacy
- Quicker distribution of assets to beneficiaries
- Assets can remain in the Trust until you want beneficiaries to inherit
- Can reduce or eliminate estate taxes
- Difficult to contest
- Prevents Court control of minors' inheritances
- Can protect dependents with special needs
- Prevents unintentional disinheriting and other problems of joint ownership
- Peace of mind!

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UNDERSTANDING LIVING TRUSTS

WHAT IS PROBATE COURT?

Probate is the legal process through which the Court sees that, when you die, your debts are paid and your assets are distributed according to your will. If you don't have a valid Will, your assets are distributed according to state law.

What is so bad about Probate Court? It can be very expensive. Legal, executor fees and other costs must be paid before your assets can be fully distributed to your heirs. If you own property in other states, your family could face multiple probates, each one according to the laws in that state. Because these costs can vary widely, be sure to get an estimate.

It takes time, usually 9 months to 2 years. During part of this time, assets are usually frozen so an accurate inventory can be taken. Nothing can be distributed or sold without Court and/or executor approval. If your family needs money to live on they must request a living allowance, which may be denied.

Your family has no privacy. Probate is a public process, so any interested party can see what you owned and who you owed. The process invites disgruntled heirs to contest your Will and can expose your family to unscrupulous solicitors.

Your family has no control. The probate process determines how much it will cost, how long it will take and what information is made public.

WHAT IS A LIVING TRUST?

A living trust is a legal document that, just like a Will, contains instructions for what you want to have happen to your assets when you die. But, unlike a Will, a living trust avoids probate at death, can control all of your assets and prevents the Court from controlling your assets if you become incapacitated.

When you set up a living trust, you transfer assets from your name to the name of your trust, which you control — such as 'Bob and Sue Smith, husband and wife' to 'Bob and Sue Smith, trustees under Trust dated May 20, 2020.'

Legally you no longer own anything so there is nothing for the Courts to control when you die or become incapacitated. The concept is very simple but this is what keeps you and your family out of the courts.

Although the title to your property is no longer in your name, you keep full control of your property. As trustee of your trust, you can do anything you could do before: buy or sell assets, change or even cancel your trust. You even file the same tax returns. Nothing changes but the names on the titles.

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Why Everyone Needs a Living Trust

Contrary to what you've probably heard, a Will may not be the best plan for you and your family primarily because a Will does not avoid probate when you die. A will must be verified by the probate Court before it can be enforced. In addition, a Will can only go into effect after you die. Therefore, it provides no protection if you become physically or mentally incapacitated. Consequently, a Court could take control of your assets before you die.

The revocable living trust is a simple and proven alternative to a Will. It avoids probate and lets you keep control of your assets while you are living and the quality of your life, even if you have become incapacitated, and after you die.

There is a pervasive legal myth that joint ownership avoids probate. Actually, it only postpones it. With jointly owned assets, when one owner dies, full ownership transfers to the surviving owner, or if both owners die at the same time, the asset must be probated before it can go to the heirs. When you add a co-owner, you lose control. Your chances of being named in a lawsuit and of losing the asset to a creditor are increased. There can be gift tax and/or other tax problems. You also could disinherit your family since a Will does not control most jointly owned assets.

The living trust is a legal document that enables a person and their loved ones to avoid probate court when they die. If a person dies with a will or without a will, then the disposition of their property will be subject to a legal proceeding. This will result in attorney fees, court costs and fees. This can only be avoided by disposing of one's property through a trust.

As you know, our philosophy and purpose is to help our clients to avoid litigation and entanglement with government administrative agencies. Consequently, the living trust is but one of several anti-probate strategies in a living trust. Therefore we will also discuss durable powers of attorney, living wills and pour over wills.

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COMPARING WILLS AND LIVING TRUSTS

A Will is the legal document that enables you to choose those you distribute your property to. With a Will you can designate beneficiaries to receive specific items from your estate and you can designate other beneficiaries to receive anything or everything else. The executor is the person you choose to distribute your property pursuant to your instructions in the will.

A Will also gives parents the opportunity to nominate a guardian for their minor children. The probate court does not have to follow your nomination because it makes the final decision when appointing a guardian for your children after your death, but the court usually accepts the nominations contained in Wills. It is a guardian's legal responsibility to provide for your minor children's physical welfare and safety.

A Will comes into play only after you die, but a living trust can start benefiting you while you are still alive. A living trust is a trust that can be established during your lifetime. It is revocable, which enables you to terminate the trust and/or make changes. You can transfer as much of your property as you choose into your living trust during your lifetime, and any omitted

	Will	Living Trust
Probate	▪Subject to probate proceedings. ▪Each out-of-state real property requires a probate proceeding in the state where it is located. ▪Provides court supervision for handling beneficiary challenges and creditor disputes. ▪Becomes public record at the time of your death.	▪Not subject to probate proceedings. ▪Avoids the cost of a second-state probate proceeding where there is out-of-state property. ▪No automatic court supervision to deal with disputes. ▪Your estate matters remain private.
Management of your Assets	In addition to the Will, one should use a Power of Attorney or use a Conservatorship to manage one's assets.	Allows you as the grantor to manage the trust assets as long as you are willing and able. Makes provisions for a successor trustee to take over in your place.
Costs	Costs less to prepare a Will than a Trust. Cost to probate a Will can be substantial.	Costs more to prepare, fund and manage a trust than to prepare a will. But avoids probate costs and fees if all assets were held by the trust.
Tax Savings	Same tax saving provisions available as are available in a Trust except for estate tax benefits for married couples.	Generally the same except that married couples can double their estate tax credit with an A-B Trust provision.

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assets can be transferred into the trust at the time of death through a pour-over will. The pour-over will is a legal device that catches all of your property that was not transferred into the living trust during your lifetime and moves it into the living trust automatically at the time of death. Thus all the property it catches pours over into your living trust.

A living trust is a mechanism to manage your property before death. The living trust also designates how your assets and the income earned by the trust shall be distributed after your death. If you become incapacitated or disabled, the trust is in place to manage your financial affairs, usually by a successor trustee, if you were serving as trustee. A living trust is not subject to probate. Because probate is avoided, all the provisions of the trust may remain private.

The legal term for dying without a Will is dying intestate. If you die without a will or living trust, your state intestate laws control the distribution of your property to your spouse and/or your closest heirs. This may or may not be what you had in mind. If you fail to nominate a guardian for your minor children, the state could appoint someone you do not trust as a legal guardian. By failing to appoint someone to be your executor or trustee, the state can appoint anyone to be the administrator of your property, and the administrator may have to pay certain fees or post a bond at the expense of your estate before he or she can begin to distribute your assets.

What are the Advantages of a Living Trust compared to probate?

Compared to probate there are many differences, but also some similarities, in the manner in which the property is administered in a living trust following the death of the grantor. Among the characteristics of administration of a living trust that a person may find desirable are as follows:

- Avoidance of probate; specifically, avoidance of expensive multiple probate proceedings when you own real estate in several different states. A living trust may be especially useful for avoiding separate probate proceedings in two or more states. If a will is used, each state where property of the estate is located will have in rem jurisdiction for an independent probate proceeding.
- Avoidance of guardianship.
- Reduction of delays: Although delays caused by filing an estate tax return cannot be avoided, a living trust makes distribution of the estate more expedient. Moments after the death of the grantor, a trustee can begin making distributions of assets to beneficiaries, but an executor cannot make

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distributions until appointed by the court after the will is admitted to probate. Once appointed, the executor is empowered to distribute all the probate assets to the beneficiaries, but it is not prudent for either a trustee or an executor to immediately distribute assets because an executor may be personally liable for the claims of creditors left unpaid by the estate as well as any unpaid federal and state estate taxes. Wise executors generally will not make final distribution until satisfied that all valid claims have been paid and all estate taxes have been finally determined and paid.

Year	Estate tax exemption
2005	$1.5 million
2006-2008	$2 million
2009	$3.5 million
2010	No Estate Tax
2011	1 million/55% tax*

* Unless a new estate law is enacted by 2011, the estate tax shall revert to the prior statutory scheme with a 1 million dollar exemption and an estate tax of 55%.

- Privacy; specifically, the terms of a living trust are contained in a private document, while the terms of a will, including the names of the beneficiaries, become a matter of public record once the will has been filed with the probate court. In addition, other information filed with the court during the probate process, such as the inventory of assets and the written account of all receipts and disbursements of the estate, also become matters of public record. The administration of a living trust generally is not made public.

- Continuity of management of your property after your death or incapacity, especially if you do not serve as the trustee.

- For married couples with substantial separate property, segregation of those assets from their community property assets.

- The absence of any requirements to file a will or any other reports with a court increases the independence and control of the trustee, relative to an executor.

- Estate Tax Savings: Married couples using a will can only use the standard estate tax credit. Whereas, if they use a living trust, they may use twice the estate tax credit.

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- Lower costs: The typical components of cost in the probate process are: court costs, appraisal fees, executors' commissions and attorney fees. A living trust can significantly lower these expenses.

Court costs will vary with the activity in the estate. A living trust would not incur these costs. Appraisal fees typically may be necessary in probate for real estate, and may be necessary for expensive artwork and interests in private companies. A living trust may or may not incur these costs. Professional executors' commissions usually vary from one to four percent of the value of the probate estate's assets combined with the income of the assets. A trustee of a living trust is entitled to a reasonable fee, but family members often act as trustees and waive these fees. However, a family member can also act as executor of a probate estate.

An executor may hire an attorney to assist in the administration of a probate estate. Similarly, a trustee may hire an attorney to assist in the administration of a living trust following the death of the grantor, but trusts generally do not require as many administrative task, and the attorney fees generated will be lower for services to the trustee because time related to probate filings will not be incurred. In many instances, an attorney's services will not be necessary. The cost of an attorney's or an accountant's services with regard to income tax and estate tax issues will usually be equivalent whether provided to the executor of a will or to a trustee.

How Can a Living Trust Save on Estate Taxes?

Most people don't need to think about federal estate tax, which kicks in only when one dies owning a very large amount of property. The amount of the estate tax exemption depends on the year of death.

The living trust also minimizes estate taxes by fully utilizing every individual's unified credit. The Estate Tax Credit, as mandated by Congress, currently shelters up to $2 million from estate taxes. With only a will in place, a married couple will receive a single $2 million exemption. However, if a Living Trust is in place and one spouse dies, the living trust separates into two separate trusts. Any amount over the $4 million exemption will be subject to estate taxes, with rates climbing as high as 46%.

Living Trusts are easy to start up and require little ongoing maintenance. They afford an extra measure of protection against loss of control, and ensure that your assets remain out of the public record even after your death. However, they do not provide protection against creditors or divorce, and do not reduce estate taxes for estates over $2 million in value, $4 million if married.

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The Disadvantages of a Living Trust

- Expense of planning: It is more complicated than a will to draft, and asset transfers can take time and result in various additional costs, but you can do it now or you can pay the Courts and attorneys even more to do it for you later.

- Inconvenience: Once the trust is established, you must be sure that trust books are maintained and that all the title to assets are registered and transferred to the trustee; persons dealing with the trustee, such as banks and title insurance companies, may want to review the trust instrument to check on the trustee's powers and duties.

- Protection of assets: If you are worried about litigation or creditors, a probate personal representative may be better able to protect your assets; the same applies to guardianship. A Living Trust does not provide asset protection.

Mental Incapacity and the Durable Power of Attorney

Incapacity can become a serious problem for families. Most marital property, especially real estate, often requires both parties to sign off. With respect to valuable property and interests of any kind, the party you are dealing with will demand the other spouse's signature in order to close a transaction. For example, if you desire to sell the family home and your spouse is incapacitated, it will be necessary to go to court in order to dispose of the property.

If you can't conduct business due to mental or physical incapacity only a Court Appointee can sign for you. A will only goes into effect after you die.

Once the Court gets involved, it usually stays involved until you recover or die. The court, not your family, controls how your assets are used to care for you. This public process can be expensive, embarrassing, time consuming and difficult to end if you recover, and it does not replace probate at death your family could have to go through the Court system twice.

A durable power of attorney lets you name someone to manage your financial affairs if you are unable to do so. When used by itself, it may work too well, giving a blank check to the person given the power of attorney. It can be very effective when used with a living trust, but risky when used alone.

Frequently Asked Questions

Should I consider a corporate trustee?

- You may decide to be the trustee of your trust. However, some people select a corporate trustee to act as trustee or co-trustee now, especially if they

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don't have the time, ability or desire to manage their trusts, or if one or both spouses are ill. Corporate trustees are experienced investment managers, are objective and reliable and their fees are usually very reasonable.

If something happened to me who has control?

- If you and your spouse are co-trustees, both can act and have instant control if one becomes incapacitated or dies. If something happens to both of you, or if you are the only trustee, your hand-picked successor trustee will step in. If a corporate trustee is already your trustee or co-trustee, it will continue to manage your trust for you.

Is a living will the same as a living trust?

- No, a living trust is for financial affairs. A living will is for medical affairs. It lets others know how you feel about life support in terminal situations.

What does a successor trustee do?

- If you become incapacitated, your successor trustee looks after your care and manages your financial affairs for as long as needed, using your assets to pay your expenses. If you recover, you automatically resume control. When you die, your successor trustee pays your debts and distributes your assets. All of this is done quickly and privately, according to instructions in your trust, without Court interference.

Who can be successor trustees?

- Successor trustees can be individuals and/or a corporate trustee. If you choose an individual, you should name more than one in case your first choice is unable to act.

Does my trust end when I die?

- Unlike a will, a trust does not have to die with you. Assets can stay in your trust, managed by the person or corporate trustee you have chosen, until your beneficiaries reach the age at which you want them to inherit or to provide for a loved one with special needs.

Doesn't a trust in a will do the same thing?

- Not quite, a will can contain certain wording to create a testamentary trust to save on estate taxes, care for minors, et cetera. But because it is part of your Will, this trust cannot go into effect until after you die and the Will is probated. So it does not avoid probate and provides no protection at incapacity.

Will a living trust protect my assets against creditors?

- The grantor's creditors are entitled to reach the assets of a living trust during the grantor's lifetime. A grantor's creditors generally may reach the assets of

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any trust to the extent that the grantor can enforce his or her own rights to trust assets. Upon the death of the grantor, in most states, the grantor's creditors can no longer enforce claims against a living trust. The beneficiaries' creditors cannot reach the trust's assets so long as the grantor is alive because the living trusts assets are not distributed to the beneficiaries until after the death of the last surviving grantor.

Will my living trust save income taxes while I'm alive?

- No, for all income tax purposes, you, as the grantor of the living trust, will have to pay taxes on the income earned by the assets transferred to the living trust. In most cases, the trustee of a living trust uses the grantor's social security number for income tax reporting and need not obtain a separate tax identification number. Generally, the trustee of a living trust does not file annual tax returns during the grantor's lifetime.

If I preserve assets in a living trust, will i qualify for Medicaid?

- No, the assets in a living trust are countable resources for purposes of Medicaid qualification. The assets in the living trust are treated just the same as if they were owned by the grantor.

Irrevocable Life Insurance Trusts (ILIT)

The Primary Purpose of the ILIT

In small estates where estate taxes are not a factor, life insurance benefits pass to the beneficiary estate tax free. A life insurance trust can be a great advantage because larger estates are subject to taxes as high as 46%. An irrevocable life insurance trust (ILIT) is nothing more than an irrevocable trust that owns life insurance. The primary goal of this trust is to remove the policy's death benefit from the owner's taxable estate. By timely transferring ownership of the life insurance policy to an irrevocable trust, or by having an irrevocable trust purchase a new life insurance policy, the death benefit will not be included in the estate of the insured.

An additional benefit of the ILIT is that the death benefits of an insurance policy can provide for the support and comfort of a surviving spouse and the support and education of the grantor's descendants without being considered part of either spouse's estate. The assets are generally safe from judgment creditors, estate taxes, and avoid probate.

The grantor is the person who creates or sets up the ILIT. The beneficiary is the person who will receive distributions or benefit from the ILIT trust. The trustee is the person responsible for managing the assets of the trust. The trustee has a

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fiduciary responsibility to invest the trust assets and to follow the written instructions of the grantor.

Almost any life insurance policy could be placed within an ILIT. A policy can be purchased to insure the continuing lifestyle of a surviving spouse and then later provide for the support of the children. All benefits could be received tax-free through the proper use of an ILIT.

Disadvantages of an ILIT

The insured can no longer borrow against the policy. If the trust allows the insured to borrow against the policy, then the insured will be deemed to be an owner of the policy for estate tax purposes. The lack the flexibility to deal with changed family circumstances with this particular policy.

Once the insured sets up and funds a trust, the insured cannot get the policy back. If the insured becomes uninsurable, he or she will be committed to this trust as the insured's only life insurance.

The insured has no right to change the beneficiary of the policy. The trustee alone has that right, and the insured cannot serve as trustee of one's own life insurance trust. The insured will designate the beneficiaries of the trust, but this designation cannot be changed after the life insurance trust has been set up.

If the insured transfers an existing policy to a life insurance trust and dies within the next three years, he or she shall be treated as the owner of the policy and it will be taxed in the insured's estate. Even if the insured survives another three years, he or she will have made a taxable gift in the amount of the cash value of the policy. However, if the life insurance trust takes out a new policy on the insured's life, the insured will never be deemed to own the policy. Therefore, no cash value will have built up yet, so no taxable gift will be made.

If the policy has not yet endowed, the insured must find a way to pay the premiums without using up the estate and gift tax exemption. If one transfers securities to the trust so that the trustee will have income with which to pay the premiums, the full value of the securities will be a taxable gift. If you transfer cash to the trust each year to pay the premiums, each transfer will be a taxable gift. However, you may be able to exempt these premium payments from gift or estate taxes by setting the life insurance trust up as a Crummey Trust. Then each premium payment can be sheltered by the annual gift tax exclusion, which is $14,000, indexed for inflation, per trust beneficiary.

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The insured cannot serve as trustee of his or her own life insurance trust. The insured will have to find or hire a third party trustee. Many banks and trust companies offer reduced fees for life ILITs because ILITs involve essentially no investing decisions.

Despite these disadvantages, many people find that the tax saving potential of a life insurance trust is worth the cost and hassle. It allows you to remove from your estate a significant asset that you are unlikely to want access to during life. And it ensures that the life insurance proceeds go 100% to the beneficiaries, not the federal government.

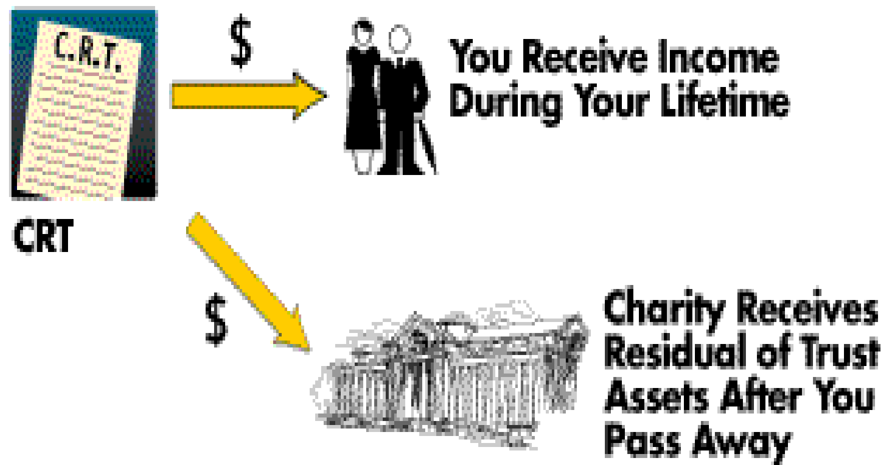
Tax & Reporting Obligations of the ILIT

Filling an annual tax return for the trust is usually not required under Federal tax law, but is often recommended as a good way to show continued existence of the trust. After the insured's death, the trustee is required to furnish annually, to each person entitled to income from the trust, a statement of the trust's holdings, receipts, and disbursements.

Charitable Remainder Trusts (CRT)

Overview of CRTs

In 1969, Congress enacted legislation creating a type of trust that helps charities and non-profit organizations generate revenue for their causes. In the past decade, this kind of trust has steadily gained in popularity because it allows tax-payers to reduce estate taxes, eliminate capital gains, claim an income tax deduction and benefit charities instead of the IRS. This kind of trust is technically identified as a charitable uni-trust or as a charitable remainder trust (CRT).



Congress in its wisdom has given citizens the following motivational reasons to inspire them to donate their property to charity:

- CRTs can avoid virtually any tax, including capital gains and ordinary income tax on the sale of most appreciated assets.
- Provide an income stream for retirement or any other reason.

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- Pass on income to the next generation while reducing or eliminating estate taxes.
- Reduce income taxes in the current year by providing a charitable deduction.
- Asset protection for assets, which you control and receive an income stream from, but which are not considered part of your estate.

The grantor is the person who donates the property to the CRT. CRTs are irrevocable trusts that actually provide for two sets of beneficiaries. The first are the income beneficiaries. The income beneficiaries usually are the grantor and, if married, the grantor's spouse. Income beneficiaries receive a percentage of income for their lifetimes from the trust. The second set are called the charitable beneficiaries which are charities chosen by the grantor. The charitable beneficiaries will receive the principal of the trust after the income beneficiaries pass away.

Although a CRT is an irrevocable trust, the grantor may change the charitable beneficiaries at any time. Under certain conditions, the grantor may even serve as trustees and maintain investment control of the assets inside the CRT.

Operation of the CRT

A grantor establishes or creates the trust by completing the trust document and following the steps listed above.

Asset Contribution

The grantor contributes assets to the trust by re-titling the assets in the name of the trust and listing them on the Schedule A. To avoid paying capital gains, the assets should be placed in control of the trustee before a qualified buyer has been found. The trustee is then the owner and will have the sole legal right to determine the timing and terms of a sale of trust assets. Note: Provisions may be drafted into the trust, which allow the grantor to contribute additional assets to the trust.

Maintenance of the Trust

The trustee has a fiduciary responsibility to invest the trust assets and to follow the overall directions of the grantor. The trustee may continue to reinvest monies within the trust, without paying capital gains taxes on income that is generated within the trust. As a general rule, the trust should never do any borrowing. The trustee is entitled to receive a fee that is reasonable and customary according to state law.

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Family members may also work for the trust for reasonable compensation, but the IRS can impose severe penalties for transactions that are not considered reasonable. Note: In the event of the death of the trustee, provisions could be drafted into the trust, which allow for successor trustees.

Annual Valuations

On an annual basis, usually December 31st, the trustee determines the net value of the trust. The best types of assets for the trust to hold are cash and marketable securities that can be easily appraised. If any other kind of asset is owned by the CRT, the trustee must get a qualified appraisal for that asset each year.

Distributions

The amount of distributions paid to income beneficiaries is determined by multiplying the value of the trust at the end of the previous year by the fixed payout percentage. The payout percentage generally ranges from 5% to 15% and is based upon several factors including the type of CRT selected, the IRS's future value of money index, and the life expectancy of the CRT. Since the trustee is required to revalue the trust assets annually, payments to the income beneficiaries can increase or decrease from year to year depending on the trust's performance. The uni-trust amount is paid in equal quarterly installments; provisions could be drafted to the trust, which allow for distributions to be made monthly or annually or to be deferred, if elected.

Changing the Charitable Beneficiary

Provision is made within the trust for the charitable beneficiary to be changed by the trustee. This provision makes it possible for a family foundation to be created at a later time and become the new charitable beneficiary. If the charitable beneficiary is changed at a later time, there is no need to give notice of any kind to the charity.

Termination of the Trust

The duration of the CRT is often tied to the death of the second spouse; provisions could be drafted into the trust which extends the life of the CRT - up to 20 years after the death of the second spouse. Distributions are made annually, and at the end of the CRT the remaining balance of the trust is contributed to the charitable beneficiary.

Capital Gains and CRTs

Because their assets are destined for a charity, CRTs do not pay any capital gains taxes. For this reason, CRTs are ideal for assets like shares or property that have a

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low cost basis with a high appreciated value. In other words, CRTs are perfect for shares that have greatly appreciated in value and, therefore, will incur significant capital gains taxes at the time of sale.

Funding a CRT with highly-appreciated assets, such as share or real estate, allows you to sell those assets without paying any capital gains taxes. Since CRTs have a charitable intent and do not have to pay capital gains, the full value of any asset transfers to the trust, which is tax exempt. The assets are then sold after transferred into the CRT.

Payout Percentage Pitfalls to Avoid

The amount of income to come out of the CRT depends upon the payout percentage that you choose, and the amount of income your assets generate while inside the CRT. The IRS requires, at minimum, that a CRT must distribute at least 5% of the net fair market value of its assets. When setting the payout percentage, you must consider several things. First, the higher the annual percentage paid out, the lower your charitable income tax deduction is going to be. Second, you do not want to set the fixed payout percentage too high, due to the possibility that taking out too much may reduce the principal inside the trust. Therefore, you should not set the payout percentage higher than 10% unless you anticipate consistently high enough returns on investments to support the payout percentage.

CRTs and Retirement Planning

A CRT can be used to augment your current retirement plan. By setting a CRT up during your peak earning years, contributions can be made and the CRT can be allowed to grow without taking any payouts during the early years. Since the CRT's profits are tax exempt, the profits can be rolled over, reinvested and will accumulate tax free year after year until retirement. This will accelerate the CRT growth and the CRT can begin making payouts when you retire. These payouts can include makeup for any shortfalls in income not received earlier. Unlike IRAs or 401(k) plans, there are no limits on how much you can contribute. You may also be able to acquire tax income tax deductions while making contributions to your CRT retirement plan.

Income & Estate Taxes

Since your property has been donated to a CRT, the donated property is considered to be outside of your estate when you die. This means that by donating the property to the charity it became exempt from your estate even though you obtained tax deductions and received lifetime payouts. Because of this, you will avoid paying estate taxes on as much as 46 cents of every dollar you move into the

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CRT. In addition, there are no restrictions limiting how much you can contribute because the annual gifting limits, as well as estate and gift tax credits are not applicable to CRT donations. This is because the funds contributed are owned by the CRT and will be donated to charity. Therefore, the fund contributed to the CRT will not be a part of your estate at the time of death.

Because CRTs benefit charities, the grantor's donation to a CRT qualifies for an income tax deduction. The amount of the deduction is the present value of the remainder interest to the charity. This depends on the type of property contributed, as well as the type of charity named as beneficiary. Average deductions normally range from 20-50% of the FMV of the property which is deducted against your adjusted gross income. Any deductions that are not taken during the year of contribution may be carried forward for the next five years.

Strategies to Compensate Heirs

CRTs are designed to give the principal to charities when the surviving income beneficiary passes away. This essentially disinherits the grantor's children who may be unhappy if they are not otherwise adequately compensated. This problem can be overcome by combining the CRT with another strategy to make up the difference that goes to the charity.

For instance, part of the payout income can be used to set up an ILIT to purchase a life insurance policy naming the children as beneficiaries. The amount of the policy should be equivalent to the amount the children would otherwise have received after the payment of estate taxes assuming the property was never contributed to a CRT.

Another strategy is to divert a portion of the payout percentage to a legacy trust. This trust can be set up to invest the funds accumulated until the income beneficiaries pass away. The legacy trust shall provide cash distribution upon the death of the last surviving income beneficiary.

Either of these strategies are scenarios where everybody wins. The estate income beneficiary receives an income stream and tax deductions. The charity eventually gets the principal of the CRT and the children receive a cash distribution.

Asset Protection Trusts

Trusts separate legal ownership from beneficial ownership. Since a trust beneficiary does not generally have legal ownership of trust property until a distribution is made, the trust property is free from the beneficiary's creditors' claims. Advantages include avoidance of probate, more efficient transfer of assets,

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confidentiality and protection from beneficiary's creditors, including spousal claims. Under most state laws, the disadvantages are that if a grantor retains benefits from the trust, the grantor's creditors can recover against trust assets if: the trust was funded as a result of a fraudulent conveyance; the grantor retained too much control; the grantor retained a beneficial interest; or the trust is a sham.

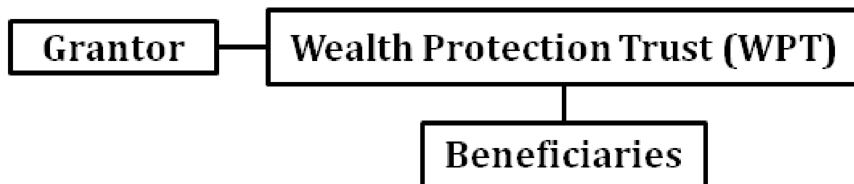
Most states recognize the validity of spendthrift clauses that protect a beneficiary's interest from creditors' claims. Such clauses are generally not enforceable with respect to a grantor who is a beneficiary.

The Wealth Protection Trust (WPT)

The WPT is a trust in Nevada and must meet all of the following requirements:

1. The trust must be irrevocable.
2. The grantor must be a discretionary beneficiary.[76]
3. The transfer of assets into the trust must not be intended to hinder, delay or defraud known creditors.
4. All or part of the property must be in Nevada.
5. All or at least part of the administration of the trust must be performed in Nevada.

The main advantage of the Nevada laws is a shorter statute of limitations period compared to the other states that have spendthrift trust laws. A creditor may not bring an action with respect to property transferred to a spendthrift trust unless brought within two years after the transfer or 6 months after he discovers or reasonably should have discovered the transfer, whichever is later. If a person becomes a creditor after the transfer is made, he must bring the action with 2 years after the transfer.



Assets are transferred to the WPT and held by the trustee for the benefit of the beneficiaries. Assets are then moved up to the LLLP for usage.

The trustee must have the power to prepare the income tax returns and maintain records for the trust. The trustee's authority can be limited to just these two areas, or it can be expanded to include distribution decisions as well. There can be a separate distribution trustee. The distribution trustee can be either a person or an

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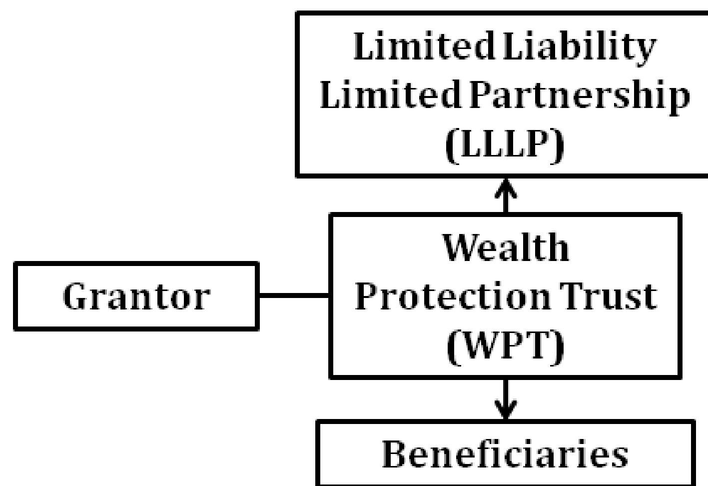

institutional trustee like a trust company or bank. The distribution trustee's authority can be limited solely to approving distributions from the WPT to the beneficiaries.

The trustee may be the distribution trustee, but the grantor is not allowed to have the authority to make distributions to him or herself. In addition, the distribution trustee may not be a beneficiary of the WPT. Although the grantor is not allowed to authorize self-distributions, the grantor can reserve veto power over distributions by inserting a condition in the trust agreement that all distributions by the distribution trustee must be approved by the grantor.

The grantor as trustee can retain investment authority. This means that the grantor may sell assets, transfer assets from one investment to another, and buy additional assets without interference from the trustee or the distribution trustee. However, the grantor may not transfer funds or assets directly from the trust to him/her. Generally speaking, the grantor should not transfer money from an account held in the WPT to an account not held in the WPT. The grantor may not pay personal bills from an account held in the WPT. These funds can be disbursed by the distribution trustee payable to the grantor so that the grantor can pay bills from the grantor's account. The best practice is for the distribution trustee to pay the grantor's creditors directly, bypassing the grantor entirely.

TAXATION OF WPTS

For income tax purposes, the WPT is treated as a grantor trust, which means that all income, deductions, loss, et cetera will flow through to the grantor and be reported on the grantor's individual income tax return. This also means that if the grantor places the family home in an WPT; the mortgage interest should be tax deductible. Likewise, the grantor should be able to use a principal residence exemption to avoid capital gains tax if the home is sold.

With respect to estate and gift taxes, any gift made to the trust will be deemed an incomplete gift by the IRS and should not be subject to gift tax. However, the trust will be fully taxable for estate tax purposes, minus any unused applicable credit equivalent for gift and estate tax purposes. In a two-grantor trust for a married

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couple, on the first grantor's death, the WPT can incorporate standard living trust planning.

The assets may be placed in an LLLP with the WPT being one of multiple limited partners. The creditor will be unable to reach the assets due to the charging order protection available to LLLPs. The LLLP should also have various duress provisions in the partnership agreement to protect the LLLP from the creditors of limited partners and involuntary transfer of partnership interests.

An LLLP with significant assets could also own an IBC and transfer significant liquid assets offshore to the IBC. The possibilities are endless.

US District Courts and Bankruptcy Courts generally follow the same analysis with respect to jurisdiction over property and jurisdiction over persons as the state in which they are located.

PERSONAL RESIDENCE TRUSTS

THE QUALIFIED PERSONAL RESIDENCE TRUST (QRPT)

A QPRT is an irrevocable trust created by an individual donor. The donor's personal residence is contributed to the QPRT at the time of its creation. By placing the residence in the QPRT, the donor may be able to exclude the full value of the residence from the donor's estate and the residence will not be subject to estate tax.

The following shows how the QPRT is set up and works:

1. The donor transfers title of the donor's primary residence or vacation home to a QPRT, retaining the right to continue to use the residence for a term of years.
2. If the donor dies before the QPRT term of years expires, the residence will be brought back into the donor's estate for estate tax purposes.
3. If the donor survives the term of years, the donor's reserved right to use the residence terminates when the QPRT term terminates, and the residence will not be included in the donor's estate for estate tax purposes
4. At the termination of the QPRT term, the residence will be distributed to the donor's children or to other beneficiaries chosen by the donor, or may remain in further trust for the benefit of those beneficiaries.
5. The surviving donor may agree with the beneficiaries or with the trustee to continue to use the residence, so long as the donor pays fair market rent for this use.

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Tax Consequences

The initial transfer of the residence to the QPRT will be considered a gift by the donor for tax purposes. If the donor has not already fully utilized the applicable credit against estate and gift tax, no tax may be payable at the time the QPRT is created.

At the time the QPRT is created the donor has made a gift to the remainder beneficiaries of the future right to the residence at the end of the QPRT term. This deferral reduces the value of the donor's gift of the residence by 25 to 50 percent of the residence's value depending on the duration of the QPRT term selected and prevailing interest rates. All appreciation in the residence's value after the transfer to the QPRT will escape estate and gift tax.

Since a QPRT is a grantor trust, during the term the donor remains responsible for any income tax attributes of the residence, such as real estate tax deductions and other income tax advantages associated with home ownership.

If the donor does not pay rent for continued occupation of the real estate after the lease expires, the residence shall therefore remain part of the donor's estate and shall be subject to estate tax.

I do not recommend the QPRT because for several reasons:

- At the termination of the donor's residential term, the title to the real estate is transferred to the beneficiaries.
- After the beneficiaries obtain title, they may choose to evict the donor and/or sell the property.
- The strategy is a gamble that one will live longer than the term of years.
- If one does outlive the term of years, one is burdened by having to lease the residence from the beneficiaries.
- After the residential term expires, the property is vulnerable to the beneficiaries' creditors.
- If the property is still encumbered by debt after the residential term expires, the donors can no longer claim the mortgage interest deduction.
- After the residential term expires, if the donor and the beneficiaries choose to sell the property; they have lost the personal residence exemption because the property is not the personal residence of the beneficiaries.

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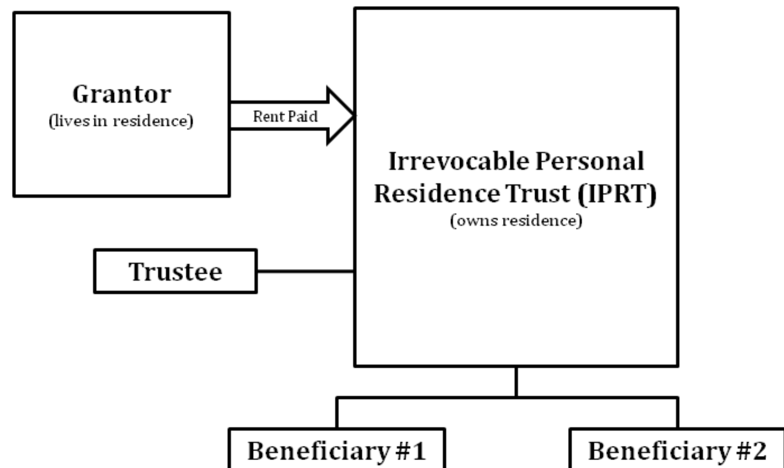
The Irrevocable Personal Residence Trust (IPRT)

This is a traditional irrevocable residential trust. We do not recommend it because, although the grantor's future creditors will not be able to reach the residence to satisfy their claims, the residence will be vulnerable to the claims of future creditors of the grantor's beneficiaries.

The trust is not a living trust because the grantor does not retain a lifetime interest or life estate in the residential property**.** The property belongs entirely to the trust as soon as it is transferred to the trust. The following shows how an IPRT is set up step by step:

1. The IPRT trust agreement is set up & trustee appointed.
2. Then sells the residence to the IPRT in exchange for compensation equivalent to fair market value. Perhaps by means of a promissory note and a loan agreement.
3. Then title to the residence is transferred into the name of the Trustee of the IPRT.
4. If you enter into a lease agreement with the IPRT to lease the residence from the IPRT to use as your personal residence, you will pay FMV rent to the IPRT for the residence.
5. The IPRT honors the installment agreement and makes annual installment payments to you.

You sell the residence to the trust and enter into a lease with the trust to live in it. You pay rent to the trust and the trust makes installment payments back to you to pay for the acquisition of the property.[77]



In order to avoid claims of fraudulent conveyance, you should be financially solvent and judgment free at the time of the transfer. You also should not be engaged in litigation at the time the residence is transferred into the IPRT.

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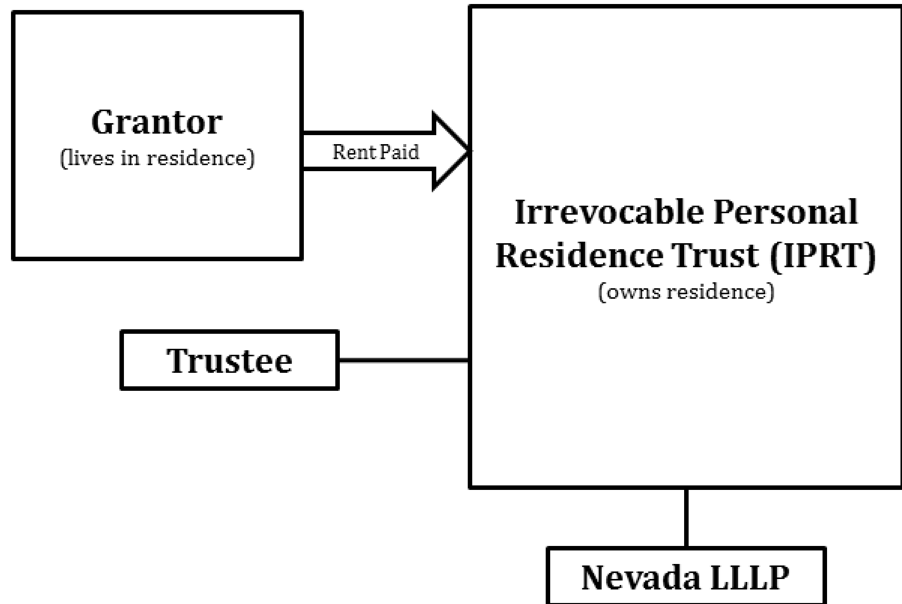
The rent should be large enough to make the installment payments plus pay for homeowners insurance with a reserve for maintenance expenses. The rent is not deductible to you and the rent is not income to the IPRT. The installment payments are not income to the grantor. You cannot use the personal residence exemption because the residence is owned by the IPRT.



If the residence has a mortgage, the IPRT would make the mortgage payments which would still be deductible to you as if the residence was still owned individually. There could be a problem if there is a due on sale clause in the mortgage, which requires they be paid in full before there can be a sale, but due to the circumstances of the transaction the bank will probably not care about it as long as the mortgage payments are received on time. You should be advised to have their attorney review their mortgage for a due on sale clause. If there is one, the attorney should confer with their mortgage holder prior to setting up an IPRT to get a waiver of any due on sale clauses.

Life Tenancy Trusts (LTT)

This trust is an irrevocable living trust because the grantor cannot revoke the trust and because the grantor retains a lifetime interest called a life estate" in the residential property. Legal title is retained by the trust as soon as the property is transferred, but the grantor retains beneficial use, possession and control of the property for life. Unforeseen future creditors cannot foreclose on the property because it is not owned in fee simple absolute by the grantor, who only has life estate. Future creditors also cannot use the life estate to obtain rental income because the trust agreement either requires the grantor to occupy the property to maintain the life estate or requires that any profits from renting the residence be retained by the trust for the beneficiaries. The following shows how a LTT is set up and works:

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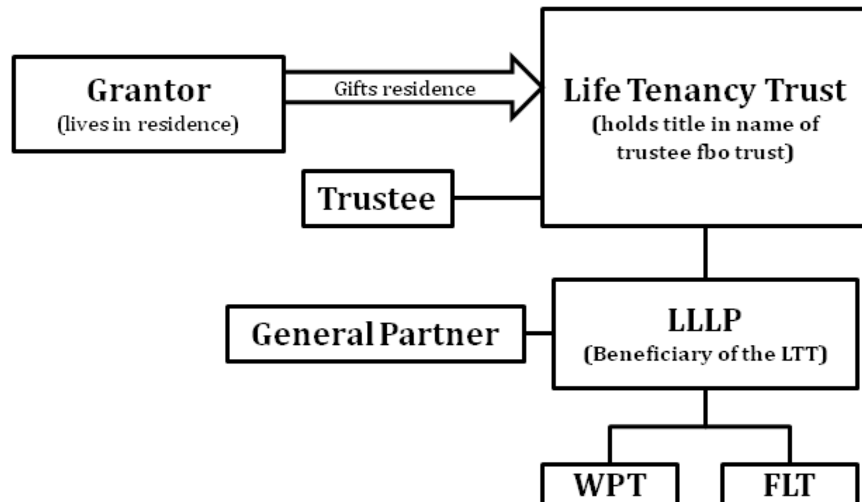
1. The LTT agreement is set up & a trustee appointed.
2. You donate the residence to the LTT, subject to reservation of a life estate subject to the terms and conditions of the trust agreement.
3. The title to the residence is placed in the name of the trustee fbo the LTT. The reservation of life estate is noted on deed.
4. You retain beneficial use, control and possession of the residence until death. You must maintain the residence's equity and may not diminish it.



5. After the death of the grantor, the beneficial interest in the residence is transferred to the LLLP.

Although the transfer to the trust is a donation, the grantor should not have to pay any gift tax since this is an incomplete gift because the grantor retained a life estate. The personal residence will also be included in the estate of the grantor after his or her death for the same reason.

The IRS will classify the LTT to be a grantor trust because of the retained beneficial interest in the life estate. This is beneficial to the grantor because it should enable the grantor to deduct mortgage interest and retain use of the personal residence exemption.

Mortgage Interest Deduction:

A retained lifetime interest in a personal residence should enable the grantor (homeowner) to deduct the mortgage interest from income on his or her annual 1040 return. If the income tax for a portion of a trust is attributable to a person, that person is entitled to the use of any deductions or credits attributable to that portion of the trust for which they are liable for taxes[78]. A grantor or another person is treated as the owner of any portion of a trust, there are included in computing his personal income tax liability those items of income, deduction, and credit against tax attributable to or included in that portion.[79]

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PLR 199916030 states: "Section 1.671-3(b)(3) provides that both ordinary income and other income allocable to corpus are treated as owned by the grantor where the grantor has an interest in or a power over both ordinary income and corpus, or an interest in or power over corpus alone that does not come within the provisions of § 1.671-3(b)(2)."

"Section 673 provides that the grantor is treated as the owner of any portion of a trust in which the grantor has a reversionary interest in either the corpus or the income, if, as of the inception of that portion of the trust, the value of such interest exceeds five percent of the value of such portion."

In PLR 199916030, the IRS noted that if the taxpayer, who was the grantor in a QPRT died prior to expiration of the term of years of the QPRT, the entire trust would be included in the taxpayer's estate. Therefore, the IRS held that the taxpayer had a reversionary interest and since the present value of the reversionary interest on the date of the transfer exceeded five percent of the value of the trust corpus on the date of the transfer, the Taxpayer, as the trust grantor, was considered to be the owner of both the income and the corpus of the trust for federal income tax purposes under § 673 during the 20-year QPRT term.

Since the taxpayer would be required to include in his/her federal income tax return all items of income with respect to the trust pursuant to IRC § 671, the grantor/taxpayer is allowed to deduct the mortgage interest paid on the residence during the years of occupancy allowed by the QPRT.

Principal Residence Exemption:

With respect to the Principal Residence Exemption, Revenue Ruling 66-196 in 1966 employed a similar analysis concerning a living trust based upon sections 671, but the basis of obligation for taxes rested upon the power to revoke[80]. Accordingly, the case is not entirely on point but follows the sec. 671 dicta that if a person is obligated to pay the taxes on a portion of property, then he or she is entitled to the deductions and credits attributable to the portion of the property the person is accountable for payment of the taxes. See also Revenue Ruling 85-45 that gave a principal residence exemption, prior exemption under sec. 121 to the wife in a marital deduction trust.

In both of the cases referred to above, the key point is that the person obligated to pay the taxes on the property was entitled to principal residence exemption. Since the LTT is a life estate trust, the grantor is the occupant and controls the beneficial interest. Accordingly, the grantor is responsible for any taxes derived from the sale

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of the property and, therefore, should be entitled to the principal residence exemption.

<u>Protection of the Beneficial Interest at the time of Distribution:</u>
One final fact to consider is that at the time of death of the last surviving grantor (the termination of the life estate), the residential property shall be distributed to the beneficiaries. At that time, the property will be vulnerable to any future creditors of the beneficiaries' in existence at the time of death. You can avoid this problem by making an LLLP with a WPT as limited partner. You can distribute the property among your children based upon the size of their partnership interest. In addition, as limited partners in the LLLP they will obtain charging order protection which will prevent their creditors from seizing their interest in the residential property upon the death of the surviving grantor.

DYNASTY TRUSTS (DT)

OVERVIEW OF DYNASTY TRUSTS

A dynasty trust is a long term trust that continues for 396 years or significantly longer and is designed to provide loans, financial assistance or other benefits to future generations of beneficiaries without any additional estate or generation-skipping transfer taxes. After the first generation, a dynasty trust can completely eliminate any liability for transfer taxes and generation skipping tax upon the trust funds. Careful estate planning is needed to minimize transfer taxes when initially funding the dynasty trust; thereafter, estate and generation skipping taxes can be lawfully eliminated.

Some dynasty trusts provide for the support and maintenance of beneficiaries by means of sprinkle and spray provisions. This is not wise because the law no longer distinguishes between support trusts and spendthrift trusts. As an unfortunate result, many creditors are now able to intercept the health, education, welfare and/or support benefits (HEWS) benefits derived there from. In some states, beneficiaries may even be able to obtain court orders compelling the payment of HEWS benefits to creditors if the trust agreements contain sprinkle or spray clauses.

Even if a dynasty trust does not contain sprinkle or spray clauses, if a trustee historically establishes the distribution of funds to a beneficiary in this manner, a creditor may very well be able to intercept these payments and even obtain an order for them to involuntarily continue to be paid pursuant to the established pattern, so that the creditor may continue to intercept the payments.

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Dynasty trusts have been in existence for 600-700 years. The US estate laws are intentionally designed to erode the concentration of multi-generational wealth. This is supposed to prevent significant economic gaps in society and reduce the economic differences of members of society. Most libertarians and supporters of free enterprise find the estate tax system to be offensive to the basic doctrines of private property and free enterprise. On the other hand, some will advocate the desirability of a more equal distribution of wealth where earned wealth is treated more favorably. However, the tax system does not make a distinction as to whether your estate was earned rather than inherited.

Although popular in the past, dynasty trusts have declined in use except for the very wealthy families, due to the increased federal estate tax exemptions and changes to the federal estate tax and the generation-skipping transfer tax. However, because of the abrogation of the rule against perpetuities, increases in the longevity of trusts and the uncertainty of whether the estate law reforms shall be extended, dynasty trusts are becoming popular again.

THE US DEATH TAX SYSTEM (ESTATE TAX)

The US has a two tier death tax system that may affect an individual's assets at the time of death.

Tier 1: The Federal Estate Tax

The Federal Estate Tax was established in 1917 to tax assets owned by the decedent at death. Assets left to a surviving spouse, if the spouse is a US citizen, are exempt. Bequests to qualified charities are also exempt. Other assets are subject to this estate or death tax.

The exemption from the tax was $2,000,000 in 2006-2008 and was expanded to $3,500,000 in 2009. There is no exclusion in 2010, but there also is no estate tax in 2010. Unless Congress enacts new legislation, in 2011 the estate tax shall revert back to the old law with an exclusion of $1,000,000 and an estate tax of 55%. Due to the fact that Congress with a democratic majority under pay as you go rules, it is anticipated that Congress will do nothing and allow the current estate tax law to expire and revert to the prior law that has a $1,000,000 exclusion and a 55% tax in 2011. The estate tax is charged on all of the world wide assets of a decedent even though another country may tax part of the assets if the person who died was a citizen of another country or owned property in another country. For an individual with $3,000,000 of net worth, with no spouse, dying in 2006, the estate tax would be $460,000 in 2006-2008.

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Tier 2: The Generation Skipping Transfer Tax (GSTT)

The second tax system is the GSTT that was introduced in 1986. It was designed to prevent wealthy individuals from setting up an irrevocable trust, after paying estate tax, to avoid having the assets in the trust taxed when the children and grandchildren died.

Under this tax structure, there is a separate exemption that is set up at the creation of the irrevocable trust. When the assets pass to the second generation, the amount over the exemption is then taxed at the highest estate tax rate then in effect. There are no estate taxes payable. However, if one sets up a trust containing less than the exemption, when it goes to his second generation the accumulated funds shall be exempt because the earnings appreciated from exempt funds.

The GSTT has been avoided by many well-known wealthy families. They paid the large federal estate tax when the family patriarch died, and left the remaining assets in trusts for several generations, with the children, grandchildren, and great grandchildren receiving earnings from the trust assets and payments of principal from the trust, if needed. Since the patriarchs died before the GSTT was introduced and their trusts were irrevocable, these trusts were exempt from this tax.

Designing the Dynasty Trust

Property transmitted to a dynasty trust may confer substantial asset protection if the trust is properly established in conformity with the following considerations:

First, the dynasty trust must be established at a time when the grantor is financially solvent and unfettered by lawsuits or foreseeable problems with creditors. Allegations of constructive fraud are a big problem for the grantor. Therefore, it is important to plan for the future and establish your dynasty trust when you are financially solvent. Other factors could render the establishment of the trust voidable:

- If the grantor is not financially solvent at the time the trust is established
- If the grantor is rendered insolvent after transferring property to the dynasty trust;
- If the grantor anticipates a lawsuit or other liability that is imminent
- If the grantor incurs substantial debt shortly after establishing the dynasty trusts.

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These circumstances may make it possible for the grantor's creditors to have the dynasty trust set aside, voided from the beginning or otherwise legally disregarded pursuant to the doctrine of constructive fraud.

Second, the grantor should not be a beneficiary unless the Grantor resides and maintains his or her wealth in a state that recognizes self-settled trusts. If the grantor resides or holds real estate in a state that does not recognize self-settled spendthrift trusts, the courts of that state may not recognize the validity of the dynasty trust and declare it void from the beginning or otherwise allow creditors to reach assets of the trust to satisfy the grantor's debts to the creditors.

Third, a dynasty trust is an irrevocable trust and the best strategy is to design the dynasty trust without any sprinkle or spray provisions. The dynasty trust should be designed to function like a family bank.

Fourth, the beneficiaries should not have any control over the assets of the dynasty trust. Therefore, the trust must be administered by an independent professional trustee or trust service.

If the dynasty trust is established in conformity with the foregoing guidelines, the grantor's creditors will not be able to reach the trust's assets to satisfy the grantor's debts because the trust is irrevocable and because the grantor has no control over the debt and is not a beneficiary. Beneficiaries' creditors will not be able to reach the trust's assets to satisfy their debts because the beneficiaries will not have any interest in the assets of the trust until the time of distribution. Since the beneficiaries do not receive any distributions from the trust, charging orders will be completely worthless because there are no sprinkle or spray provisions.

Another consideration is the location. Because one wants a dynasty trust to last as long as possible, it should be located in a state that has revoked the rule against perpetuities which requires that a trust must end within the period of lives in being plus 21 years. The following states have eliminated the rule against perpetuities: West Virginia, Alaska, Delaware, Idaho, Illinois, South Dakota, and Wisconsin. The following states have an expanded time period that is greater than the rule against perpetuities: Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Indiana, Kansas, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, South Carolina, and Tennessee. The remaining states still following the rule against perpetuities.

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Nevada is a good state for the legal location of a dynasty trust because the state's spendthrift law recognizes self-settled trusts, and Nevada is a good jurisdiction because of the protections provided by the Nevada Spendthrift Statute.

Funding the Dynasty Trust

The initial funding of the dynasty trust must employ creative strategies to vest funds into the dynasty trust while minimizing estate taxes. The most popular methods are:

- Make an annual gift to the dynasty trust using the annual gift tax exemption limits of $13,000 per person ($26,000 for a married couple).
- Make a large contribution using up the unified gift and estate tax credit (The estate tax credit is unlimited in 2010 but there will be a limit in 2011) There is a lifetime limit of $1 million per person ($2 million for a married couple).
- Set up an IRIT and designate the dynasty trust as the beneficiary. Encourage other family members and beneficiaries to do the same every generation.

After the dynasty trust is funded there is a problem with generating income from the trust's capital assets because trust income is at the top of the income tax scale. Therefore, the bulk of the trust's conservative investments should be in assets able to grow while avoiding or deferring taxation such as:

- Tax Free Municipal Bonds
- Non dividend growth share
- Zero coupon bonds
- Tax free annuities
- Various life insurance policies that allow for income to be deferred or forgiven
- Real Estate ventures eligible for 1031 exemptions

The trust should contain specific language to permit investments in assets that generally are high yield investments, such as residential real estate, artwork, jewelry, and the like, which have significant appreciation potential.

Practical Uses of the Dynasty Trust

For family planning, there may be significant advantages to the use of dynasty trusts to avoid estate taxes, GSTT and also to protect future heirs from claims by unforeseen future creditors. However, due to changes in collections law that makes

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support and spendthrift provisions vulnerable to creditors, it may be wise to discontinue any kind of direct distribution of income to beneficiaries except for distributions that are exempt from GST taxation.[81]

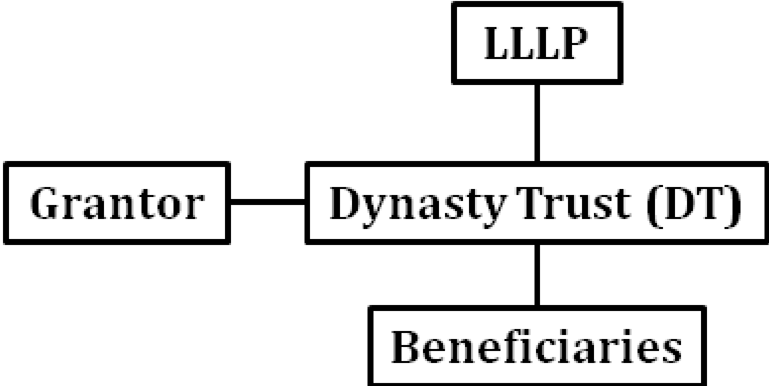
The Family Bank

This can be accomplished by operating a dynasty trust like a family bank to make low interest loans available to family members that must be paid back as a condition of being extended further loans. Because the beneficiaries continually repay the loans, the trust corpus is kept intact for future generations. Additionally, the problems associated with beneficiaries gratuitously receiving large amounts of cash can be mitigated.

The family bank can be used to indirectly provide income streams to beneficiaries. For example, perhaps a beneficiary needs funds for college tuition and books that will cost $5,000 per semester and there are two semesters per year. The family bank could make a loan of $100,000 and charge 3% interest. The beneficiary's financial planner could invest the funds in a program that pays 12% per annum interest. The $150,000 would generate $18,000 in profit and require interest payments to the bank of $4,500, leaving $13,500 which should be enough to pay for the beneficiaries' books and tuition after paying capital gains taxes.

Perhaps a beneficiary who is elderly needs funds for home healthcare. Rather than use a HEWS provision to care for her, a low interest loan could be used to make an investment and the proceeds used to pay for the healthcare. Thus, the money is received indirectly and, thereby, the dynasty trust completely avoids all estate and generation skipping taxes entirely because no funds are ever directly distributed to a beneficiary unless the distribution is exempt from taxation.

The family bank could also be used to make business loans to help beneficiaries start family businesses to become financially independent. In some circumstances, the dynasty trust might consider making a capital contribution and becoming a shareholder, partner or member in a venture with a beneficiary.



Acquisition of Real Estate for Use by Beneficiaries

The trustee should be

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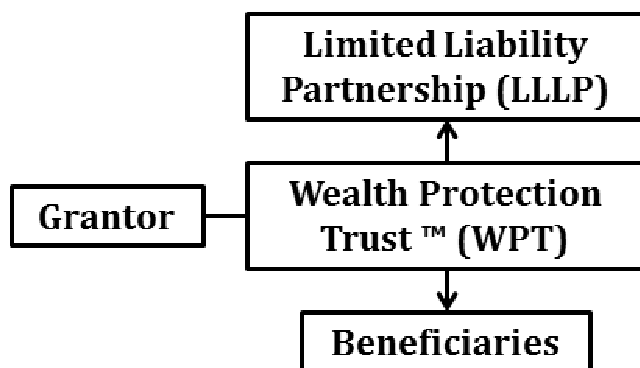
encouraged to acquire assets for the use of the beneficiaries rather than to make distributions to them. The trust should contain specific language to permit investments in assets such as residential real estate, artwork or jewelry which have significant appreciation potential. The artwork and jewelry can be insured and held for safe keeping in the homes of beneficiaries. If a beneficiary wants to purchase a home, the residence could be purchased as an asset of the dynasty trust. The beneficiary will have the use and enjoyment of the real estate which should be a tax neutral transaction. In addition, the property would be insulated from divorce and claims by future creditors against the beneficiary.

WEALTH PROTECTION TRUSTS™

The Wealth Protection Trust™ (WPT) is a type of asset protection trust established for your family or whoever you wish to benefit. You select the trustee(s) and provide instructions for the trustee(s) to follow. You choose the property to be transferred to the trustee to be held exclusively for the loved ones named as the trust's beneficiaries.

In a Life Insurance Trust the only property owned by the trust is the life insurance policy. You are the person who establishes the trust (the grantor) and are usually the insured person, but you're not a Beneficiary. With a life insurance trust, once the insured dies, the death benefit of the policy pays off and the trustee distributes the money - tax-free -outside the estate of the insured. Once that is complete, the life insurance trust terminates.

By contrast with the WPT, instead of owning only life insurance policies, the trust is allowed to own that plus almost every kind of property there is from investments to real estate to limited partnerships and much more. The first key to the Wealth Protection Trust™ is that, because it is 'irrevocable', whatever is inside of it is no longer yours. The second key is that it must be established when you are financially solvent and there are no lawsuits on the horizon.



With a Wealth Protection Trust™, the trust is allowed to own life insurance and annuities as well as almost any other kind of property there is, including real estate. The Wealth Protection Trust™ is an irrevocable trust; therefore whatever is inside of it is no longer yours. Because the WPT is

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irrevocable, legal adversaries cannot take the assets of the WPT away from the trust or your loved ones. It is also important that the WPT must be formed at a time when you are financially solvent and there are no lawsuits on the horizon in order to avoid constructive fraud accusations.

Ownership vs. Control Of Assets

"Ownership versus Control" is part of the formula that makes it work. John D. Rockefeller is credited with saying, "It is better to own nothing but control everything." - and that is the key to the asset protection features of the Wealth Protection Trust™. That is why the assets inside the WPT cannot be taken away in a lawsuit or a divorce, because you don't own them. The trustee -who you select- holds legal title on behalf of the trust.

Primary Assets of a WPT

A WPT has two primary assets: (1) a large percentage of your Limited Liability Limited Partnership and (2) life insurance on the grantor(s). You should use a Management Privacy Trust™ (MPT) as the General Partner of the LLLP, and you should be the insured on any life insurance coverage owned by the WPT. As the in direct General Partner of the LLLP, you'll have control over the LLLP assets even if your ownership as a general partner were only two percent (2%). The Limited Partner would be your Wealth Protection Trust™ -- owning up to 98% of the LLLP or giving up 18% to the Family Living Trust (FLT) for cash flow purposes.

Asset Protection Features

Because it's irrevocable, the WPT's assets are all "outside" of your estate and beyond the reach of any unforeseen future creditors or legal adversaries. Since the trust is established for the sake of your beneficiaries and not you, and because you have abandoned the power to revoke the trust, future creditors or legal adversaries will not be able to seize or attach the WPT assets held by the Trustee.

An additional feature reinforces this protection. The WPT Trust Agreement should grant the trustee with the authority to make 'discretionary' rather than 'mandatory' distributions to the beneficiaries. Because of this, there is no 'mandate'. Therefore, the trustee can sprinkle distributions over the lifetime of the beneficiaries and can withhold distributions in the event a beneficiary is going through a lawsuit or a divorce. Neither adversary would be able to get a judge to order a distribution because distributions are discretionary. Distributions also should never be made directly to the beneficiaries.

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HOW WOULD THIS WORK?

Hypothetically, let us assume you own a business and invest in real estate. You have your business inside of a corporation and you keep your real estate inside of a limited liability company. The stock of the corporation and the LLC would be owned by your LLLP. You would be the indirect 'managing' general partner of the LLLP using a Management Privacy Trust™ (MPT). The limited partners could be your WPT and your revocable living trust. Suppose many years after formation you are involved in a terrible auto accident which results in litigation. The assets held inside of the Wealth Protection Trust™ and the LLLP should be safe if the WPT was established at a time when you were financially solvent before the controversy leading to the lawsuit.

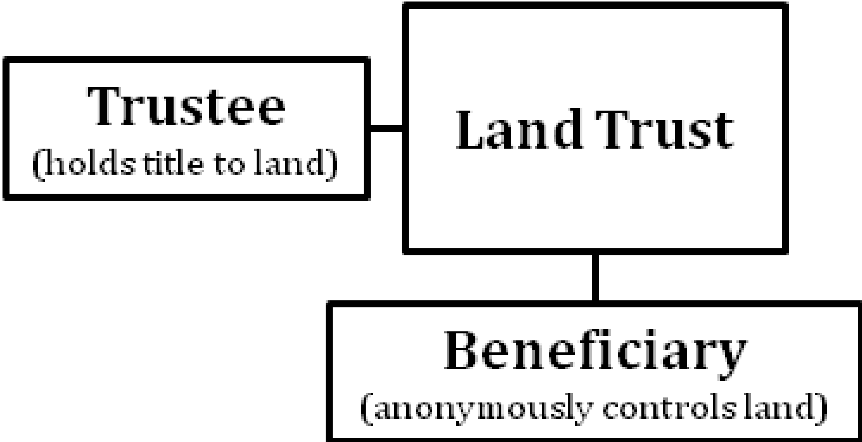
MANAGEMENT PRIVACY TRUSTS™ (MPTS)

In order to maintain financial privacy one may desire to own real estate without your name appearing on the deed, which is public information. Likewise, you may desire to own a controlling interest in a business entity without having your name appear as a General Partner on a certificate of partnership interest. One method of accomplishing this task is to use a management privacy trust (MPT) to hold title to the certificates of General Partner ownership of the business entity.

There are three types of trusts that are useful for the purpose of obtaining and maintaining financial privacy. These are the land trust, personal property trust and the management privacy trust (MPT). The land trust is used to hold legal and equitable title to real estate while the beneficiary holds the beneficial interest which includes the use, indirect possession and control of the property.

LAND TRUSTS

One of the best ways to keep real estate ownership secret is the use of an Illinois-type land trust. With this trust the trustee holds legal title but the beneficiary's beneficial interest controls the use and possession of the land. The trustee only has authority to hold title in his, her or its name and to transfer title when and if instructed to do so by the beneficiary. If you



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have a sophisticated buyer, you can even sell the property by selling the beneficial interest in the property by transferring the interest through an assignment of beneficial interest. This is presented to the trustee who will issue a new certificate of beneficial interest. Meanwhile, the same deed sits on record at the county courthouse, indicating that the property remains owned by 'John Doe trustee for the benefit of Land Trust #1F3Y78 dated 6/1/2010.'

Land trusts are simple title holding trusts that were originally started in Illinois, so they are often called Illinois Land Trusts. The purpose of a land trust is to allow legal title of your property to be held in another person's name, while you retain all of the rights and privileges of property ownership, the beneficial interest. The trustee acts only upon the beneficiaries' direction. So the property owner still retains all rights, such as the right to possession, to collect rent, mortgage the property, homestead exemption, and/or any other conventional use of property.

Avoid Probate, Save on Taxes

Property held in a land trust can designate successor beneficiaries or contain a personal directive specifying who shall receive the beneficial interest upon the death of the beneficiary. The designation of the successor beneficiary in the land trust agreement enables the property to be conveyed to the successor beneficiary after the death of the beneficiary without going through probate court. The land trust avoids probate court in the same manner that a living trust avoids probate proceedings.

Your spouse, children or their successors can bypass costly and time consuming probate proceedings. They can sell or refinance the property without delay. With a land trust your heirs can sell immediately, thereby avoiding making payments on property they inherit but do not wish to keep.

Keep Liens and Judgments off Your Property

Tax liens, judgment liens and notices of pending litigation against the beneficiary do not attach to the land in the Land Trust.[82] These recordings may be placed on property held in the name of the person subject to the lien or judgment. However, property in a land trust is listed in the name of the trust and the trustee. The beneficiaries are not listed on the public record and are anonymous. Therefore, any liens or judgments against you personally cannot be posted on the property since it is not in your name. This applies to IRS Liens as well.[83] In most states, a beneficiary may freely sell the real estate held in the land trust, even though the beneficiary may have liens and judgments in his/her own name in the public record, by selling his or her beneficial interest in the land trust.

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Protect yourself from serious liabilities

Due to significant liability for environmental pollution caused by such things as asbestos, lead paint, ground contamination, leaky gas tanks, toxic mold and many other kinds of liabilities which may have been incurred by third parties or prior owners, a land trust can be used to shield your identity. Once a trust is closed, the trustee is not obligated to keep records for any period of time. Therefore, once property is sold and the trust is closed, the trustee should not preserve any land trust records, so there will be no way to identify the owner in the chain of title.

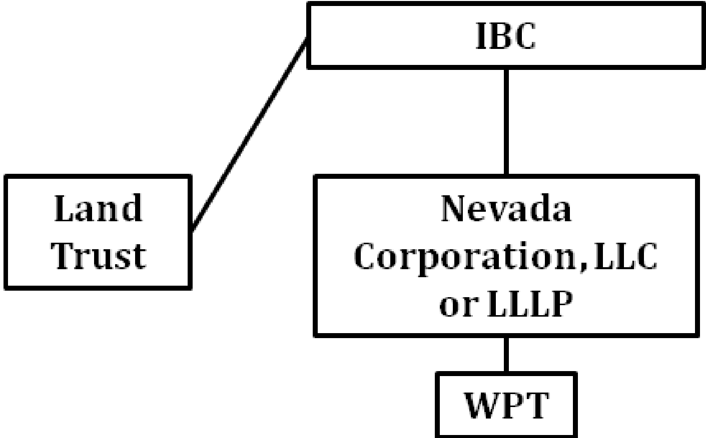
Defend Your Right to Privacy

Legal ownership of all real estate is listed with the county recorder's office in all counties. That means your ownership information is available to anyone who wants it. That is why property owners are constantly seeking mortgage brokers to apply for new loans. When you form a land trust, your interest in the property remains confidential because the trust's and the trustee's names appear on the deed.

The trustee is not required to disclose the identity of the beneficiary of the trust. The trustee need only disclose such information if the trustee is served with a subpoena and/or deposed. The trustee also is not required to maintain any records. If the property is sold and the trust closed, the trustee may destroy the land trust records if the trustee chooses to do so. You may be able to select a trustee that is a resident of another state or that resides in another country. This would make it difficult and costly to subpoena the trustee and subject him or her to a deposition.

THE LAND TRUST

Financial privacy can be further enhanced with a land trust by using privacy corporations and/or offshore IBCs or LLC as beneficiaries. Property can be structured so that it is almost impossible to identify the person at the end of the chain of intermediary entities between the property and the person that controls the entities.



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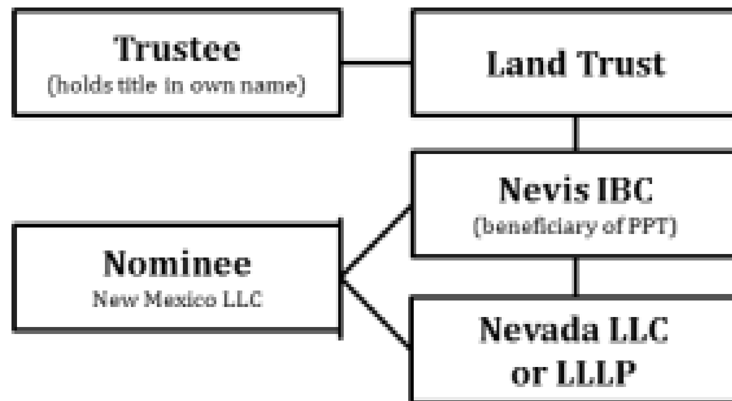
If the land trust has multiple owners it may be necessary to designate one of the owners as the director by appointing him or her as director in the trust agreement by means of a power of direction clause which will designate the director's authority and also place limitations on the director's authority to act on behalf of all the owners. In addition, if there shall be more than one beneficiary, then a beneficiary agreement is necessary to designate how the beneficiaries will delegate their authority, jointly, severally or to a director.

Transfer Property Anonymously

There are two different ways that real estate may be transferred via a land trust. The first method is to have the trustee convey the property via a deed to the purchaser on behalf of the land trust. This is the traditional method just like any other real estate transfer. In this fashion, the beneficiary of the land trust, assuming that the property was acquired by the land trust originally, remains anonymous.



The second method is to sell the beneficial interest in the land trust. In most states the beneficial interest in a land trust is personal property. This is done by executing an assignment of beneficial interest that is given to the trustee who denotes the change in beneficial interest by executing a new certificate of beneficial interest to the buyer in his/her name. A bill of sale should be executed to memorialize the sale. The buyer is now the beneficiary and controls the beneficial interest in the real estate. The buyer can now use and enjoy the property in any way he or she chooses. This is truly controlling property without owning it. Not only are both the buyer and sellers anonymous, but the sale itself is anonymous and appears nowhere in the public record.

However when one sells the beneficial interest, a discount will have to be given to the purchaser because the tax basis in the real estate held by the beneficiary shall be carried over to the purchaser. If and when the new beneficiary elects to sell the real estate and not the beneficial interest, then he or she will have to pay capital

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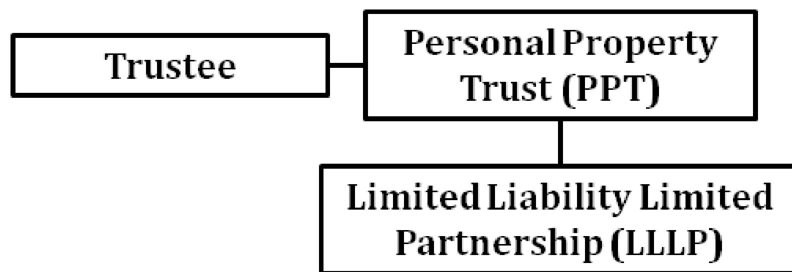
gains tax based upon the FMV at the time the land trust originally purchased the property, not at the time they acquired the land trust's beneficial interest. Therefore, they will be paying the capital gains the land trust would have paid had it sold the real estate to them instead of the beneficial interest.

For example, suppose the land trust bought a property called Eden for $100,000. Beneficiary A sells his beneficial interest as sole beneficiary to beneficiary B four years later. At that time Eden has a FMV of $200,000. Since A is not selling the real estate, but instead is selling the beneficial interest, capital gains tax is not due at that time. Normally by selling the real estate, instead of the beneficial interest, A would have paid capital gains tax on the $100,000 profit and beneficiary B would receive Eden with a tax basis of $200,000.

PERSONAL PROPERTY TRUSTS



Now suppose, five years later beneficiary B sells the real estate for $300,000. Since B bought the beneficial interest he assumed A's tax basis of $100,000 and owes a capital gains tax on $200,000, instead of $100,000. Consequently, when buying the beneficial interest B should have demanded compensation equivalent to the capital gains tax A would have been required to pay if the real estate had been transferred instead of the beneficial interest. This should not be problematic to beneficiary A, since A would otherwise have paid the money in capital gains taxes anyway.

A PPT is a trust designed to hold personal property for the benefit of a beneficiary who has a broad beneficial interest or beneficial ownership that allows the beneficiary to possess, control, use, rent, improve, encumber, maintain or repair the property. Beneficial ownership essentially entails complete control of the property. The Trustee holds legal title for the benefit of the trust and is responsible for the payment of any tax reporting and payment of tax liabilities. While the trustee holds title, the trustee cannot transfer title nor do almost anything else without written instructions from the beneficiary.

The PPT is governed by the PPT agreement. A PPT is created by the execution of PPT agreement and the subsequent transfer and titling of personal property into the name of the trustee for the benefit of the PPT. If the personal property does not

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have a title or registration, then a bill of sale should be executed to authenticate the transaction. It should be signed by both of the parties and notarized if possible.

PPTs can be used to hold almost any kind of personal property. However, they are most useful for holding share certificates for corporations or certificates of membership for limited liability companies. They can also be used to hold the beneficial interest of a land trust in states where the beneficial interest in a land trust is considered to be personal property. A few states consider the beneficial interest in a Land Trust to be real estate.

The trustee is the person or entity who holds title for the benefit of a trust. Some states require that the trustee be a natural person. Others allow entities to be trustees, but some require that entities acting as trustees must be bonded. If a corporation or LLC is to be used as Trustee, a resolution should be executed the entity acting as Trustee designating a person who is given signature authority and who is authorized to act as Trustee on behalf of the PPT.

A PPT may have a director. This is a person who is empowered by the trust agreement to direct the actions of the trustee. A director can be irrevocably appointed. Successor Directors can be designated in the trust agreement. Multiple Directors may be appointed and they may be authorized to act jointly, by a unanimous vote or majority vote, or severally, independently like partners in a partnership. If a director is not identified by the trust agreement, then the power of direction is reserved for the beneficiaries. Unless the trust agreement or a beneficiaries' agreement specifies otherwise, the beneficiaries can only act by unanimous agreement.

Preparing Deeds, Titles & Registrations for Privacy Trusts

Titles, registrations or deeds that are to be transferred to a land trust or to a PPT must be transferred into the name of the trustee. The Trustee holds the real or personal property for the benefit of the trust itself. Land to be conveyed to the land trust must first have the titled transferred to the trustee of the land trust. Personal property that is to be conveyed to a PPT must have title transferred to the trustee of the PPT.

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The following are examples of how to identify the owner of the trust on a title, deed, registration or other form:

	Primary purpose	Irrevocable?	Asset Protection?
LTT (Life Tenancy Trust)	Owns personal residence	Yes	Yes
WPT (Wealth Protection Trust)	Limited Partner of LLLP	Yes	yes
MPT (Management Protection Trust)	General Partner of LLLP	Yes	Yes
FLT (Family Living Trust)	Estate planning for the family, Limited Partner of LLLP	No	No
DT (Dynasty Trust or Generation Skipping Trust)	Limited Partner of LLLP, 396 year life	Yes	Yes
PPT (Personal Property Trust)	Holds personal furnishing	Yes	Yes
LT (Land Trust)	Holds real estate	Yes	Yes
CRT (Charitable Remainder Trust)	Income stream while alive, donates to charity after death	Yes	Yes
IRT (Irrevocable Residential Trust)	Holds real estate	Yes	Yes
ILIT (Irrevocable Life Insurance Trust)	Holds Life Insurance policy	Yes	Yes
IPRT (Irrevocable Personal Residence Trust)	Not recommended, holds real estate permanently		
QRPT (Qualified Personal Residence Trust)	Not recommended, last 20 years or life of grantor whichever is shorter		

Living Trust	Created during lifetime of grantor, not usually subject to probate, expense of planning, inconvenient
Trustee	Legal Owner, Holds title, Fiduciary responsibility, manages for benefit of Beneficiaries
Grantor	Person who establishes the trust by providing property, may revoke trust or change trust if revocable trust,
Beneficiary	Anonymously controls & enjoys land, can be individuals, corporations, associations, or charity, for asset protection purposes is always the LLLP
Trust Property	Property donated to the trust by the grantor, aka: trust principal, trust corpus, or trust estate

John Doe as Trustee for ABC Trust

- John Doe as Trustee for ABC Trust dated June 1, 2005
- John Doe Trustee fbo ABC Trust
- John Doe Trustee fbo ABC Trust dated June 1, 2005
- ABC Trust, dated June 1, 2005, John Doe, Trustee
- ABC Trust, dated June 1, 2005, Ace Trust Corp., Trustee

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On deeds, the title is to be held by the trustee but the document can be arranged to make it appear that the trust holds the property directly by executing the document as follows on the front page where the grantee is to be identified: To the ABC TRUST dated June 1, 2005, whose trustee is John Doe hereinafter mentioned…

Thereafter, the trustee's name can be mentioned somewhere on page 2 or 3 of the deed in very small fine print. However, you should be aware that some clerks will not execute a deed prepared as outlined above. If that should happen then your fallback signature will be: To the ABC TRUST dated June, 2005, John Smith, Trustee.

If you are a Trustee and you desire to protect yourself from personal liability, then you should execute your documents as follows: John Doe as Trustee for the ABC Trust (no personal liability).

A trustee is not personally liable for the debts of the trust unless the trustee assumes responsibility. Therefore, by including the statement, no personal liability, there can be no confusion about whether the trustee was acting in his or her official capacity only.

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	Will	Living Trust
Probate	▪Subject to probate proceedings. ▪Each out-of-state real property requires a probate proceeding in the state where it is located. ▪Provides court supervision for handling beneficiary challenges and creditor disputes. ▪Becomes public record at the time of your death.	▪Not subject to probate proceedings. ▪Avoids the cost of a second-state probate proceeding where there is out-of-state property. ▪No automatic court supervision to deal with disputes. ▪Your estate matters remain private.
Management of your Assets	In addition to the Will, one should use a Power of Attorney or use a Conservatorship to manage one's assets.	Allows you as the grantor to manage the trust assets as long as you are willing and able. Makes provisions for a successor trustee to take over in your place.
Costs	Costs less to prepare a Will than a Trust. Cost to probate a Will can be substantial.	Costs more to prepare, fund and manage a trust than to prepare a will. But avoids probate costs and fees if all assets were held by the trust.
Tax Savings	Same tax saving provisions available as are available in a Trust except for estate tax benefits for married couples.	Generally the same except that married couples can double their estate tax credit with an A-B Trust provision.

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SPECIAL NEEDS TRUST

In the course of your lifetime, either your family or perhaps the family of a friend or relative may include someone receiving government disability benefits for a condition – such as autism, Down's syndrome or several other disabilities. Plus, if you want to leave money upon your death to someone with a disability, you must be careful in planning. Otherwise, you might disqualify your intended beneficiary from receiving Supplemental Security Income ('SSI') or Medicaid benefits.

In most cases, simply owning a house, furnishings and other normal personal effects does not affect a person's liability. However other assets including cash in the bank will disqualify a person form benefit. So if you leave a disabled person a sum of money he or she won't be qualified to receive SSI or Medicaid.

That's why you should know how a Special Need Trust works and how it can help. Special Needs Trusts (sometimes referred to as 'supplemental needs' trusts) allow a disabled beneficiary to receive gifts, lawsuit settlements, or other funds and yet *not lose his or her eligibility for certain government programs*. Such trusts are drafted so that the funds will not be considered to belong to the beneficiary in determining eligibility for public benefits.

WHAT EXACTLY CONSTITUTES A "SPECIAL NEED"?

As the name implies, a Special Needs Trust is ***not*** designed to supplant or in any way replace government disability income which provides for very basic support. Instead, it can be used to pay for '**Quality-of-Life**' comforts such as recreation, music or horseback riding lessons, educational trips and other non-covered luxuries that could not realistically be covered and paid for by public disability income funds.

Basically a 'special need' is anything not covered by

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the disability benefit**.**

These trusts can also pay for things like educational support, counseling, and specialized medical attention beyond the simple necessities of life. 'Special needs' might include medical and dental expenses, annual independent check-ups, necessary or even supplemental or support equipment (such as specially-equipped vans) that can improve the quality of the disabled person's life.

The trust might also be able to provide for specialized training and education, insurance needs, transportation, and special dietary needs. If the trust is sufficiently funded, the disabled person can also receive spending money, electronic equipment and appliances, computers, vacations, movies, payments for a companion, and other self-esteem and quality-of-life enhancing expenses**.**

HOW DOES IT WORK?

The trust's grantor(s) (the 'founder') selects a primary trustee and a back-up or 'contingent' trustee who will administer the trust. The legal documentation is prepared by an estate planning attorney familiar with special needs trusts**.**

The trustee is a fiduciary. That means he or she has a *higher duty of care* with the trust's assets than they do with their own property**.** The trustee administers the trust according to its instructions and is charged with responsibility to providing for the trust beneficiary, the person for whom the trust is established. When the trust documentation is ready, the trust paperwork is signed and the trust is then 'funded' with the initial property or money being contributed to it by the grantor.

From the time the trust is signed, the trustee must provide for the beneficiary from the trust assets. Some will fund the trust with an initial monetary amount, and then add to it from time to time. Others will also have the trust be the owner of life insurance on the grantors or other members of the family – with the death benefit being payable to the Special Needs Trust**.**

WHAT IS THE PROCESS?

First, start with *exactly what the disability benefit actually covers***.** Different states cover similar but sometimes slightly different items. They also have guidelines that if violated might render the benefit recipient 'disqualified' to receive further benefits. So be careful to follow your state's guidelines. Second, once you know

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what the disability income covers, the Special Needs Trust can then be designed *around the coverage* provided by the government benefit.

Often, a Special Needs Trust might be created by a parent or some other family member for a child with special needs (even though the child may be an adult by the time the trust is created or funded). Such trusts also may be set up as a way for an individual to leave assets to a disabled relative.

In some cases, the disabled individual can often create the trust himself, depending on the program for which he or she seeks benefits. These 'self-settled' trusts are frequently established by individuals who become disabled as the result of an accident or medical malpractice and later receive the proceeds of a personal injury award or settlement.

WHAT IF THE DISABLED INDIVIDUAL DIES?

In the event of the beneficiary's death, any amount of money or investment holdings or other property still remaining within the trust at that time can be paid out in full to any other non-disabled beneficiary in the family (i.e. the beneficiary's siblings or parents) or any charity (i.e. the 'Aid for Autistic Children Foundation') of your choice**.** This situation is usually covered in the drafting of the legal documentation after a consultation with the attorney.

WHAT IS A SPECIAL (SUPPLEMENTAL) NEEDS TRUST?

Special needs trusts (also known as "supplemental needs" trusts) allow a disabled beneficiary to receive gifts, lawsuit settlements, or other funds and yet not lose his

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or her eligibility for certain government programs. Such trusts are drafted so that the funds will not be considered to belong to the beneficiary in determining eligibility for public benefits.

As their name implies, special needs trusts are designed not to provide basic support, but instead to pay for comforts and luxuries that could not be paid for by public assistance funds. These trusts typically pay for things like education, recreation, counseling, and medical attention beyond the simple necessities of life. (However, the trustee can use trust funds for food, clothing, and shelter if the trustee decides doing so is in the beneficiary's best interest despite a possible loss or reduction in public assistance.) Special needs can include medical and dental expenses, annual independent check-ups, necessary or desirable equipment (such a specially equipped vans), training and education, insurance, transportation, and essential dietary needs. If the trust is sufficiently funded, the disabled person can also receive spending money, electronic equipment and appliances, computers, vacations, movies, payments for a companion, and other self-esteem and quality of life enhancing expenses.

Often, special needs trusts are created by a parent or other family member for a child with special needs (even though the child may be an adult by the time the trust is created or funded). Such trusts also may be set up in a will as a way for an individual to leave assets to a disabled relative. In addition, the disabled individual can often create the trust himself, depending on the program for which he or she seeks benefits. These "self-settled" trusts are frequently established by individuals who become disabled as the result of an accident or medical malpractice and later receive the proceeds of a personal injury award or settlement.

OFFSHORE TRUSTS

THE NEED FOR PROTECTION

You worked hard for what you have. But all your effort to build wealth does nothing to protect it. Wealth *needs* protecting. Today, a family that fails to actively safeguard their assets risks losing them – perhaps through slow erosion, or possibly in a sudden disaster.

The hazards are real:

- A lawsuit could sweep everything away that you have. The grievance might seem trivial – but if you choose the wrong lawyer, or if you get the wrong

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jury, or if you find yourself on the wrong side of political fashion, you could easily be wiped out at the bang of a judge's gavel.

- Income taxes bleed away a third or more of business and investment earnings each year. During high-inflation years you may actually earn less after taxes, than you lose in purchasing power. Even when tax rates go down as they did in 1986, they soon go back up as they did in 1990 and as they are now doing again.
- Estate taxes can take up to 50% of what you leave and up to 75% of the money you leave for your grandchildren. The damage to your family's welfare may be even worse if a crushing bill for estate taxes forces a hurry-up sale of real estate, a family business, or other illiquid investments. And if that's not bad enough, the rules keep changing.
- The near-impossibility of financial privacy in the US now leaves your wealth visible and vulnerable to government bureaucrats and lawsuit predators. It's too easy for someone sizing you up for a lawsuit to learn the details of your bank accounts, your investments, and how you spend your money. If a lawsuit is pressed, thousands of people you've never met may read the story of your financial life in the local newspaper.

It's an unwelcome fact, but today's environment amplifies every one of those hazards. The economy's deep troubles and the government's ambitious agenda for change, increase the risk of even higher taxes.

That's troubling enough, but new risk factors are now emerging. Respect for contracts and the rule of law have been weakened by the government's drastic measures to deal with disorder in the financial markets. A desire to treat the earnings of the wealthy almost as public property is becoming more and more widespread. With out-of-control, unprecedented deficits and inflationary policies that are now pushing the government toward the idea of foreign exchange controls to halt a flight from the dollar, your money is now more at risk of loss or seizure than any time in history.

The Best Protection

A lawful offshore trust can protect you, your family and your assets from all of those hazards.

A trust is a legal arrangement for transferring the ownership of assets to an institution or qualified trustee. As trustee, the institution accepts a duty to administer and protect your assets for your benefit and for the benefit of other persons you name.

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For maximum advantage, an offshore trust can be carefully structured with multiple layers of protection, layers that fit together to strengthen one another:

- An offshore trust should be designed by a qualified professional trusts consultant whose everyday job is to avoid disputes with the IRS and other government agencies. And it should be examined by a qualified certified public accountant who understands the reporting requirements for offshore trusts.
- The offshore trust's tax plan should be completely non-controversial with no strained or exotic tax theories. You should stay in full compliance with clear and simple tax law provisions that apply to offshore trusts.
- For full protection, the offshore trust should be outside the jurisdiction of any US court both in principle and in practice – and inside a long established, stable country that discourages frivolous and inventive litigation.
- An offshore trust should be flexible so that it adapts easily to changes in US laws, to changing investment conditions and to changes in family circumstances. Flexibility makes it a *long-term* source of financial safety and security for you and for future generations.
- An offshore trust should be able to hold any type of investment including offshore companies and carry out the investment policies you want, and it should be free to use whatever currencies are best for safety and wealth preservation.
- An offshore trust should also be easy to coordinate with the other financial planning tools you may be using, such as a living trust, a family limited partnership or limited liability company, a management investment account or an annuity.
- Offshore trusts should give enough (just enough) authority to the trustee to protect your assets and reduce your taxes but still assure that the trustee never loses sight of *your* objectives and the pursuit of protection against lawsuits and public prying eyes. While the offshore trust should allow you greater privacy, you should never need to hide the trust's existence or shade the truth about what it is doing.

Participants In An Offshore Trust

The story of how an offshore trust protects you, your family and your assets is easy to follow if you understand the roles of just four people or groups. You already know most of them. They are:

- the Grantor (you)

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- the Beneficiaries (whomever you name)
- the Protector (you)
- the Trustee (the institution that manages the trust)

With a Bridgeway Offshore Trust™ the rights, powers, and duties of those four persons or groups are precisely defined to maximize the Trust's protective power and to assure that your transfers to the Trust are completely tax free.

Grantor

You are the Grantor – the person who establishes the Trust by transferring money or other investments. As Grantor, you name the Beneficiaries of the Trust and have the power to remove anyone or add more of them. You will probably include yourself, your spouse, and everyone else in your immediate family (including children and grandchildren not yet born and their further descendants). It's entirely up to you. You may include other individuals and one or more charities. As Beneficiaries, you and your spouse are "first in line" to receive benefits. The trustee is authorized to give preference to *your* current and future financial needs. Whatever you don't need personally will eventually be available to the other Beneficiaries you have included.

Protector

You are the Protector of the Trust for the rest of your life or until you resign. You can and should designate someone to be the Protector after you.

As Protector you hold a powerful office.

- You can confer with the Trustee on all the affairs of the Trust
- You can make investment recommendations
- You can inform the Trustee's decisions about what to distribute to each Beneficiary and when to distribute it
- If you're ever dissatisfied with the Trustee's performance, *you can require the Trustee to resign* and be replaced with another trustee and/or trust company more to your liking

Your power to select a replacement Trustee assures that the Trustee will give the most careful consideration to your recommendations in all Trust matters.

During your lifetime, all Trust distributions to you or any other Beneficiary are income tax-free. Neither it, the Beneficiaries, nor your successor as Protector will be subject to International tax on earnings the Trust accumulates.

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Trustee

The Trustee administers the Trust and is constrained by the basic investment arrangements you elect when you establish and fund the Trust.

You or your successor as Protector can recommend changes in the investment arrangements at any time with the Trustee's administration of the Trust investments always subject to your (the Protector's) oversight.

The Trustee also is obligated to judge which Beneficiaries should receive money and when they should receive it – all according to your intentions in establishing the Offshore Trust and subject to monitoring by the Protector.

The Trustee is authorized to rely upon the information and advice you give in your role as Protector including information about the needs and circumstances of the Beneficiaries which reinforces your influence as Protector.

Spouse Transferor

The Trustee is authorized to accept transfers of property to your Trust from any person including your spouse.

If your spouse transfers property to the Trust, the spouse will have a lifetime power to require the Trustee to transfer the property again to a separate Trust. In the event your spouse exercises that power, the spouse will become the Protector of a separate Trust and will be deemed to be its Grantor.

Supplemental Advisor

Some Trusts include an optional, fifth participant called the Supplemental Advisor, to give the Trustee an additional source of information about the circumstances of the Grantor and other Beneficiaries. The Supplemental Advisor might be the Grantor's attorney or other professional advisor, or might be a member of the Grantor's family. In any case, the Professional Advisor has no rights or powers, but the Trustee is authorized to consider any information he might provide him from time to time.

Standby Trustee

For additional safety, the Trustee and the Protector can agree that a new trustee shall automatically step in under certain circumstances. The triggering event can be anything the Trustee and Protector agree it should be – even a simple declaration by the Protector that the Trust should be moved to a new trustee in a new country.

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Trust Instrument

Your powers as the Grantor, the Protector, the rights as Beneficiary, the status of a Spouse Transferor, and the duties of the Trustee are all spelled out in a written Trust Instrument.

The Trust Instrument is a legally binding contract. You or any Beneficiary could sue the Trustee for violating it; however, provisions in the Trust make any such problems with the Trustee very unlikely.

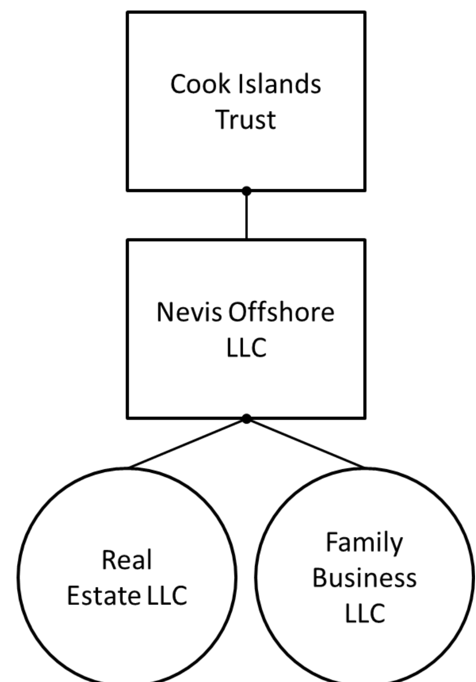
If you become dissatisfied with the Trustee's performance, you as Protector, can force the Trustee to resign in favor of another qualified institution and Trustee that you selected, thereby transferring the entirety of the Trust Fund to a new Trustee you have chosen.

It is important to know a trust instrument is reliable only if the trust is located in the right country. That's why the Bridgeway Offshore Trusts™ are located in the Cook Islands, where the Cook Islands Courts will strictly enforce the trustee's obligations.

What Your Trust Can Protect

Some offshore trusts are tied to fixed investment programs. An insurance company for example, might sponsor trusts that hold life insurance policies and nothing else. A Bridgeway Offshore Trust™ on the other hand has no such limitation. With your recommendation as Protector it can hold almost any kind of asset you want to protect including:

- Stocks, bonds and mutual funds traded in any US or foreign market
- Precious metals and foreign currencies
- Life insurance and annuities including policies issued in foreign currencies
- Real estate
- A family business



How an asset is transferred and held in your Trust, and the way it's managed depends on your wishes and also on the character of the asset.

Protecting a Family Business

By using an Offshore International Business Company (IBC) managed by a nominee, you can easily transfer a

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family business to the Trust. If the business is incorporated, transfer your stock. If the business is organized as a partnership, transfer the limited partnership interests (which can represent most of the business's value). If the business is organized as a limited liability company (LLC), transfer your membership interests. You retain control of the business as a corporate officer and director or as general partner or the LLC's manager.

Protecting Real Estate

If you want to transfer investment real estate, first transfer the property to a limited liability company organized in the state where the property is located, and to avoid a real estate transfer tax, make yourself the first member. Then, change your membership interest in the LLC to the Trust. You continue to control and manage the property, but the value and the ownership is in the Trust.

If the LLC, under your direction sells the property, the money can be reinvested within the LLC or it can be distributed by the LLC to the Trust or International Business Company (IBC), where it will be reinvested and protected until you or your Beneficiaries need it.

Stocks, Bonds, and Other Marketable Investments

A Bridgeway Offshore Trust™ lets you participate in the management of Trust investments as little or as much as you wish. You can choose any one or more of the following options.

Option 1. Holding Company Owned by Trust. To maintain the highest level of control over management of the investments you want to protect, put them into a limited liability company (LLC). Then transfer your ownership interest in the LLC to your offshore Trust. As manager of the LLC, you can make all the investment decisions.

At your request, Bridgeway can form an Offshore Limited Liability Company (IBC) for your Trust for a higher level of protection and give you easier access to investments not generally available in the US. For privacy, you may elect to use a single nominee manager for all your LLCs.

Protection from Currency Exchange Controls

The freedom of US citizens to invest in gold and foreign currencies has been restricted from time to time. A Bridgeway Offshore Trust™, being offshore, would not be subject to possible future US restrictions – and might even profit from them.

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Option 2. Brokerage Account Owned by Trust. Alternatively, to retain direct personal control over investment management, you can ask the Trustee to open an account with the investment broker of your choice and to appoint you as the account's trading adviser. The account will be registered in the name of your Trust; however, you will issue the buy and sell orders directly to the broker and receive copies of all account statements.

The account can be with the broker you are using now, if that firm accepts accounts from non-US entities. You can also create a US LLC owned by the Trust and managed by you or for more complete protection; the Trustee can establish an account for your Trust with a non-US institution.

Option 3. Your Investment Advisor. If you are now using a professional investment advisor, you can transfer the investment account into your Trust. The Trust will now own the investments but your chosen advisor will continue to manage them. You will still be required to report all income earned by your trust or by the LLC owned by your trust in the country where you live.

Option 4. Tax-Managed Permanent Portfolio. Any portion of your Trust Fund for which you haven't recommended a different arrangement will be administered as a tax-managed "Permanent Portfolio," which is a diversified mix of investments designed to preserve and increase purchasing power.

The Permanent Portfolio strategy is conservative and focused on protection that doesn't take risks with forecasts, predictions, or short-term trading. Instead, a Permanent Portfolio typically includes long-term holdings of:

- **A.** Interest earning investments denominated in US dollars such as US Treasury bills and bank deposits
- **B.** Interest earning investments denominated in selected foreign currencies, such as the Swiss franc, etc.
- **C.** Stocks of US companies (including mutual funds)
- **D.** Stocks of foreign companies (including mutual funds)
- **E.** Gold, including bullion, coins, and stocks

The goal of such a mix is to achieve diversification for profit and safety. It's never a bet on which markets might go up or down.

For the most effective performance, a Permanent Portfolio should be tax-managed to favor investment media that give the best tax results consistent with the objectives of profit and safety.

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For cash or investments you transfer to the Trustee to be administered as a Permanent Portfolio, the Trustee may receive investment and tax-planning advice from an affiliate service. There is no additional cost for this service or you may advise the Trustee to retain a different advisor that you have identified for this purpose.

If you want to manage your Trust's investments directly, ask the Trustee to establish an account for your Trust with an investment broker acceptable to you and to appoint you as the account's trading advisor. Or use a limited liability company – owned by your Trust but managed by you – to hold investments. Either arrangement will give you direct control over investment decisions.

LONG-TERM FLEXIBILITY

In any case, you are not limited to the investment arrangements you elect when you establish your Trust. For long-term flexibility, the Protector (first you, then the successor you name) can recommend different arrangements to the Trustee at any time.

THE OPEN DOOR

There are currently no legal restrictions on the kinds of investments you can purchase and where you can hold them. That hasn't always been the case for Americans.

From 1933 to 1974, US citizens were prohibited from owning gold bullion or gold coins. During World War II, trading in oil and many other commodities was severely restricted. From 1963 to 1974, US investors who bought foreign securities were subject to an "interest equalization tax" at a rate of 15%.

A sense of emergency is usually what leads a government to restrict the freedom of its citizens in such ways. In the years following World War II, when the British government was trying desperately to protect the pound sterling, British citizens were forbidden to take more than token sums out of the country which made foreign travel a virtual impossibility to anyone who hadn't already sent money to a "non-sterling" country.

Such restrictions are now a growing possibility for Americans. The risk comes from the government's multi-trillion dollar deficits and the Federal Reserve's extraordinary rates of money creation. These highly inflationary policies are exposing the dollar to a dangerous tumble in foreign exchange value. If that hazard turns into an emergency, regulations limiting the freedom of Americans to trade

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dollars for foreign currencies or for any other foreign purchases could seem like a quick way to deal with the problem.

> ***Not A Broker***
> ***The Trustee has a legal obligation to protect your Trust Fund and to weigh the advice it receives from you as a Protector. However, the Trustee is not a stockbroker. It is not practical for the Trustee to process frequent requests to buy or sell particular investments for your Trust.***

The door is still wide open for placing part of your wealth in an offshore trust. However, there is no guarantee that the door will stay open. If that door closes, it almost certainly will do so suddenly and without warning. Then it would be too late.

Enjoying the Benefits of Trust Protection

Wealth you put into a properly structured offshore trust is used exclusively for the beneficiaries you have chosen. You and your spouse stand "in first place" among the Beneficiaries and you have first priority to receive benefits.

The simplest way for the Trustee to confer a benefit is to mail you a check. When you establish your Trust, the Trustee will send you forms for requesting such distributions.

The Trustee can also use the Trust Fund to pay for legal, medical, educational, rental, credit card, and other expenses for a Beneficiary.

In addition, the Trustee can apply the Trust Fund *indirectly* for a Beneficiary by lending money, or buying assets from the Beneficiary at favorable prices, or by investing in their own business.

Grantor, Beneficiary, and Protector

Because you are both the Grantor and a Beneficiary, by the terms of the Trust Instrument, the Trustee may give priority to your current and future financial needs when it makes decisions about conferring benefits. Because you are the Protector, the Trustee always wants your recommendation on requests from any Beneficiary.

Today and Tomorrow

To get the maximum tax savings and keep expenses as low as possible, an offshore trust should be used primarily as "nest egg" money and wealth you don't expect to spend in the near future.

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A Bridgeway Offshore Trust™ is very flexible. It is designed to satisfy all of your needs. If your circumstances change unexpectedly, or if you intend to start drawing on your Trust soon after establishing it, the Trustee is authorized to make distributions to you immediately.

Protection From Lawsuits

Today, it's not so much what you do that attracts lawsuits; it's what you *own* and everyone with wealth is now a potential target.

Earlier generations of Americans learned painfully about the hazards of bank panics, depressions, runaway inflation, confiscatory taxes, and wartime property seizures. Our generation is faced with the fear of being wiped out by a lawsuit; however, a properly structured offshore trust can put that fear to rest.

A Bridgeway Offshore Trust™ places your wealth beyond the easy reach of anyone who someday might try to exploit shifting legal standards to find a reason to sue you.

When you transfer assets to a Trust, the Trust owns them…not you. Thus you cannot be forced to hand them over to the victor of a lawsuit and their attorney.

Cash. When you send a check to your Trust, the Trustee's first step is to deposit the money in a bank in the Cooks Islands where the Trust and the Trustee are located. No one can force you to withdraw the money to pay a court judgment because the bank won't release it without the Trustee's approval, provided your Trust has provisional duress clauses written into the body of Trust Instrument

Stocks. If you want the Trust to invest in stocks in the US, the Trustee will hold the shares through a non-US broker or bank custodian. No one can legally force you to sell the shares to pay a court judgment because the broker or bank custodian won't release them without instruction from the Trustee, as long as you have a provision that if you are under duress, your Trustee cannot release assets and you are immediately removed as the Protector and Advisor of the Trust.

Other investments. Bonds, gold, foreign currencies, life insurance, annuities, and other assets can be protected in the same way because the Trust owns the assets, not you.

Further Barriers to Coercion

The Trust should be carefully designed so that neither you, another Beneficiary, nor the Trustee can be forced to undermine it.

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You as a Grantor. Your Trust is irrevocable and as a Grantor you do not have power to cancel or undo the Trust, so no one can force you to do so.

You as Protector. You have the power to replace the Trustee but only of your "own free will and volition" and not "while acting out of coercion, threat, or duress or in furtherance of any plan or action to frustrate any purpose of the Trust." Thus, no one can force you to select a trustee you don't want. For added safety you can renounce or suspend any of your powers as Protector, if you ever need to if under threat or duress. For further protection, you can with the consent of the Trustee, or appoint an attorney or family member to exercise your powers as Protector, either temporarily or permanently.

You as Beneficiary. The Trustee is required to suspend any payment it would make to you, if the money would be subject to seizure by your creditor, such as the winner of a lawsuit. Thus, a creditor can't seize Trust distributions by "waiting at your mailbox." However, this doesn't prevent the Trustee from providing benefits for you – since the Trustee can still pay your credit card and other bills directly and can make distributions to your spouse or to other family members you have included as Beneficiaries.

Trustee. By law in the Cook Islands, the Trustee is subject to the laws of that country and only that country. The Cook Islands respects protective trusts and is unfriendly to predatory lawsuits. To further add to your protection, neither the Trustee nor any of its affiliates has offices in the US so that nothing that could be taken is "held hostage" by a US court.

Playing By The Rules

If you ever lose a lawsuit in the US, you should do whatever the court orders you to do, fully, promptly and *to the best of your ability.*

Whenever you send a check to your Offshore Trust, you place wealth beyond the easy reach of malicious lawsuits and court judgments. The Cook Islands are home to thousands of International Trusts. Financial services are an important industry.

If a court instructs you to sign a letter to the Trustee revoking your Trust – do so. The Trustee will respond by reminding you that your Trust is irrevocable. It won't send Trust assets back to you to be seized to pay off a lawsuit.

If a court orders you to sign a letter replacing the Trustee with a trust company in the US which would be subject to the orders of a US court, obey the court's orders…provided the Trustee knows or suspects you are acting under duress, will be

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obligated to treat the letter as invalid.

Discouraging Lawsuits

Even in the best circumstances, fighting a lawsuit is worrisome and expensive. It can handicap your business, disrupt your personal life and run up tens or even hundreds of thousands of dollars in legal bills. Your Bridgeway Offshore Trust™ can shield you from such troubles by stopping lawsuits before they begin.

A potential litigant's attorney will "size you up" by doing an asset search before going to the effort and expense of filing a suit. The attorney wants to make sure you can pay the big judgment or the big settlement if you lose in court. When the plaintiff and his/her attorney finds that you don't own as much as they thought, they may simply leave you alone. If they do file a suit, they may become demoralized and give up when your lawyer tells them your assets are held in an offshore trust. Even if a lawsuit should proceed, trust protection for your assets will put you in a vastly stronger position to negotiate a settlement, if at any time you decide that's the best course.

The Peaceful Cooks

Adventuresome litigation is discouraged by Cook Islands law.

- ***Contingency fees for lawsuits are prohibited.***
- ***A plaintiff who fails to prove his case may be required to pay the defendant's legal costs.***
- ***A plaintiff can be required to post a bond before proceeding with a lawsuit.***
- ***Awards for punitive damages are never enforceable in the Cook Islands.***
- ***Cook Islands courts will not honor decisions from foreign courts regarding transfers to a registered International Trust.***

Protection In The Cook Islands

The Cook Islands is the ideal location for an offshore trust. It is especially friendly to trusts. And it has clear, definite rules that protect trusts by permanently eliminating uncertainty about the validity of your transfers of wealth to your Trust.

Even if a litigant succeeds in establishing a claim against you personally, he/she will still find it difficult indeed to have any of your transfers to an offshore trust set aside to pay that claim.

Timing Rules

In particular, under the Cook Islands International Trusts Act, a transfer to your Trust is protected and cannot be set aside so long as:

- you made the transfer *before* the event that gave rise to the creditor's claim against you or;

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- you made the transfer more than two years *after* the event that gave rise to the claim against you or;
- the event occurred within the two-year window and the creditor failed to bring a legal action to assert his/her claim within one year after the transfer.

SUBSTANTIVE RULES

Under the Cook Islands International Trusts Act, even if the creditor does satisfy the strict timing rules to have your transfer set aside, the creditor and his/her attorney must prove the following:

- The principal purpose in making the transfer was to defraud that particular creditor and;
- The transfer left you with insufficient assets to satisfy his claim.

The creditor must prove these two points *beyond a reasonable doubt.*

As a practical matter, the first timing rule is the most important provision. It means that if you transfer property to your Trust today and then tomorrow are involved in some mishap, your transfer is solidly protected under Cook Islands law and cannot be reversed – potential future creditors are shut out.

Even without the protection of the timing rules, the "principal purpose" test should be very difficult for a creditor to satisfy because of all the advantages in establishing an offshore trust that have nothing to do with creditors such as:

- Potential income tax savings
- Estate planning advantages
- Financial privacy

Tax Advantages

Imagine how much faster your wealth would grow…

- ***If your investment returns weren't taxed until many years after you earned them;***
- ***If some of your profits were never taxed at all;***
- ***If more of what did get taxed showed up as capital gain rather than as interest or dividends.***

And imagine how much easier it would be to manage your wealth if taxes never interfered with investment decisions – and if your desire to reduce taxes never got in the way of liquidating a profitable investment at the right time.

A properly designed and properly managed offshore trust gives you ready access to tax-planning opportunities not generally available at home. It's the best way to put your wealth into a low-tax or no-tax environment.

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- Professional investment management
- Greater access to International investments
- Protection from future currency exchange controls
- Protection from future restrictions on exporting capital or owning precious metals.

Strict Requirement

The Cook Islands International Trusts Act will not help anyone escape existing debts for which adequate timely demands have been made. So to assure the Trust's ability to safeguard family wealth, you shouldn't transfer "too much." How much is too much?

As a strict limitation, you should not transfer so much that you are left unable to pay your existing and reasonably foreseeable debts, including a reasonable allowance for any contingent obligations, such as loans you have cosigned.

We recommend that you approach this limitation cautiously. Unless your lawyer advises you otherwise, we suggest that you transfer no more than 50% of your net worth which is conservatively estimated to an offshore trust in any 12-month period.

Sooner Is Better

The timing rules, the principal purpose rule, and the opportunity to protect assets from the very first day, all point to the same conclusion: The sooner you start and fund your offshore trust, the safer you will be from potential future creditors.

Reducing Income Tax

A well-managed offshore trust makes it easier to limit taxes on your investment profits. A Bridgeway Offshore Trust™ does so with an approach to tax planning that is measured and is careful. It is not tied to any exotic or controversial tax theories.

Tax-Free Transfers

No income or other taxes are due when you transfer investments to a Cook Islands Trust. Even if an investment is worth much more than you paid for it, the transfer is completely tax free.

Trust's Income

The Trust itself is not taxable by any government. Instead, you include the Trust's taxable income on your personal US tax return as "other income or on Schedule B" just as though you personally owned the Trust Fund. This simple rule seems to eliminate any possibility of reducing taxes during your lifetime…but look closer.

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If you elect to have a Permanent Portfolio as all or part of your Trust Fund your tax bill may be reduced in the way the investments are invested and managed. The basic strategy is deferral by postponing the day when investment profits become taxable.

Because the Trustee administers Trust investments with a long-term view to the future on the basis of the Cook Islands International Trusts Act which allows a trust to continue indefinitely, tax deferral can continue for decades even for the rest of your life without interfering with successful investment performance. And in many cases, tax deferral can be stretched out so far that it virtually becomes tax eliminated.

Tax-Wise Investing

Unless you have asked the Trustee to leave investment decisions to yourself or to your independent advisor, the Trust Fund will be invested as a tax-managed Permanent Portfolio for safety, profit and protection of purchasing power. In so administering the Trust Fund with the assistance of advisors that select investments for their expected profitability *and* favorable tax results, the Trustee at all times is subject to oversight by the Protector.

In principle, there is nothing the Trust can do to defer taxes that you couldn't do yourself.

In practice however, the Trust is likely to be far more successful than most individual investors and here's why:

1. The Trustee administers many trusts, so it is practical for the Trustee to retain the most expert advice on conservative tax planning.
2. Because your Trust is offshore, more choices are available to it than are available to most individual investors. Some investments and ways of investing are ideal for conservative tax planning but are not available in the US except to the most knowledgeable investors.

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3. The Trustee has buying power which can be a big advantage in avoiding high commissions and fees that in many cases soak up the benefit of a tax-favored investment.
4. The Trustee administers many separate pools of capital of which some are not subject to US tax. When its advisors identify an opportunity for a tax-advantaged transaction it can act without the delay, effort and legal expense that an individual would incur acting on his own.
5. The job of deferring taxes is easier for a Trust than for an individual investor. The Trustee administers pools of capital that have been earmarked for long-term or other specific investing purposes. Individual investors on the other hand may find it difficult to isolate a definite part of their capital for long-term planning.

Trust Assets You Manage

Your Trust can hold and protect an interest in real estate, a family business or an investment account managed by yourself or by your chosen advisor. In those cases, the Trustee isn't administering the underlying assets and has no direct opportunity to reduce the income tax bill associated with them.

Tax-Free Distributions

During your lifetime, all Trust distributions to you or any other Beneficiary are income tax free and there's no income tax to pay on the distribution.

Your Trust's Tax-Free Future

After your lifetime, the Trust "disconnects" from the income tax system. The Trust itself, the Beneficiaries, nor your successor as Protector will be subject to tax on earnings the Trust accumulates.[84] This will make your Trust the perfect vehicle for investing and compounding family wealth tax free until a family member actually needs to spend it.

Any Beneficiary who receives a distribution after your lifetime must pay income tax on it *only to the extent* it represents taxable income recognized by the Trust after your lifetime. Accordingly, the Trustee should continue to favor investments that defer taxable income so that a larger portion of distributions are tax-free for the Beneficiaries who receive them.[85]

All distributions of Trust principle will be completely tax free to all Beneficiaries, including all the capital you transferred to the Trust and all the income that was taxable to you during your lifetime.

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In addition, most Trust investments included in your taxable estate will receive an adjustment or "step-up" in cost for income tax purposes so the Trust can sell them without recognizing taxable income.

This means that appreciation built up during your lifetime may never be taxed, even when it's distributed to the Beneficiaries.

PROTECTING YOUR PRIVACY

Financial privacy means that *you* decide who learns the details of your financial life.

The desire for such privacy is largely a personal matter. You may not think it's important or you may see it as the best protection of all. What others don't see can never be taken from you, therefore you may see privacy as an additional source of comfort.

If you value privacy, you will find the Cook Islands to be an especially comfortable location for an offshore trust.

Privacy is the norm in the Cook Islands. It is what the Cook Islanders expect for themselves and it is what Cook financial institutions provide for their legitimate customers from all around the world.

The Cook Islands' tradition of privacy is reinforced by common law. Every financial institution and every financial professional has a legal obligation to protect information given in confidence by a client.

A Cook Islands International Trust is free of that great enemy of financial privacy – the income tax system. Because there is no applicable income tax in the Cook Islands, your Trustee will not have to file a Cook Islands tax return for your Trust.

To gain the protections available under the Cook Islands International Trusts Act, the Trustee will register your Trust with the Registrar of Trusts, a government office. The registration will refer *only* to the name and date of the Trust and the name of the Trustee. Neither the Grantor, the Protector, nor any Beneficiary are disclosed in the registration.

By transferring wealth to a trust in the Cook Islands you establish a zone of privacy for your financial life.

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Privacy In The US

A Cook Islands trustee will not respond to inquiries about a trust even to acknowledge its existence from credit bureaus, marketing companies, government agencies or other information gatherers in the US.

A would-be litigant in the US might discover you have “something” in the Cook Islands by tracing your transfers of money and investments. But even if a would-be litigant guesses that the “something” is in a trust, he/she won’t be able to discover what it is doing or what it owns. It is an impenetrable black box to any would-be investigator.

US Tax Reporting

When you the Grantor file your income tax return each year, you must include the Trust’s taxable income and you must check a box showing that you have a foreign trust. With a tax-managed Permanent Portfolio your Trust Fund is managed to keep *taxable* income as low as possible. Three other simple forms also are required.

Form 3520. You must report your transfers of cash and investments to your Trust on IRS Form 3520 “Creation of or Transfer to Certain Foreign Trusts” at the same time as your personal tax return. This routine report requests identifying information about you, the Beneficiaries and the Trustee and asks the value of the money or other property you transferred.

You and other Beneficiaries also must use Form 3520 to report any distributions you receive even though all distributions during your lifetime are income tax free.

Form 3520-A. You must file IRS Form 3520-A “Annual Return of Foreign Trust With US Beneficiaries” each year. Unless you apply for an extension, it is due on March 15. This form requests information about the income and assets of the Trust, distributions to Beneficiaries and the name and address of the Trust’s “information agent.”

Form TD F 90-221.1. You must declare your Trust as a foreign financial account on Treasury Department Form 90-22.1 each year. The filing deadline is June 30 following the year the report covers.

To make it easy to file correct and accurate reports the Trustee will send you statements for each year indicating the Trust’s income, assets and distributions to a private mailbox in Nevada if you so choose. The accounting firm of Bridgeway Financial can file all of your tax needs and requirements easily for you.

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Information Agent

Under rules enacted in 1996, your Trust should have an "information agent" in the US to receive any information requests from the IRS. To keep your Trust non-controversial, the Trustee will give you authority to appoint an information agent. If you wish, you can appoint yourself or you can appoint a lawyer, accountant or other representative. You may even appoint Bridgeway Financial to fill this position for you.

Regardless, it is mandatory and you must file no matter how greatly you desire privacy. It would be foolish to neglect them. By keeping your Trust clearly within the rules, you make it a source of protection and peace of mind rather than a source of risk and anxiety.

Full Privacy

After your lifetime, *no one* in the US – not your successor as Protector, nor any Beneficiary will have a general obligation to file reports on the Trust – the Trust's privacy can be complete.

However, the Beneficiaries will still be obligated to report distributions they receive and they may find it advantageous to establish that distributions are whole or partly tax free. If permanent financial privacy is an important objective for your family, a number of strategies are available for reconciling that object with the goal of reducing unnecessary taxes by speaking with your Trustee.

Protection For Your Estate

An offshore trust can eventually "liberate" family wealth from the tax system. The advantage to your children and descendants is enormous. The advantage is especially great with the Cook Islands since that country's International Trusts Act allows a trust to have perpetual existence.

Next Protector(s)

What you don't spend during your lifetime will continue to be held in the

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Trust Instrument for the Beneficiaries you named.

To assure that the Trust continues to operate as you intended, you should designate at least one Beneficiary as a "Potential Successor" to become the Protector after you. That Protector will have the same power you had to confer with the Trustee and to replace, if ever necessary, for unsatisfactory performance. If you wish, you can instruct the Trustee to divide the Trust into separate Trusts and name a different Potential Successor for each one.

For example, suppose you have three children of any age. You could instruct the Trustee to divide the Trust into three Trusts and name each of your children as the Potential Successor for one of the Trusts (a different child for each Trust).

You can also control whether your successor can designate his own successor. If you decide not to give your successor that power, you should designate two Potential Successors. The first to be Protector immediately after you and the second to be Protector after the first resigns or dies.

For example, you might name your spouse as the first Potential Successor but without the power to appoint a successor and name a son or daughter as the second Potential Successor. This assures that *eventually* your son or daughter will become the Protector.

You can have any of these decisions take effect either during lifetime or upon your death.

The Trustee will provide you with forms for appointing Potential Successors and for dividing the Trust.

The trustee's advisors can give more effort to investigating and evaluating tax planning strategies than almost any individual investor. A Cook Islands Trust is an ideal vehicle for investing and compounding your family wealth.

No Gift Tax

No gift tax is due on your transfers to your Cook Islands Offshore Trust.

As Grantor, you retain two powers that make your transfers "incomplete" under federal gift tax rules and therefore free of gift tax. First, you have the power to remove Beneficiaries and second, you have the power to direct the Trustee to make charitable contributions.[86] As a result, your transfers to the Trust are not taxable gifts nor do they count against the amounts you can give away during your lifetime without paying gift tax. [87]

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Assuming you do nothing to make your transfers "complete" under the gift tax rules, the Trust will be included in your taxable estate. On the surface it appears that the Trust has no effect, plus or minus on gift and estate taxes. If you're not concerned about reducing estate tax the story for your Trust can be that simple. We strongly advise that you contact a Bridgeway Financial CPA before proceeding with any strategy mentioned in this book.

Reducing Estate Tax

On the other hand, it is possible to remove much or all of the Trust Fund from your estate which means the Trust can be a powerful tool for cutting estate tax and can coordinate smoothly with all the estate-planning strategies you may have heard of, including:

- Credit shelter trust beginning in 2011, $1 million tax-free transfer
- "Crummey" gifts of $14,000 per year per beneficiary tax-exempt transfer
- QTIP bequests of unlimited tax-free transfers for a surviving spouse
- Grantor Retained Annuity Trusts (GRATS) can remove large amounts of wealth from your taxable estate without gift tax

A Cook Islands Offshore Trust is designed to facilitate estate planning and can show you how to use your Trust to execute the four strategies just mentioned. They can also help you coordinate your Trust with other highly advantageous estate planning strategies, including:

- Tax-free gifts
- Completed gifts
- Bargain loans
- A family limited partnership
- A family limited liability company

Properly coordinated with your Trust these strategies can drastically reduce or even eliminate estate tax while still keeping assets available for your support.

Future Generations

Even if you do nothing to reduce your own estate tax, you may be the last person in your family ever to pay the tax, thanks to your Trust.

Although the Trust Fund would be included in *your* taxable estate if you've taken no steps to remove it, estate tax will end there. The Trust would not be included in the taxable estate of your spouse, or of your successor as Protector, or any Beneficiary.

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In addition, your Beneficiaries can use the Trust, which then will be completely outside the US tax system as a tool for their own financial planning including reducing tax on their own estates. Thus, the estate planning you provide to our heirs by establishing a Trust may be just as important to them as the assets the Trust contains. That estate planning may be the greatest financial blessing you leave them.

Putting Complexity Aside

Estate planning is a complete topic for which you will probably need professional advice.

But you don't need to work out an estate plan before establishing a Bridgeway Offshore Trust™. The Trust will be completely gift and estate tax neutral with no gift tax and no change in potential estate tax unless you take steps to make it otherwise. Establishing the Trust now won't reduce your flexibility later since as Grantor you can remove Beneficiaries if you ever wish to and as Protector you can change your designations of Potential Successors at any time.

Of course, acting early makes estate planning easier and more effective.

Your Own Plan

An offshore trust can perform powerfully as a stand-alone financial plan. But for a maximum advantage, it should be integrated with the rest of your financial life. The inflexibility of some trust programs make this difficult to do.

Investment Freedom

The Trust isn't an investment. It's a way of holding investments of any kind of investment you want for protection from lawsuits and taxes. So you need not alter the basic investment strategy to get that protection.

Adding to the Trust Fund

You can send wealth to the Trust at any time and in almost any way you want. Once the trust is open you can:

- Transfer additional cash to the Trustee, by check or by bank wire
- Transfer stocks, bonds, life insurance, annuities including foreign annuities, foreign currencies, precious metals or almost any other asset to the Trustee
- Transfer cash or securities to a brokerage account or company owned by your Trust

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- Name the Trust as the beneficiary of your life insurance or pension plan
- Name the Trust as a beneficiary of your will or of your living trust

The door is always open to add to your Trust provided you observe one critical limitation. You must never make a transfer to the Trust that leaves you insolvent, meaning unable to pay your existing and reasonably foreseeable debts.

When you establish your Trust, the Trustee will send you a set of transfer forms and a booklet explaining virtually every type of transfer including transfers by your spouse and other person, transfers of community property and transfers earmarked for specific Beneficiaries.

Practical Minimums for a Financial Protective Trust

$200,000 ***The annual trustee fee (which covers essential trust administration, preparation of quarterly and annual trust statements, investment management and tax planning) is $2,000. Thus, by most standards, the practical minimum size for a Trust is approximately $200,000. At that size, the minimum annual trustee fee represents 1% per year of the Trust Fund – about what you would pay by investing in an ordinary mutual fund.***

$500,000 ***On assets between $500,000 and $1 million, the basic annual trustee fee is just 1/2 of 1%, much less than what you would pay with most mutual funds, and you receive all the safety and tax-planning advantages of a lawful offshore trust.***

$1,000,000 ***On assets above $1 million, the basic annual trustee fee is only 3/8 of 1%. And for assets managed by you or your professional advisor, the effect rate is as low as 3/16 of 1%.***

USING THE FAMILY LIVING TRUST

Many individuals use a living trust to provide for a standby management for their personal affairs by a relative, close friend or local institution. This would be important if the individual someday becomes incapacitated. Coordinating a Family Living Trust with a Bridgeway Offshore Trust™ is simple.

Step 1. Include yourself as a Beneficiary of your Offshore Trust. If you ever become incapacitated, the Trustee can transfer money to the living trust to be used for your benefit. The trustee can then use the funds to pay your bills.

Step 2. Name your Offshore Trust as the ultimate beneficiary of your living trust. You can do this when you establish the

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family living trust or by amending the living trust you already have. At the end of your lifetime, all or part of the assets of the living trust can pour into the Bridgeway Offshore Trust™.

Limiting Costs

The costs of an offshore trust vary widely from trustee to trustee and from haven to haven. You probably find that a Bridgeway Offshore Trust™ is dramatically less expensive than any other offshore trust program because the Trust was designed to keep costs low. The Trustee's one-time acceptance fee is only $2,500, which is less than half of what offshore trustees often require.

With most types of investments the Trustee's basic annual fee subject to a $2,000 minimum, is:

- 1% on the first $500,000 of Trust value;
- 1/2 of 1% on the next $500,000 of Trust value; and
- 3/8 of 1% on Trust value above $1million.

This basic fee covers all the essential services, including asset protection, investment management, tax planning and quarterly and annual trust statements.

Lower effective rates apply to certain "externally-managed" assets you transfer to the Trust such as an interest in a family limited liability company or a brokerage account managed by you or a professional advisor. In applying the fee schedule just shown, the value of each such asset is discounted by 50% (but not to less than $100,000). Thus, for example, for a Trust with $1 million in other assets, the effective annual Trustee fee on a large brokerage account you or your advisor manages would be only 3/16 of 1% of the account's value. The Trustee also charges fees for services if and as you use them.

Additions to your Trust. There is no charge for adding cash to your Trust. For transfers of other assets which require more administrative time and attention to process, the Trustee's one-time fees are: $50 for each block of marketable securities or reduced to $30 for securities transferred with advance notice to the Trustee; $100 for a life insurance policy, annuity, managed account or stock in a private company; and $250 for an interest in a partnership or limited liability company. You may incur some of these fees in building your Trust to the desired size but they are not recurring.

Custom pricing. To administer your Trust properly and to provide you with the accurate statements, the Trustee must obtain and record a price for each Trust

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asset every quarter and must collect and record any related income. There is no charge for this account service for any asset the Trustee purchases for your Trust's "Permanent Portfolio," since in most cases, it will be holding the same asset for other Trusts as well. But for any asset you transfer directly to your Trust excluding securities held in a company or brokerage account owned by the Trust, there is an accounting fee of $25 per year.

Special sub-accounting. The fee for maintaining a sub-account of assets to which particular Beneficiaries have been given a preference is 1/8 of 1% per year of the value of the assets.

Fiduciary actions. The Trustee charges a fee of $100 for any fiduciary actions you initiate or request such as changing your potential successor as Protector, instructing the Trustee to divide your Trust, removing a Beneficiary or renouncing any of your Grantor powers.

Distributions. The Trustee's fee for processing a distribution to a beneficiary is $50.

Extraordinary services. The Trustee will charge an hourly fee agreed upon in advance for any extraordinary services your request.

The Trustee is reimbursed for charges which are usually nominal of any bank custodian that holds stocks or other investments for your Trust.

There is no extra charge for preparing quarterly and annual trust statements.

Controlling Costs

The fees for basic services are exceptionally low by trust industry standards. The secret to controlling the costs of your Trust is to use "special services" only as needed. Frequent changes to your designation of potential successors as Protector; requests for non-standard financial reports; unnecessarily prolonged discussions concerning investment policy; and frequent distributions all add to the cost of your Trust. As Grantor or Protector you are welcome to as much of these services and a range of others as you wish but be mindful that the meter will be running.

Trust Size and Activity

The minimum to establish a Bridgeway Offshore Trust™ is only $14,995 plus disbursements. However, by commonplace standards, the practical minimum size would be about $200,000 – the level at which the $2,000 minimum annual fee would represent 1% of Trust assets paid to the Trustee.

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The income tax benefits will be the greatest benefit if the Trust is used primarily for "nest egg" money in a permanent portfolio. The key to reducing your tax bill is to defer the taxability of income in the Trust.

In any case, no matter what the size of your Trust and no matter what tax planning techniques the Trustee applies to it, the Trust Fund is available whenever you have a financial need.

THE RIGHT HAVEN

Cook Islands are the ideal place for a lawful offshore trust because of its stability, good communications, favorable laws, and high standing in international financial planning. The country was selected for the Bridgeway Offshore Trust™ only after a thorough survey of the possible alternative locations.

Among the world's tax havens, the Cook Islands has a high reputation for honesty and fair dealing. Cook Islands financial institutions are careful about whom they do business with. As a strict and long-standing policy they will not accept funds from questionable sources.

The "clean hands" policy practiced in the Cook Islands is to your advantage. It defuses any possible suspicion that a trust has been established for an improper purpose.

Travel and Communications

The Cook Islands are located in the Southern Hemisphere, at the same relative latitude as Hawaii, 1,900 miles northeast of New Zealand.

The main island of Rarotonga is volcanic in origin, with a maximum elevation of 2,100 feet.

Rarotonga is connected with the US by direct, non-stop flights from Los Angeles. US travelers can also reach the Cook Islands through New Zealand, Australia, or Tahiti.

A modern communications system with high-quality telephone, facsimile and computer data channels links the Cook Islands with every part of the world.

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Economy

The Cook Islands are a fully modern country, with a first-world standard of living. There is no abnormal unemployment and there are no "bad neighborhoods" or dangerous poverty pockets.

Financial services are an important industry which thrives in the Cook Islands environment of stable laws and zero taxes for International Trusts.

The Cook Islands are home to thousands of International Trusts, attracted by the country's stability and the complete absence of income taxes and inheritance taxes for International Trusts.

There are no currency restrictions or controls.

Visitors' Delight

The Cook Islands' primary industry is tourism. With a climate that closely resembles that of Hawaii, the Islands are a popular winter refuge for Australians and New Zealanders and also for knowledgeable North American travelers. The average daytime high temperature during the months of April to September (mid-fall and winter in the Southern Hemisphere) is 73 degrees. Sunshine is plentiful and snow is unknown.

Force Majeure

It is impossible to foresee what conditions in any country might be in 100 years, or even 20 years, from now. To provide long-term protection, an offshore trust needs the flexibility to adapt to changing conditions – even if change occurs abruptly.

In the event income taxes are ever imposed on International Trusts by the Cook Islands, or if other unfavorable changes occurred, the Trustee is authorized to move the Trust to another jurisdiction. This power permits the Trustee to respond to the kind of unforeseeable events that, in the long sweep of history, can overtake any country.

The Protector also has the authority to change the governing law of the Trust to that of another country and to apply to a court in that country to appoint a new trustee.

Unlike any of the Hawaiian Islands, the Cooks' main island of Rarotonga is surrounded by a protective reef that tames the surf and creates a sandy, clear-water lagoon that is safe for small children and small boats.

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One hundred thousand people visit The Cook Islands every year for golf, tennis, sailing, scuba, diving, snorkeling and hiking to relax in comfort amidst floral abundance. Visitor accommodations include beautiful resort hotels and beachfront cottages.

The Cook Islands are both a winter refuge and a summertime playground. Nearly 100,000 vacationers visit every year. You and your professional advisor are welcome to visit the Trustee's offices whenever you find it convenient. The Cook Islands are a nonstop flight away from Los Angeles, in the same time zone as Hawaii and approximately the same distance from the Equator.

Government

The Cook Islands have a parliamentary form of government similar to that of England and New Zealand. Her Majesty Queen Elizabeth is the head of state. The country's external defense is maintained by New Zealand. The Government is publically committed to supporting the Cook Islands as an international finance center.

The courts are independent and follow the procedures and practices of English law. Appeals are to the court of Appeal and from there to Her Majesty's Privy Counsel, a body of the House of Lords, in London.

Practicing attorneys in the Cook Islands typically are graduates of New Zealand law schools.

Taxation

In the Cook Islands there are:

- No income taxes on International Trusts
- No inheritance, estate or similar taxes applicable to International Trusts

Government revenue comes from import duties, value-added tax (VAT), payroll tax, income tax on resident individuals, transfer taxes on real estate and miscellaneous license fees, and stamp duties. There is a fee of $300 per year for registering a trust under the International Trust Act which in the case of a Bridgeway Offshore Trust™ is paid by the Trustee.

Social Structure

The Cook Islands people are a successful bi-racial society descended from New Zealand settlers and indigenous Polynesians. There is no history of slavery or colonial oppression. *There are no demoralized, impoverished elements in the Cook Islands.* Everyone has a stake in the country's prosperity and stability.

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The primary religious groups are Protestant and church membership is exceptionally high. The Cook Islands telephone directory lists eight times as many churches as bars.

Crime rates are low. There are no slums and no neighborhoods where it is unsafe to walk at night.

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CHAPTER 12: COMPLEX ASSET PROTECTION STRUCTURES

DESIGNING BUSINESS STRUCTURES

Business entities can be connected and interact in a wide variety of ways to accomplish different purposes. However, before you engage in forming useful combinations, you should be aware of the unique characteristics of each entity by itself.

For example, entities that are pass through tax structures such as the LLC and LLLP are useful with businesses that have passive income such as real estate capital gains, long term investments, rental properties and leasing companies. There is no self-employment tax on passive income if you use a pass through entity such as an LLC, S Corporation or LLLP.

Corporations and LLCs are useful if limited liability is desired to protect your personal assets from front door liability. Members of LLCs are not personally liable for the debts and obligations of the corporation or LLC. Unless, a creditor can pierce the corporate veil or prove there was a fraudulent transfer. Limited partners also are not liable for the debts of the partnership, although General Partners are liable for the debts of a limited partnership.

Entities with charging order protection are referred to as COP Entities. LLCs, LLLPs and only Nevada State Corporations are COP Entities that are useful for protecting your assets from back door liability. This means that a debtor's interest in an LLC or LLLP has a significant degree of protection from his or her personal creditors if their entity is properly structured and maintained. A prudent person should have a carefully drafted operating or partnership agreement that contains provisions to limit the rights and authority of involuntary assignees and provisions to remove management or General Partner authority from a member or partner under duress.

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A corporation does not have back door protection. A debtor's corporate shares can be attached by a court order and sold at auction by means of a writ of execution to satisfy a debt to a personal creditor except in the state of Nevada. The creditor can purchase the debtor's shares for the debt owed and, thereby, own the debtor's interest in the corporation. If the debtor held a controlling interest in the company, the creditor can liquidate the corporation by simply scheduling a shareholder's meeting. As the controlling shareholder, the creditor can liquidate the corporate assets.

CRTs are useful to avoid capital gains taxes on successful investments where there are dramatic increases in the tax base of a very large investment. ERISA Compliant LLCs are useful to accumulate tax deferred or tax free capital gains with a ROTH IRA. Nevada corporations, LLCs, land trusts and PPTs are useful to maintain privacy with respect to the ownership of assets. Private foundations are also very useful for the super-rich. Rather than pay huge income taxes to the government and later donate over half of your estate to the government in estate taxes, the wealthy often donate up to 50% of their personal income to private family foundations used to benefit the general public through philanthropic programs that will provide greater benefits for society than giving tax dollars to the IRS to be squandered by inefficient government bureaucracies.

For example, Bill Gates' family has a large foundation that sponsors all kinds of research and projects around the world. Warren Buffet personally donates 1.5 billion dollars a year to the Gates foundation rather than let Uncle Sam squander the money. Many museums, art institute's, educational programs and other large charities such as PBS significantly rely upon donations from private foundations.

THE DESIGN OF A SMALL BUSINESS STRUCTURE

The diagram below is a good example of a complex business structure. The medical center is the operating company where the day to day business of providing medical services occurs. It is a C corporation that has minimal assets and carries enough malpractice insurance and error and omissions insurance et cetera to adequately compensate a serious plaintiff. The C Corporation allows the physician to obtain the many tax savings benefits and fringe benefits that can only be provided by a C corporation.

If the physician is someday sued for malpractice, the plaintiff is likely to settle for the insurance policy limits because the operating company has no significant assets. The building and all the equipment the medical center uses are owned by the Leasing Company and the Real Estate Company. These companies are going to

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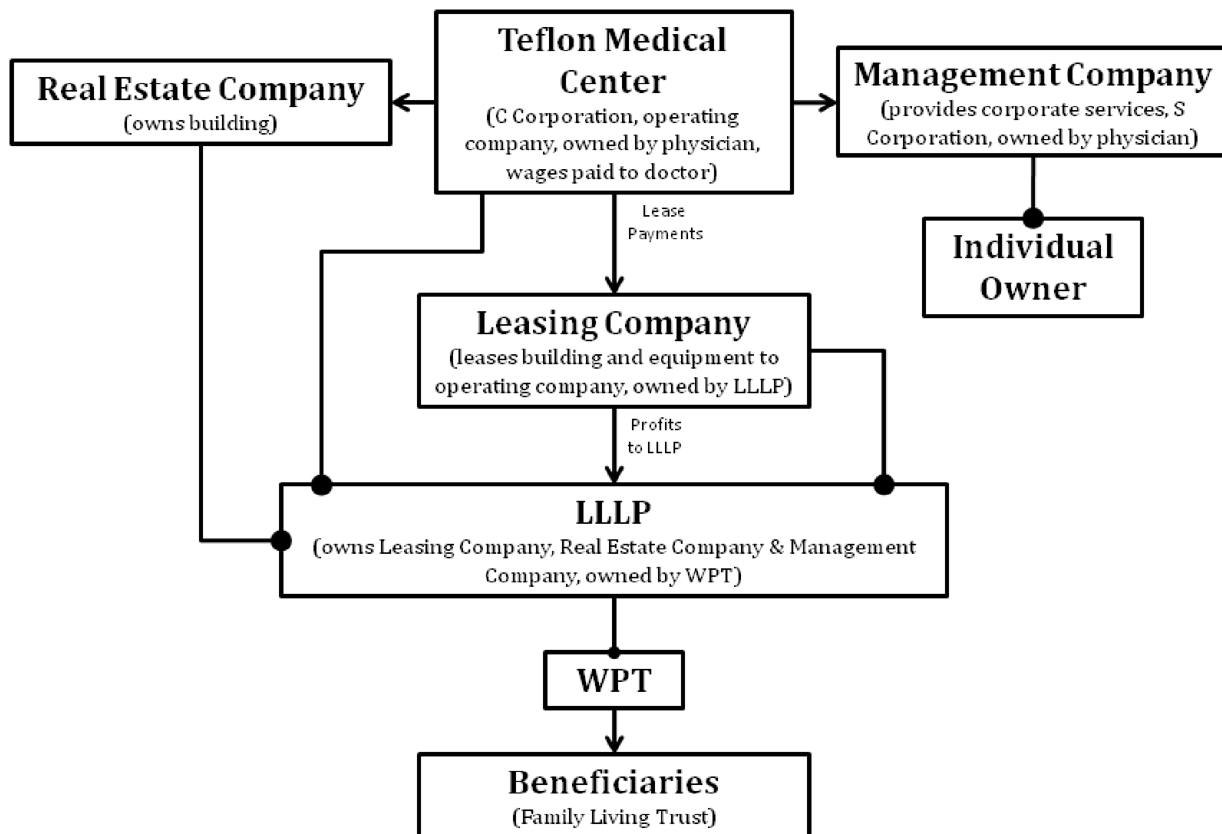
be either LLLPs or LLCs depending upon the jurisdiction where the medical center is located. Rental income is passive income. Therefore, an entity treated as a partnership is required to minimize taxes on profits.

All of the rental and leasing income passes through to the physician's LLLP to the physician and his or her spouse without the payment of any self-employment taxes since the LLCs and limited partnerships are all pass through entities and the income is passive income. If the patient or creditor obtains a judgment against the physician, the leasing companies and the LLLP have charging order protection and all should be set up with multiple partners to insure that the charging order protection is viable.



Instead of an LLLP, the physician may choose to use a Nevis LLC or multiple Nevis LLCs and register it as a foreign partnership in the state where the medical center is located. The Nevis LLC should have a domestic bank account and an offshore bank account. The operating reserve and investments should be held by an offshore bank and/or brokerage firm. The domestic bank account should be used to hold operational funds needed to handle payroll, taxes and routine expenses.

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If the physician/owner is worried about an aggressive plaintiff attempting to pierce the corporate veil of the medical center, the medical center could be owned by a onshore LLC and offshore entity. In turn the Leasing LLCs could be owned by an offshore LLC and in turn is owned by the Nevada LLLP with a WPT as its member and the physician's Nevis LLC or Nevada LLLP as beneficiary of the personal property trusts. Hence, no one would know that the physician controls the building and equipment and is leasing it back to the medical center which he or she also controls.

The management company can handle bookkeeping, accounting, inventory, corporate services and real estate management services. This is another way for profits to be drawn out of the medical center back to the physician.

Rather than set up the facility as a hospital or medical center with physicians and nurses as employees, the medical center can be designed as a professional center. Based upon areas of medical specialization, there can be multiple independent practice offices each with a different staff and owned by a different LLC.

Each independent practice would lease its medical equipment from the LLC leasing company and its office space from the medical center. Each independent practice should use the management company to do its bookkeeping, accounting and corporate services. If possible, the physicians and nurses working in each office should be hired as independent contractors. The idea is to compartmentalize the liability of the medical center.

With this structure, any inside litigation would be initiated against the individual physician and/or nurse that were negligent and possibly the independent practice that employs them. The medical center would not be liable because it is a separate corporation that sublets space and facilities to the independent practice. The other physicians and independent practices in the building would not be liable because they are separate and distinct companies. The owners of the independent practice will be protected by the limited liability protection provided by the LLC or corporation that operates the independent medical practice.

The independent medical practice itself should carry a reasonable amount of insurance. Since it has minimal assets, any litigation should settle for policy limits.

The physician/owner should act only in a limited capacity as an administrator of the medical center and as a consultant to the independent practices. In this manner, the physician/owner has minimal liability and can harvest the profits from the independent medical practices through the medical center, the leasing

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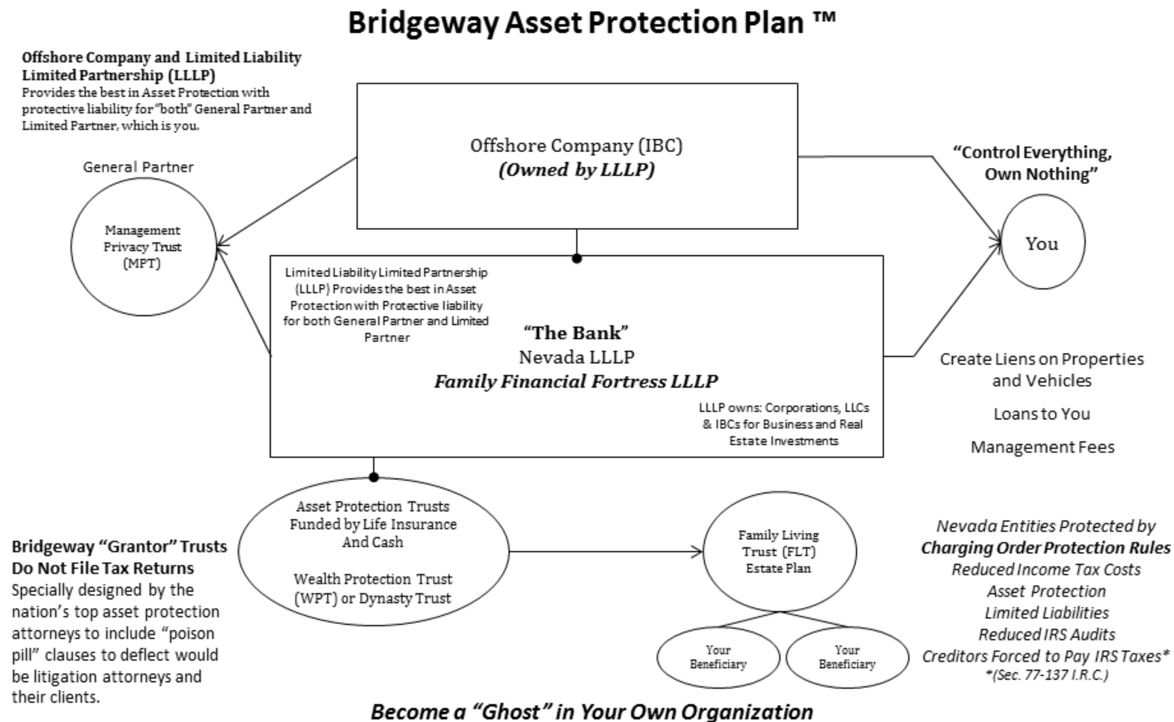
company, the management company, consulting fees and his/her member interest in the LLCs that own the independent medical practices.

As our hypothetical physician accumulates wealth in his or her Nevis LLC, eventually the Nevis LLC could set up an offshore asset protection trust to secure the physician's family's nest egg offshore. Offshore asset protection trusts are not viable until one has at least three to five million dollars to invest because they are expensive to set up and have high maintenance. If set up properly, offshore asset



protection trusts are very effective. Before attempting structuring, we strongly recommend that anyone seeking asset protection should consult with an asset protection specialist.

THE BRIDGEWAY ASSET PROTECTION PLAN™

This complex group of entities is designed to help your family accumulate and preserve wealth, avoid probate and minimize their estate taxes and retain in direct control of your investments, cash, real estate and other property holdings. The plan also provides protection should you or your spouse become mentally or physically incapacitated. This is accomplished by carefully structuring your business, personal, financial, and legal affairs, and is accomplished through the use of a living trust, powers of attorney, a living will, a pour-over will, an LLLP, MPT, WPT, PPTs and either a LTT or a Life Estate Deed (LED) for the family homestead,

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plus an International Business Corporation (IBC) to ensure your assets are not frozen locally by a US Court.

Protecting the Family Residence

Starting at the top of figure above you see two shapes labeled as the LTT/LED and a Nevada LLC. The LTT refers to the irrevocable intervivos trust used to hold a personal residence discussed previously. The LTT is only used in those states that recognize self-settled trusts. US citizens that are residents in all other states are recommended to use the LED.

A LED is a deed that immediately creates an irrevocable transfer of the remainder interest in your personal residence to your heirs subject to the reservation of a life estate for yourself. The term remainder interest refers to an interest that arises after death. A life estate is the right to lifetime beneficial use, control and enjoyment of the property. Normally with a LED, when the grantor dies, the property will be transferred to the grantor's children or heirs. However, this leaves the property exposed to the children's creditors. Consequently, we leave the property to an LLLP owned a by Wealth Protection Trust (WPT) where the children are the beneficiaries so that the property at the time of death is protected from the children's creditors by the LLLP's charging order protection. All this is accomplished by carefully setting up a family LLLP and carefully drafting a warranty deed reserving a life estate for you and your spouse.

The Nevada LLC is established primarily for the purpose of holding title to your investments in a Nevada bank and/or brokerage account for asset protection; ease of control and to minimize estate taxes. Please note: our clients should establish their bank account through us and where possible avoid using your social security number. It is almost impossible to set up a bank account for a Nevada LLC unless you live in Nevada. Even so, there are problems. We have personal contacts within well-known national bank that will set up accounts for Nevada LLCs and Corporations without state shareholders/members. All LLC's should be managed by either a Nevis LLC or New Mexico LLC.

The LTT, if established when he client is solvent, provides strong asset protection and you can retain use of their mortgage interest deduction and their personal residence exemption. The LED is preferable because it can be used in every state and it is a simpler process. Both make the sale and transfer of the personal residence more difficult because all of the beneficiaries must approve a sale of the residence.

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An LLC requires two, preferably three, persons in order to insure asset protection because a one person LLC will not provide asset protection.

Equity Stripping

In addition to the LLT and the LED there is a third alternative that can be used in conjunction with the foregoing strategies or used independently. The third alternative is called equity stripping. This is a method whereby you remove the equity of your homestead by encumbering it with debt. This removes any equity that would be available to a creditor to attach. Equity stripping is an excellent idea because one retains the right to deduct mortgage interest as well as the use of the personal residence exemption.

Over the course of time the encumbrances will be paid off and/or the property will increase in value creating new equity vulnerable to creditors. The use of equity stripping in conjunction with a LED solves this problem and creates multiple lines of defense.

The Home Equity Line of Credit (HELOC)

A quick and easy way to equity strip your homestead is by means of a HELOC loan. The HELOC is used in conjunction with a hypothecation agreement. A HELOC is a line of credit that uses your home equity as collateral for the line of credit. A line of credit is a specific amount of money that a financial institution agrees to make available to you upon demand at any time pursuant to a HELOC agreement. Most financial institutions will provide a line of credit equal to 50 to 80% of one's equity in their personal residence.

The residence is used as collateral for the HELOC. The line of credit is secured by recording a mortgage or deed of trust against the personal residence for an amount equivalent to the maximum amount allowed to be borrowed by the HELOC. This mortgage or deed of trust will be in second position if there already is an unpaid mortgage that has first position. You do not have to exercise the line of credit immediately. It can be used at any time, but one does not necessarily have to use it at all. This is often reassuring to spouses that are afraid of second mortgages and lines of credit.

However, if the line of credit is not exercised there remains a possibility that a creditor might be able to reach your equity in your residence because the line of credit is not in use. This is easily remedied. The funds may be loaned to one of your business entities for business purposes as venture capital or it may be used as a capital contribution to start a new business. It can be used for whatever purpose one considers relevant. If one obtains a low rate of interest for the HELOC, the

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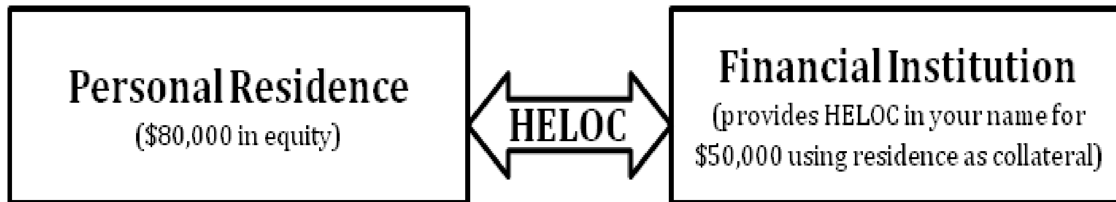
money could be contributed to an ERISA Compliant LLC or to another entity owned by you and invested in a venture that can generate a higher rate of return. In this manner, one can make money by investing the HELOC funds.



You can assign your line of credit to your Nevada LLLP by means of an assignment of beneficial interest. This is an agreement in which you can assign or transfers for consideration your interest in the HELOC to the LLLP. In this manner, you no longer own the HELOC for a term of years. Until the agreement terminates, the HELOC belongs to the LLLP.

In the example set forth in the diagram above, after deducting the HELOC, there still remains $50,000 in equity. You should check to see if the remaining equity may be protected by the homestead exemption in your state. Even if the state homestead act covers the remaining equity, multiple lines of defense are useful for asset protection purposes.

Hypothecation

Hypothecation is another effective means of equity stripping. Hypothecation is the posting of collateral to secure an obligation. Hypothecation is a useful method of stripping the remaining equity left after one obtains a HELOC loan. With respect to the family residence, hypothecation is established in following manner:

1. A Nevada LLLP is established with a Wealth Protection Trust™ (WPT) and family living trust (FLT) as Limited Partners.
2. The General Partner should be a management privacy trust (MPT) with at least a 2% interest.
3. You and your spouse execute a hypothecation agreement that assigns your equity in the family residence as collateral for a promissory note.
4. The parents pledge to make a future capital contribution to the LLLP in an amount equivalent to or greater than the remaining equity in the family residence.

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5. The parents pledge to contribute is documented by a promissory note with a balloon payment provision. In the promissory note the promise to pay an amount equal to the remaining equity in the family residence in a lump sum plus interest at some distant date in time.
6. The LLLP secures the promise to pay by placing a mortgage or deed of trust against the family residence equivalent to the amount pledged as a contribution in the promissory note and filing a UCC-1 as public record.

Regardless of the distribution, the process is essentially the same: the house is used as collateral to secure the promissory note to be used as a capital contribution to the LLLP. If the parents are making the promissory note, then they can use their home as collateral directly. If the children are making the promissory note, then a hypothecation agreement will be necessary so that the children may use the parent's home as collateral.

LLLPs should have creative names that convey the image of a conventional business. Choose a name that will look more impressive for use as a dba or on a mortgage or deed of trust. Instead of the 'Smith LLLP', use a name like the 'Rocky Mountain LLLP', the 'Windy River LLLP,' or 'Pacific Rim Enterprises LLLP', et cetera

The trustee for the MPT, the LLLP General Partner, should be someone that does not carry the family name because the trustee's name will be the only name that shows on the Nevada Secretary of State's records. We refer to relatives by marriage that do not carry one's family's last name as outlaws instead of in-laws. Outlaws are useful as trustees because they do not carry the family name. Friends, business partners, trusted coworkers and pastors may be useful as trustees if they are honest and trustworthy persons. Bridgeway Financial can provide a qualified nominee trustee as a third party to be the trustee for the MPT and WPT for privacy purposes.

The Life Estate Deed (LED)

A Deed is a legal document that conveys title or ownership to real estate. It is recorded at the County recorder's office in the county where the real estate is located. A deed is used to convey title and identify the owner of real estate. Title to the property is owned by the person or entity named on the deed. To transfer ownership of the real estate to another, the current owner must execute a new deed and record it with the County recorder's office.

There are many different types of deeds, all of which convey different legal rights. The most common deed is called a general warranty deed that contains warranties or guarantees from the grantor/seller to the grantee/buyer that the seller is the

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owner of the property and that no one else has any interest in the property, other than those exceptions stated in the deed. A quit claim deed conveys to a buyer only what the seller actually owns, if anything, and provides no guarantee from the seller to the buyer that the seller has any interest in the property to convey.

A LED allows the owner of residential real estate to retain the right to continue the use of the property for the rest of his or her life, but upon his death the property goes immediately to the person named as remainder men in the deed. With a life estate form of ownership of real estate there are two separate categories of owners of the property:

The Life Tenant Owner of the property have absolute and exclusive right to use of the property during their lifetime, which expires automatically upon the death of the last to die of the Life Tenant. The life tenant can be an individual or there can be joint life tenants. The life tenants remain responsible for real estate taxes, insurance and ordinary maintenance costs of the property. The life tenant is entitled to all income from the property in the event that the property is rented. If the life tenants no longer wish to reside or are unable to reside at the property, the property can be rented and the rental income belongs to the life tenant.

The remainder owner automatically becomes owner of the real estate immediately upon the death of the surviving life tenant owner. A remainder owner has no right to use the property or income from the property during the life tenants' lifetime. The remainder owner is not responsible for payment of taxes, insurance, or maintenance of the property during their lifetime. The remainder owner may be a sole individual or more than one person.

An LED has the following advantages

- It is easy and inexpensive to obtain. An LED can be obtained by simply signing and recording a new deed signed by the present owner of the property. The fees are minimal and in most states there is no transfer tax because the transfer is 1) a transfer of the life estate is not really a transfer because it goes from owner to owner and 2) the transfer to the remainder owner is an incomplete gift.

- Use of the LED avoids the time and expense of probate. Upon the death of the last life tenant owner the property automatically belongs to the remainder owner, without any requirement of probate for the real estate.

- An LED makes it easy to clear title to real estate after the death of the life tenant. A death certificate for each lifetime owner must be recorded at the

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registry of deeds, together with a simple affidavit stating that the deceased lifetime owner did not have assets valued at more than the estate tax limit.[88]

- The life tenant's right to occupancy is protected from the creditors and actions of the remainder owners. The remainder owners' problems cannot affect the life tenant's absolute and exclusive right to use and occupancy of the property during the life tenant's lifetime. The remainder owner may experience hardships such as: bad debts, bankruptcy, divorce, and lawsuits. However, these problems cannot affect the life tenant's rights to the property.

- The LED provides income tax advantages to the remainder owners after the death of the surviving life tenant: The remainder owners get the benefits of a stepped up income tax basis for capital gains purposes.

- Medicaid planning: A property owned in life estate form of ownership is, in most cases, protected from Medicaid claims once more than sixty months passes after the date of transfer to the life estate ownership form.

An LED has the following disadvantages

- *Irrevocable Transfer:* The transfer is real estate is an irrevocable transfer**.** The decision to transfer the property to a life tenancy form of ownership should be considered irreversible. If all owners, life tenants and remainder owners agree, a change could be made, although it may not be recommended due to income tax consequences or for Medicaid planning reasons.

- *Medicaid Disqualification*: If a life tenancy owner becomes ill and needs the use of Medicaid during the first sixty months after obtaining the LED, he or she could be disqualified from access to Medicaid. Therefore, if a Medicaid application appears to be imminent, the transfer to the life estate ownership form is not recommended. On the other hand, if you are in relatively good health and the LED form of ownership otherwise makes sense for your estate plan, the sooner you accomplish the transfer to the LED, the sooner that the disqualification period will pass.

- *Unanimous Consent to Sell Required*: All owners, life Tenants and remainder owners, must sign to sell or mortgage the property. All of the owners must agree to sign a deed in order to sell the property or sign a mortgage in order to mortgage the property during life tenant's lifetime. So long as all owners agree to sign the deed and/or a mortgage, then a sale or mortgage can be accomplished without any problems.

- *Income Division Required by Sale*: Once the LED is executed the property has two or more owners: the life estate owner and the remainder owner. The IRS has tables for determining the value of the life estate interest. Consequently, if the property is sold the remainder owners would be entitled

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to their pro rata share of the proceeds from the sale of the property. For example, if the life estate is worth 50% of the real estate. Both the lifetime owner and remainder owner would be entitled to 50% of the profits from the sale of the residence.

- *Income Tax Consequences at the time of sale of real estate during the lifetime of life tenant*: If the property is sold during the life tenant's lifetime, the life tenant will not get the full personal residence exemption that would otherwise have been available to the life tenant if he or she was the sole owner of the real estate. The life tenant owner will only get a partial exemption based upon the value of the life estate. Since the since the exemption is based upon the percentage of interest of the life estate in the real estate, it should be sufficient to avoid capital gains tax. Whereas, the remainder owner will get no exemption from the sale of the personal residence.

- An additional *disadvantage of the LED* is that the creditors of a remainder owner may place a lien on the residence to secure payment from the remainder owner's share of any proceeds derived from any sale of the residence prior to termination of the life estate. A remainder owner's creditor may also be prepared to attach the residence at the time of death of the surviving life tenancy owner. We avoid these problems by using an LLLP controlled by your heirs as the remainder owner. This gives the remainder owner COP and places the residence beyond the reach of unforeseen future creditors.

- *Using the LED with a HELOC and/or Hypothecation Agreement:* The LED can also be used in combination with a HELOC loan and a hypothecation agreement after the loan and hypothecation are completed first. The following steps show how one can set up three lines of defense to protect the family residence combining, a HELOC line of credit, with a hypothecation agreement and a LED:

    1. You (or your marital community) obtain a HELOC Loan.
    2. You (or your marital community) execute a hypothecation agreement giving your children authority to use the family residence as collateral.
    3. The LLLP is established with your WPT as the Limited Partner.
    4. A promissory note or balloon note is issued for a specific amount that is pledged as a capital contribution to the LLLP by the children in exchange for their LLLP interest in a family LLLP. Your equity in the family residence is pledged as collateral in the promissory note as a security for the capital pledged.

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5. The LLLP places a deed of trust against the family residence in the public record securing the home as collateral and filing a UCC-1 as public record.
6. An LED is prepared listing your children as the owners, preferably through an LLLP, with a reservation of a life estate for you or your marital community. The LED is then filed in the public record.

Placing the residence in the LTT/LED solves the problem of future equity. As time passes, most real estate properties increase in value. In addition, as time goes on the primary mortgage will be paid down. Hence, over time an ever increasing amount of new equity and paid off equity shall be exposed to the creditors.

By placing the title in the trust, the equity will be secured from the grantors unforeseen future creditors since future creditors cannot foreclose because the grantor only has a life estate. Title can only be transferred with the signed consent of the beneficiary. The beneficiaries' creditors cannot reach the property because the beneficiaries cannot acquire title until the surviving grantor dies. Even so, the property will belong to the LLLP, not the members. Therefore, after death when the property vests the member's interest in the homestead will have charging order protection.

The Limited Liability Limited Partnership

When designing a LLLP in the context of the Bridgeway Asset Protection Plan™, we need to keep the following overall design considerations in mind:

1. If there is a family business, consideration should be given to whether it can operated as a C corporation owned by the Nevada LLLP. Distribution of profits and taxes problems can be resolved by stripping profits from the corporation through salaries, benefits, loans, as well as management and/or consulting fees. Anything that remains can be handled by disproportionate distributions. The LLLP will give the business COP and the business will strengthen the LLLP from claims it is not a real family business.
2. There must be at least two, preferably three, partners to obtain COP. We recommend the MPT as the General Partner of 2%, the WPT as the first Limited Partner of 80% and an FLT as the second Limited Partner of 18%.
3. The family residence should not be placed in the LLLP it should be placed in a LTT/LED and protected via equity stripping. If a LTT, the LLLP should be the beneficiary of the trust. If a LED is created, then the property should be conveyed to the LLLP subject to your reservation of a life estate in the residence.

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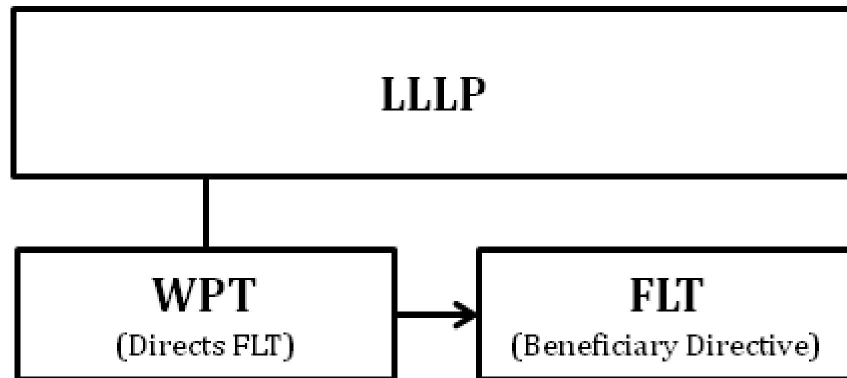
4. If you are going to equity strip the residence using a HELOC, hypothecation or a second mortgage, all equity stripping must be completed before the establishment of the LED or the LTT.
5. If you have investment funds, these should be placed in an LLC owned primarily by your LLLP.

At some point in time, the LLLP should be used as a vehicle for passive investments, real estate speculation or to control a family business. A family enterprise such as an investment program or small business gives the LLLP a legitimate business purpose which is necessary to use the LLLP later for estate planning purposes.

The Family Living Trust (FLT) and Wealth Protection Trust™ (WPT)

In a Bridgeway Asset Protection Plan™, the purpose and function of the Living Trust and related structures, such as the powers of attorney, pour over will et cetera, are to help you avoid the cost, time and expense of probate Court.



A living trust is not useful for asset protection purposes because it is a revocable trust. A living trust removes a title from the name of the grantor. For example, a deed or certificate will be titled in the name of the trustee such as 'John Doe as Trustee fbo the Smith Family Living Trust'. In the event of an unforeseen and unexpected future claim, a future creditor may be able to get a judge to order the debtor/grantor to revoke the living trust. If the living trust is revoked, title must return to the name of the grantor. The grantor's creditor could then seize title to the property by foreclosure once title returns to the grantor because of the involuntary revocation.

Only property that has statutory exemption from collection activity, that has minimal value or that has little or no interest to creditors should be placed in a living trust. Any property that does not fall into any of the foregoing categories should be held in a COP entity, preferably offshore in Nevis. The certificates of interest in the COP entity should be placed in a WPT.

A personal directive, similar to the provisions used in a living trust, can be placed in the WPT Agreement to provide the trustee with instructions concerning the

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disposition of the property held in the WPT upon the death of the beneficiary. These provisions automatically take effect upon the death of the beneficiary and bypass probate. A WPT can convey property at the time of death in the same as manner as a living trust. The WPT can convey property to those named in the FLT allowing for future changes to beneficiaries in the FLT by the Grantor.

When using a WPT that is holding only certificates of interest, real estate or other items that do not generate income, should not obtain an EIN. This is because it does not have income, nor does it have employees. Obtaining an EIN will only create a lot of unnecessary problems with IRS and start automated systems looking to collect tax obligations the PPT does not owe and tax returns the WPT is not required to file.

UNDERSTANDING ERISA COMPLIANT LLCS

WHAT IS AN IRA?

An Individual Retirement Account (IRA) is an investment tool created by the US Government's ERISA Act of 1974 to supplement retirement income. IRAs are generally available to anyone who receives taxable earned income throughout the year. Investments in the IRA are tax deferred. Therefore, the contributions are deductible from income tax and the IRA owner avoids payment of capital gains taxes while the funds are invested in the IRA.

WHAT KINDS OF IRA ACCOUNTS ARE THERE?

There are several kinds of IRA Accounts: traditional IRA, Roth IRA, Simplified Employee Pension (SEP) IRA and the Education (Coverdell) IRA. The Traditional IRA was created for individuals that do not participate in an employer sponsored retirement plan. Individuals that do participate in an employer sponsored retirement program may still qualify for this IRA. The Roth IRA is similar to the traditional IRA except for the way in which it is taxed. Contributions to a Roth IRA are made with non-deductible, after-tax funds and withdrawals from a Roth IRA are generally tax free. SEP IRAs were created for self-employed individuals and smaller companies. Employers can make tax-deductible contributions to SEP IRAs for eligible employees. The Coverdell Education Savings Account (ESA) creates an ongoing tax-free educational savings fund for the family. If used for educational purposes,

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withdrawals are tax and penalty free.

What is a Self-Directed IRA?

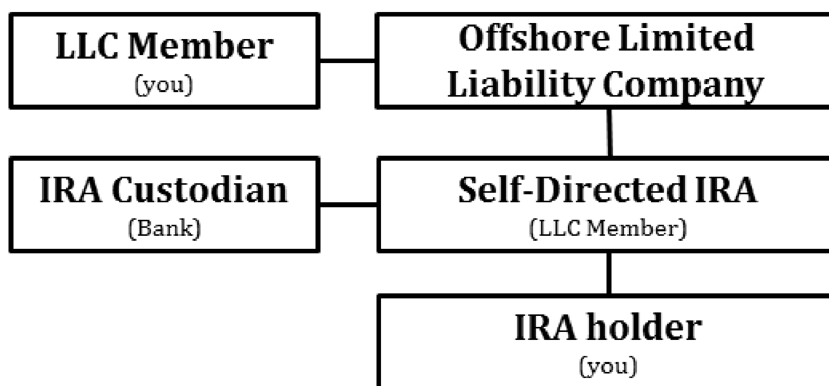
A self-directed IRA is no different than any other IRA except that you are allowed to direct the investments of the IRA. Many custodians claim that they allow you to self-direct your IRA investments but restrict what you can invest in. A truly self-directed IRA allows the IRA owner to make the decisions without restriction.

Over two trillion dollars are held in retirement accounts. Only about 3% of retirement accounts are self-directed and only about 2% are invested in real estate. The rest of the IRAs are established with conventional banks and brokers. Most people do not know that CDs and the US share market are not the only investment possibilities available for their IRA because their bankers and brokers do not provide or offer any other services. An IRA owner has the right to invest in just about anything other than life insurance and collectibles. This has been the rule since IRAs were created 30 years ago.

What is a Self-Directed IRA Custodian?

The government allows certain institutions to act as custodians to handle the accounting and reporting of IRAs. Custodians are all subject to the same rules and guidelines. Most of these custodians are traditional bankers and brokers. Consequently, they restrict the scope of investment possibilities to the markets and services their firms routinely offer the public. More recently, a handful of non-traditional custodians have set up self -directing IRAs that allow IRA owners to make non-traditional investments at their own discretion. The term self-directed custodian refers to an IRA custodial service that strives to allow IRA owners to make their own financial decisions and provide as many different types of investment opportunities available to the IRA plans as possible.

What is an ERISA Compliant LLC?



An ERISA Compliant LLC is a LLC that is owned by a self-directed IRA. The LLC is managed by the IRA owner. It is referred to as check book controlled because the LLC has a checking account that you, as

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manager, control without the need for prior approval by your IRA trustee or custodian.

Establishing a self-directed IRA is one step toward obtaining complete control. Nevertheless, many self-directed custodians still require their clients to get permission from the custodian before making each investment. This requires filling out forms and obtaining approval for each investment. In addition, the custodian must sign all legal documents and issue all the checks. This is time consuming and more expensive than it needs to be. To obtain a truly self-directed retirement account you need a Nevis LLC owned by the self-directed IRA in order to obtain check book control.

With the ERISA Compliant LLC the IRA makes one investment. It purchases certificates of membership in an ERISA Complaint LLC. The LLC is set up as a flow through entity for tax purposes. All the profits, whether distributed or not, are imputed to the owner, your IRA. Therefore, all profits are tax deferred. The profits stay in the LLC where the full untaxed amount is ready for reinvesting. Now the IRA account holder is able to make investments whenever he or she wants without getting permission from anyone. The LLC manager has a checkbook and is in control of the retirement money.

Scope of Investments Allowed

An ERISA Compliant LLC can make any investment as long as it stays away from insurance contracts, collectibles and avoids any kind of self-dealings. The following is a list of some of the things one can invest in:

- Residential Real Estate
- Private Notes and Loans
- Raw Land
- Commercial Real Estate
- Commercial Paper
- Tax Certificates
- Options
- Shares, Bonds, and Mutual Funds
- Futures, Trust Deeds, and Mortgages

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- Foreign Currency
- LLCs and LPs
- IPOs

Transferring Funds to an ERISA Compliant LLC

What kind of pension funds can be transferred to an ERISA compliant LLC?

- Traditional IRAs
- Sep IRAs
- Roth IRAs
- 401(k)s & 403(b)s
- Keoghs
- Qualified Annuities Profit Sharing Plans
- Government Eligible Deferred Compensation Plans
- Coverdell Education Savings and Money Purchase Plans

What are Prohibited Transactions?

Understanding what constitutes a prohibited transaction is very important when it comes to making investments within your IRA. The IRS defines a prohibited transaction as follows:

- Generally a prohibited transaction is any improper use of your IRA account or annuity by you, your beneficiary or any disqualified person. Disqualified persons include your fiduciary and members of your family (spouse, ancestor, linear descendant, and any spouse of linear descendant)." IRS Publication 590

IRC 4975 is the section that lays out the rules on prohibited transactions.

Prohibited transactions generally involve one or more of the following:

- Doing business with a disqualified person
- Benefiting someone other than the IRA
- loaning money to a disqualified person
- investing in a prohibited investment

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Prohibited transactions are those transactions that violate the basic intent of the IRA. Your IRA must benefit rather than benefiting you personally. In other words, there can be no self-dealing transactions. However, there are many ways in which you can invest your IRA and not be in violation of the prohibited transaction law.

Who is a disqualified person?

- the IRA owner and his or her spouse
- the IRA owner's ancestors, lineal descendants and spouses
- investment advisors and managers
- any corporation, partnership, trust or estate in which a disqualified person has 50% or greater interest
- anyone providing services to the IRA such as a trustee or custodian

Are there investments that are prohibited?

Yes, but you probably are not investing in them anyway. The Internal Revenue Code does not specifically authorize investments within an IRA; rather, the IRS Code outlines what types of investments are not allowed. The prohibited investments include:

- Artwork
- Antiques
- Metals
- Gems
- Rugs
- Stamps
- Coins
- Alcoholic Beverages
- Life Insurance Contracts
- S Corporation Share

What are some types and examples of Prohibited Transactions and / or Self-Dealing Transactions?

- Self-dealing with a family member
- Self-dealing with yourself

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- Personal use of IRA property
- Receiving personal benefit from your IRA
- Using the IRA as security for a loan
- Buying property for personal use with IRA funds
- Receiving unreasonable compensation for managing the IRA LLC.

What are the Penalties for Violations?

If a prohibited transaction occurs, the IRA account will not be treated as an IRA retroactive to the first day of the year that the prohibited transaction occurred. The IRA owner must include the FMV of all or part of the IRA assets in the IRA owner's gross income. In some cases a prohibited transaction can be corrected. This means undoing it as much as possible without putting the IRA plan in a worse financial position than if proper fiduciary standards had been applied, the anticipated financial position anticipated if the prohibited transaction had never occurred. If the prohibited transaction is corrected, the IRS may abate, credit or refund the 100% tax.

What are Exemptions?

An Exemption is a permission to invest in something or invest in some manner that is technically a prohibited transaction. For example, it is a prohibited transaction to rent property owned by your IRA to your child because your child is a disqualified person. Descendants of the IRA account holder are included in the definition of disqualified persons. Financial transactions with disqualified persons are prohibited. An Exemption would allow you to do so.

The Exemption section of the IRS Code begins by saying: 'The Secretary shall establish an exemption procedure for purposes of this subsection.' This provision goes on to say that the IRS shall coordinate the requests with the Department of Labor& Industry. In reality, all power to grant these exemptions has been shifted over to the Department of Labor & Industry.

Is it likely that one's exemption will be granted? Yes it is. While most tax advisors are not aware of this section, the Department of Labor & Industry grants hundreds of these exemptions each and every year. One giant size exemption is provision 96-62. This exemption is amazing. It's called a class exemption. Provision 96-62 basically states that if two transactions substantially similar to yours have been approved in the last five years, your exemption request should likewise be approved.

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These exemptions have allowed people to access their IRA money early, without paying any taxes including penalty taxes, and their actions have had the full blessing of the government. In some cases they had their IRAs own their home mortgages or used IRA funds to help them buy a business. I bet your stockbroker never told you about these scenarios.

Advantages of the ERISA Compliant LLC

With a self-directed custodian you receive more control than with a traditional custodian, but you still have to file forms and get permission from the custodian for every little thing you do.. This also puts one at a huge disadvantage with time sensitive real estate deals. If you do not move quickly, you may miss out on the best deals. For example, tax liens, tax deeds and foreclosures are sold at auction on the courthouse steps; you need to have checkbook control or you will miss out. With an ERISA Compliant LLC one has the checkbook authority to write the checks and can make an investment without time delays. This ensures that the IRA is able to make the best investments at the best prices.

You can obtain the ability to manage the property, collect the rent and pay the bills. Unlike just having a self-directed IRA which puts restrictions on what a self-directed IRA account holder can do, the ERISA compliant LLC structure allows one to perform maintenance on the property, advertise for renters, collect and deposit the rent checks, pay the real estate bills, et cetera. This saves the IRA a lot of money and helps provide a more comfortable and prosperous retirement for the IRA owner.

Frequently Asked Questions:

- Can an ERISA Compliant IRA purchase real estate from the IRA Account holder?
    - No, his would be a prohibited transaction (see IRC 4975). One may not purchase property that is currently owned by oneself or another disqualified person unless the IRA owner has filed for an exemption and it has been approved.
- If an ERISA Compliant LLC buys an income producing rental property, who gets the rental income?
    - The income goes back into the ERISA COMPLIANT LLC, and the IRA owner retains the tax deferred or tax free status (in the case of the Roth IRA) of the investment.

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- Can one use leverage in buying real estate?
  - Yes, however, you cannot use the IRA's assets as security and you cannot personally guarantee the loan. You can use their IRA's assets as a down payment and obtain a non-recourse loan for the balance. With a non-recourse loan, if your IRA fails to make payments, the only recourse the lender has is against the property itself. There will also be unrelated debt financed income (UDFI) tax that applies on a pro rata basis when a loan is obtained. For example, if one-half of the property is financed, then one-half of the profits would be subject to UDFI tax.

- Can an IRA owner's ERISA Compliant LLC co-invest with Friends?
  - Yes, ERISA Compliant LLCs may purchase an undivided and proportionate interest in real estate. It is not prohibited transaction for an IRA owner to co-invest with your self-directed IRA. However, there are certain formalities that need to be adhered to, and there are some situations where it isn't advised.

- Can the IRA Owner be the property manager of the Real Estate?
  - Not with a simple self-directed IRA, but with an ERISA Compliant LLC one has the ability to manage the property, perform routine maintenance, collect the rent and pay the bills et cetera This saves the Self-directed IRA owner a lot of time and money.

- May the ERISA Compliant LLC use the ERISA Compliant LLC's funds to make improvements or renovations?
  - Yes, in fact, you must use ERISA Compliant LLC funds to make the improvements and pay all expenses associated with the property. All expenses of the property are paid with ERISA Compliant LLC funds, and all profits made on the property must be returned to the LLC's account. Personal funds may not be used to make improvements.

- Can I buy vacation property?
  - Yes, but one cannot vacation there and all rental profits must be retained by the ERISA Compliant LLC's account. All maintenance, improvements and repairs must be paid for by the ERISA Compliant LLC.

- Can I buy a retirement home with my ERISA Compliant LLC?
  - Yes, your ERISA Compliant LLC would purchase and maintain the property. The home would need to be used as a rental property until you attain retirement age. The rents generated would be returned to the ERISA Compliant LLC's account. When one attains retirement age, the property can be distributed and the IRA owner will have to pay taxes on the value of the distribution.

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- Can an ERISA Compliant LLC make loans to third parties?
  - Loans can be made to third parties so long as they are not disqualified persons. Interest must be charged at a competitive rate and the loan should be secured with adequate collateral.
- Can an ERISA Compliant LLC make a loan to an IRA owner's relatives to purchase a home?
  - Yes, to qualified relatives. Siblings, aunts, uncles, cousins and "step relations" are not included in the definition of disqualified persons. Any dealings between the ERISA LLC and these relatives would not be a prohibited transaction. One would need an exemption to deal with one's children, grandchildren, spouse or parents who are relatives that are disqualified persons.
- Can an ERISA Compliant LLC make loans to an IRA owner's friend?
  - Yes, friends are not disqualified persons under the Code. Your IRA can make a loan to them for any purpose. Of course, one should make sure that there are reasonable terms and sufficient collateral for the loan to protect the IRA owner's retirement.
- Can an ERISA Compliant LLC make loans to businesses?
  - A self-directed IRA can make a loan to any type of business unless a disqualified person or disqualified persons own more than 50%. For example, if an IRA owner and spouse had a company and together owned 50.5%, then the ERISA LLC could not buy, sell or loan to it without penalty because the IRA owner and spouse are disqualified persons because they collective own more than 50% of the company. If an IRA owner and brother owned 51% of a company, the ERISA LLC could engage in transactions with the company because the brother is not a disqualified person and the IRA owner individually does not own more than 50% of the company. (Assuming the IRA owner's brother's interest was equal or greater than at least 1%).
- Are the gains that an ERISA Compliant LLC makes taxable?
  - Capital gains stay within the IRA. Capital gains in a traditional IRA are tax-deferred. If an IRA owner has a Roth IRA, the gains are tax free. Note that UDFI taxes are required if the property was acquired through borrowed money. If you borrow 1/3, then 1/3 of the profits are taxed.
- Can an ERISA Compliant LLC using an IRA account invest Offshore?
  - Yes, it can. Providing it is structured properly.
- Can I invest outside of my state or outside the country?
  - No

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Place as much of your IRA funds as possible into an ERISA compliant LLC that is owned by a Roth IRA. The beauty of the Roth IRA is that not only do investments accumulate tax-deferred, but the funds are also withdrawn tax free! Whereas, with a SEP or Traditional IRA, funds disbursed are treated as ordinary income and taxed as such.

You can also make a loan from a 401K to your Roth IRA at a nominal interest rate thereby earning investment income for tax free purposes in your Roth IRA and slowly paying back the 401K from your Roth IRA.

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CHAPTER 13: HELPFUL HINTS

BUSINESS PLAN

If you have a business, you should have a business plan. As you create it, the process ensures you thoroughly think through what you plan to do and why, to give your strategies the greatest chance for success. On an ongoing basis, the business plan is what keeps you going in the right direction and gives you a yardstick by which you can measure your progress. It quantifies and helps you measure the work that will be involved and functions as the roadmap to get you where you want to go. And, if you are looking to go after any outside funding, from either banks or investors, you will need to show them a business plan to demonstrate that your plan is well thought out and holds considerable potential for success.

A business plan goes into detail about the following areas:

- Mission, Vision & Objectives of the Venture
- The Company(its legal description, history, and current situation/location)
- Products & Services (offered & planned)
- External Environment (the industry status, the economy, legal/regulatory)
- Overall Market (including analysis of the competition, size, growth, demographics, et cetera)
- Target Market (the specific segments your firm is or plans on pursuing)
- Analysis of Strengths, Weaknesses, Opportunities and Threats/Risks
- Sales & Marketing Strategy (including promotion, pricing, distribution, Internet and forecasts)
- Management Team & Advisors (one of the most critical areas for influencing funding)
- Operational Plan (including equipment, labor/personnel, and production/service process)
- Implementation Plan
- Financials & Exit/payback strategy (to show how investors/lenders will get their return)

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Federal Employer Identification Number (EIN)

Most official documents for taxes, reporting, corporate bank accounts, and more, require you to supply a Federal Employer Identification Number (EIN), also called a Tax Identification number, so you will need to apply for one with the IRS early on in the process. This is essentially your corporate Social Security number and is the number the IRS uses to track each and every corporation. The IRS wants to know as much as they can about your corporation and everyone involved in it, so they ask for an individual's social security number in order to obtain an EIN. It is recommended that you use a family member with a different name to apply for your EIN to give you more privacy. For absolute privacy use a third party privacy nominee for your EIN and banking so that your social security number is not shown anywhere in connection with the entity.

Business License

All Nevada Corporations are required to acquire a state business license from the Department of Taxation at a cost of $200 at the time of this printing, renewable annually for the same fee. This also registers you for collection of the payroll tax, payable quarterly. Various municipalities also require a local business license in order to do business within their boundaries.

Establishing a Corporate Presence in Nevada

If you utilize a Nevada LLC for tax advantages, you should visibly base your business in Nevada by having:

1. A Nevada bank account so that, wherever you are located, all corporate funds are maintained in Nevada.
2. A Nevada address for all of your corporate mail.
3. A Nevada phone number, which should be listed in the local phone book and answered with your corporation name.
4. A business license in the state and county or city of your registered agent, as further proof of your Nevada base.

What's in a Name?

After the decision has been made to incorporate, the next step is to name the new creation. This question can be as simple as the first thing that pops into your head to spending a few days figuring out just the right name. The amount of thought you put into a name should depend on exactly how you plan to use the corporation.

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Keep in mind that names have meaning in corporate law. The last word of the name of the entity describes what the entity is and how it will be governed by state and federal law. A corporation is not an LLC and an LLC is not a trust. For example: You can have Windy River Enterprises, LLC or Windy River Enterprises Trust. Aspects of how they operate, how they are taxed and the level of asset protection all differ. It is important for you to understand what they are and what they are not in the context of asset protection and estate planning.

If the corporation were created for asset protection and to provide you with personal privacy, obviously you would not want to choose "Your Name, Inc." If you are associated with other businesses, you should be sure to avoid those names or derivatives of those names when privacy is a concern as well. Think of the many ways an effective name can promote the corporation's plans.

For instance, if you created a corporation for the purpose of purchasing real estate, you may find it beneficial to use a name that might provide you with some leverage when it comes time to negotiate a deal. If the name of the corporation is 'National Real Estate, Incorporated', the impression is that this corporation is a large company that deals in real estate. When it comes times to approach a seller to buy property, you might say, "I'm Jim Johnson and I'm an agent for National Real Estate, Incorporated and my client is interested in purchasing your property". This can give you a great advantage as you go back and forth cutting a deal for your client.

NAMES MAKE LASTING IMPRESSIONS

Building an image of a large, older, respectable institution by using a name such as 'Landmark, Inc.' or 'First National Corporation' will help you make a better deal. You can also piggyback by using well-known names that are no longer in business like 'Youngstown Sheet and Tube, LLC' or 'United States Steel, Corp.' Using a name similar to an existing company such as IBM which may stand for your company, "Iowa Business Machines, Inc.", will most likely help with marketing because of the name recognition factor.

NAME RECOGNITION IS POWERFUL

You may want to use a name which sounds familiar to them such as 'Federal Maintenance, Inc.' or 'Federal Construction Agency, Inc.' or you can completely hide your corporate identity by having it file for legal alias DBA: 'doing business as'. Therefore, 'Fred's Café' might be a dba or trade name for 'International Capital, Inc.', thereby creating a complete change of image and identity. Most Las Vegas casinos are known by trade names rather than by the names of their parent corporations. The "Sands" casino was really Hughes Property Management

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Corporation. Likewise, "The Aladdin" was really a licensed company called Ginji Corporation.

Whichever name you choose for the corporation, be sure to consider your options carefully. A great name can be a major catalyst for the future success of a new business.

REGISTERED AGENT

BWFC PROCESSING CENTERS LLC AS YOUR REGISTERED AGENT

BWFC Processing Centers LLC (BWFC LLC) is a registered agent in the State of Nevada. BWFC LLC represents its entities from its corporate offices in Las Vegas, Nevada. Since its beginning, BWFC LLC has developed from a private registered agent service to a full-service registered agent, attracting clients from far and wide. In addition to representing corporations, Bridgeway Financial Corporation can actually incorporate businesses within 24-48 hours along with providing other services to accommodate any corporate needs you may have.

REGISTERED AGENTS PROTECT YOUR PRIVACY

Use your registered agent as a lightning rod. Always place the focus of the corporation on your registered agent instead of your physical location. BWFC LLC as a full-service registered agent is well equipped to establish a solid presence for the corporation or company, hence keeping attention away from you. When you use BWFC LLC as your registered agent, you will be provided with a prestigious Nevada address.

ACCOUNTANTS

ACE LLP AS YOUR ACCOUNTANTS

ACE LLP offers a broad range of services for business owners. ACE LLP rates are affordable, is experienced and friendly. ACE LLP is here to help you with your accounting and tax needs. ACE LLP's reputation for providing quality service reflects the high standards we demand of ourselves. ACE LLP high standards, responsive service and specialized staff spell the difference between our firm and the rest.

LOW COST

Even single persons or a family business can benefit from incorporating or organizing.

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Live Where You Want: The Company Stays in Nevada

Driving a healthy state economy, Nevada's liberal tax laws prove their positive impact daily as over 6000 people make the 'Silver State' their new home each month. Another great advantage to Nevada's tax laws for company is that individuals can continue living where they are and still benefit! True, there is a strategy that must be followed to implement this benefit, but once you understand the basic principle, the rest is easy.

Red Ink Strategy Requires the UCC-1 Form

Once the assets are secured, file the agreement for public access. The entity that has now secured your property for a loan would file a UCC-1 financing statement with the Secretary of State's office of the state where your company is organized and with the county recorder in the county where the assets are located. This UCC-1 states to the public that these assets are collateral for a note that is owed and that the assets are encumbered. It tells the public that they cannot touch these assets until the debt is paid. Public documentation of encumbered assets alone will sometimes discourage money hungry lawyers during their initial asset searches. After the UCC-1 agreements are discovered, the attorney, who is no longer smiling, calls his clients back and tells them there is nothing to go after should a suit ensue, but if they wish to continue, he will be glad to do so for an unreasonable retainer. Mission complete; you have now successfully judgment proofed your corporation.

This strategy can be very successful by using a Nevada Company in conjunction with your home state LLC.

Your Nevada Company would be the lending entity to your home state business that fully encumbers the assets of your home state business. This would allow you as an individual to remain out of this loop completely because no one has to know that you are the owner of this lending corporation in Nevada.

UCC-1 Forms Work Well as a Smoke Screen to Keep Prying Eyes Away

Every state has its own form of UCC-1 documents. These forms can generally be found at an office supply store or purchased through the state's Secretary of State's office.

UCC-1 is generally filed at the county level. A UCC-1 is a public notice that validates the encumbrance of assets. At the top of the form are the names of the debtors and their addresses and their tax ID numbers are listed boldly. Area number 4 is where the secured party's names go. These are both corporations and the tax ID numbers of the corporations. Area number 6 is probably the most significant portion of the

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form because it is where it is stated exactly what it is intended that the public is able to determine about the arrangement between the borrower and the benefactor. It would contain the amount of the note as well as the type of property encumbered by the filing. The type of property can be a piece of real estate, a business or any property of considerable value. The debtor does not have to sign the form as long as the creditor has signed it. After it is filed with the county or state, a certified copy is then forwarded to the secured party.

To protect real estate, some have been known to file a UCC-1 without ever having truly placed that real estate as collateral for a note. This can be quite useful as a smoke screen to keep the sharks away. Remember, if you already have a first mortgage on the real estate, the UCC-1 would be subordinate to that first mortgage. The IRS is another organization that does not like to wait in line with other creditors either.

BANKING

KEEPING AT ARM'S LENGTH FROM THE CORPORATE ENTITY

A large part of keeping at arm's length from the corporation means that you must take precautions to preserve a legitimate distance from the corporation. In order to validate separating yourself from the corporation, you need to make sure that you carry out business legitimately.

Do not co-mingle funds. Many people think that it is okay to pay for small personal items or an outing here or there with corporate funds – after all; the money is really your money. Right? Wrong! Bad habits could have serious consequences in the future. Just as you are separate from the corporation, your money is separate from corporation money as well. Merging your money will supply strong evidence to anyone interested in piercing the corporate veil by simply proving that the corporation is simply an alter ego of you.

WHEN USING CORPORATE MONEY, REMEMBER: YOU ARE A CORPORATE REPRESENTATIVE

Part of providing complete documentation is to make sure those resolutions, checks and other important forms that you use are accurately filled out. It is absolutely necessary to sign the documents with the proper title when you

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authorize corporate decisions. Let's say you want to buy a piece of property on the corporation's behalf. You authorize the purchase of property, issue a resolution, write a check for the given amount and sign it with your name. Transaction is complete. Right? Wrong! By forgetting to sign with BOTH your name and your TITLE you have just made a serious mistake. By forgetting to identify your authority to sign such a form, you have subjected the corporation to severe scrutiny. In fact, for such a simple and seemingly insignificant mistake, the corporation may well be pierced by validating the speculation of its alter ego status in relation to you.

Procedures are very important. But just because you cannot buy your groceries with the corporation debit card does not mean that the corporation will not end up paying for your food – all for a legitimate business reason. Perhaps at the end of the month the corporation will write the Vice President an allowance check. This check can then be cashed and then food may be purchased at the market. In this way, the corporation may compensate contractors, employees and Officers for all their service and hard work. Individuals that happen to work with or for Nevada corporations, but live outside the state, may be able to redeem even more compensation because of the distance, additional time given or general hassles of working for an out-of-state company.

Legitimize the Corporate Presence in Nevada

Nevada Corporate Bank Accounts

Once you are ready to start using your corporation or LLC, you will want to set up a bank account. Even if you are not yet in a place to start using your corporation, it is a good idea to have a bank account set up so that when you are ready to begin using your corporation, everything is ready to go. When a corporate strategy involves using a Nevada Corporation or LLC even though the owner or representatives of the corporation do not live in Nevada, it is best to establish a Nevada bank account to further legitimize the presence of the corporate entity in the preferred state. If you want a bank account in your home state, there are no problems with that but make sure it is in addition to a Nevada bank account. Remember that you don't want to defeat the purpose of having a Nevada corporate entity by cheating yourself out of tax advantages by running transactions through your home state corporation.

When using a home state bank account for your Nevada Company, it is best to make a deposit in Nevada first then transfer money via check to your home state bank account. This is the cleanest way to end up with corporate funds in your home

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state to give you access to corporate cash. This process helps solidify your Nevada Corporation by primarily operating in Nevada.

MAKE SURE YOU ARE THE ONLY SIGNER ON THE CORPORATE BANK ACCOUNT

This system works well because an Officer nominee does not want to know anything about the company – protecting them, and you as the private shareholder maintain the power to remove his name from the public list at any time. Best of all, YOU, as the OWNER, are the ONLY signer on the corporate bank account. Those seeking privacy, have someone else be the bank signer.

JUST BECAUSE YOU CAN, DOES NOT MEAN YOU SHOULD

A Nevada corporation and/or LLC can open a corporate bank account in every state without having to register to do business in that particular state. You may run into a few banks that will tell you that you need to be registered in their state, but we have found that most banks are uninformed. If you run into resistance or unnecessary questioning regarding your corporate matters, choose a more cooperative bank.

Establishing a Nevada bank account can be easier in many respects than setting up one in your home state. In fact, Bridgeway Financial Corporation has established a friendly relationship with a national bank for processing Nevada corporate bank accounts without you ever having to go to Nevada.

Once the Nevada corporate bank account is established, it is very simple to mail the bank your deposits or use your local branch. The bank will send you a receipt of your deposit or you can see deposits posted to the account online. Note**:** All interest earned by a corporation is reported annually to the IRS. If you desire to keep the IRS as far away as possible, you may want to set up a non-interest bearing checking account for the corporation.

If you want to open a corporate bank account in your home state you need to foreign file (register) the Nevada Corporation or Nevada LLC in your home state. You can avoid foreign filing your Nevada Entity by setting up a home state LLC owned by the Nevada Corporate Company. The home state LLC can then open a business bank account in your home state at your convenience.

For additional banking privacy, set up a Nevada address for your Nevada entities. You will be able to use this address for all of your business correspondence and on the business checks. Keep in mind the bank will still need the personal address of the signer on the bank account but this will be for their internal information only.

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CAPITAL

Capital or money is put into a corporation to either fund future activities; in the case of a small asset protection corporation, money is given to a corporation as a loan. Loans are popular vehicles to move money by lowering personal tax.

There are primarily two classifications for funds as you place them into your corporation's bank account: Capital contributions or loans. Larger corporations will have a third class similar to a loan called Corporate Bonds.

MAKE SURE LOANED MONEY IS COMPENSATED

A capital contribution means that you are placing money into a corporate vehicle as an investor in that corporation. When you place your money into the corporation as an investment, the corporation would then give you shares of stock in the corporation. The number of shares of stock that you receive is based on the value of each share. A share of stock could be valued at any price; it could be worth one dollar or one million dollars.

By loaning money to a corporation, you are essentially giving the corporation funds. In exchange, the corporation is going to give you a promissory note. This promissory note would tell you the length of the note and the rate of return (interest) on the note. If the corporation does issue a promissory note for a loan, be sure to create a corporate resolution authorizing the loan.

BROKERAGE ACCOUNTS

Nevada corporations and LLCs can open a brokerage account to be utilized for the investment of extra money that the company may be holding. A corporation, like an individual can invest anything from US Treasury Bonds to stock option contracts, a highly speculative investment.

HOLD ON TO YOUR PRIVACY WITH A BROKERAGE ACCOUNT

For those of you who are looking to set up a corporate checking account without having to give out your social security number, you may want to consider a mutual fund checking account. There are many mutual funds around the country that offer corporate accounts to hold cash in money market funds allowing the corporation access to those funds via checks. These accounts are simple to setup and they do not require as much personal information. Best of all, they are outside the Federal Reserve System!

For those concerned with privacy, you may want to consider having someone else apply for your tax ID number on the corporation's behalf. The number would be

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sent to your registered agent's address instead of your own; this provides a layer of privacy.

Brokerage Accounts Can Offer Competitive Options to Bank Accounts

The account opening forms for corporations are a bit more tiresome than the forms for individuals, but the end result is the same. Many brokerage firms offer special accounts to businesses to maximize the returns on cash. These accounts offer checking access to funds that are earning very competitive returns in national and international money fund pools. Additionally, many of these accounts come with a credit or debit card when you set up a new account.

Credit Cards

Credit cards for new corporations can be difficult to get. Corporations and LLCs that do not have any credit history established are very unlikely candidates for a corporate credit card. Some banks will take a look at the credit history of the Officers of the corporation and use that as a basis for their decision.

Your corporate profile increases with a credit card; this may be just what you want because it may also greatly reduce your personal profile. If you are dealing with more than one corporation, then the suggestion is to keep one in sound financial shape and one that takes up quite a few corporate losses. Credit cards today are all tied into the international tracking system that is out there. You should only be using your credit cards on things that the corporation absolutely has to have such as hotel reservations and the rental of vehicles.

Bank Loans

Loans for corporations can often be quite difficult to get unless a corporation can consistently show income sufficient to pay the loan back. New corporations are also less likely to get bank loans because, like a college student just starting out, they will not have much or any kind of credit history.

If you try to get a bank loan with a new corporation, chances are that you, as an individual will have to co-sign for the corporation. This is the way many new corporations begin to build depth to their credit history.

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FINANCING

When using your Nevada Corporate Company in conjunction with a home state corporation or LLC, one of the cleanest strategies is to make your Nevada Corporation into a financing corporation. In Nevada there is no such thing as usury laws; therefore, you can literally charge an interest rate of 25%. For example, if you have the ability to move $100,000 from a Nevada corporation to your home state corporation as a loan, you can quite nicely draw out $25,000 per year from a state that taxes businesses to Nevada, which does not. You will still pay your federal tax, but you have eliminated all or a substantial portion of your state taxes.

Be sure that if you utilize any of these strategies, that all of your documentation is in place to show that there was a resolution to authorize the loan and a promissory note that is signed. You may want to also pledge the assets of your home state business against the note to encumber them.

DROPPING OUT OF SIGHT

A Nevada corporate structure can be a vehicle for dropping out of the public's eye.

A corporation can be used in your strategy for protecting everything you own – but what about you? Many people today are looking for a way to accomplish personal privacy. A Nevada corporation or LLC is the perfect tool for gaining privacy and freedom. Nevada LLCs are the perfect tool for gaining privacy and freedom. A corporation can be used to either purchase real estate or to change the way the title currently reads on real estate. For instance, if you own property, you can use a simple Deed to change the name under which the real estate is held. This way, you no longer appear as the owner, the corporation does. This can be done without any reappraisal being conducted because it is not considered a sale.

NEVADA BELIEVES YOUR BUSINESS IS YOUR BUSINESS

Nevada statutes have developed a corporate structure unlike any other state. Although Delaware had long been the preferred state to incorporate, Nevada emulated their tax benefits and went even further. When creating its corporate statutes, Nevada made provisions for privacy protection for investors and owners of Nevada corporations alike.

When filing the annual list of Officers with the Secretary of State of Nevada (SOSN) only a minimum of information is required. Most states normally require detailed information about the corporation and the people controlling it for their records and to share with the Internal Revenue Service (IRS). Nevada, on the other hand, believes that your business is just that – YOUR business. Supporting efforts to

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preserve privacy, the SOSN wants relatively little information about the individuals involved in the corporations. Asking only for the names of the President, Secretary, Treasurer and one Director on the annual list of Officers, the SOSN conveniently leaves the Vice President off the list allowing elected Officer nominees to expose their identities while preserving the privacy of those in control.

Privacy

To show just how far Nevada will go to preserve privacy, let's look at Nevada's stand on reciprocity with the IRS. One reason why Nevada requires so little information to be filed with SOSN is that documentation shared with the IRS is kept to a minimum. Currently, the IRS maintains a formal information exchange program with most states in the country.

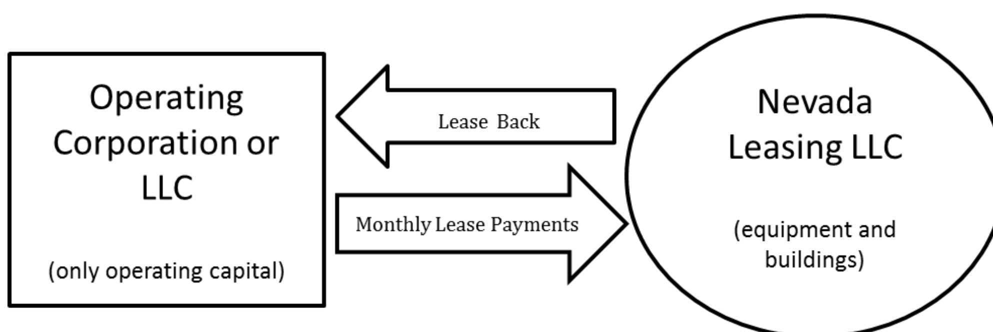
Having a direct link to each state's database makes it easier for the IRS to track the income and assets of people throughout the country.

Most states share information freely with the IRS because then the IRS supplies pertinent tax information with them as well. Nevada, on the other hand, has no state taxes; therefore, it has no use for any arrangement with the IRS. With the whole state so dedicated to supporting corporate rights, why would you incorporate anywhere else**?**

Keep Attackers Away

In order for us, as entrepreneurs, to access all the benefits offered by the corporate structure, we must consider the importance of location. Because each state interprets and upholds corporate statues differently, it is wise to choose a state that will serve the corporation's best interest, as well as your own.

Time and again people's personal assets are attacked by states that do not value individual rights. Nevada, on the other hand, is committed to upholding corporate statutes allowing individuals to achieve privacy, tax savings and liability protection all in one. Now, there are other states that offer tax savings alone, but none come close to providing your corporation with as much security and total protection as Nevada does.



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Keep Valuable Assets Away from the Public Eye

One technique used by corporations both large and small is to separate out those areas of their business that have a higher likelihood of drawing lawsuits, particularly those branches that work directly with the public and separating those areas from the more valuable assets under their control. For example, construction companies may consider placing their expensive vehicles and equipment in a separate corporation altogether so that if the main company is sued, not all valuable assets will be attacked. In this case you might want to set up a leasing corporation to hold the most valuable assets and simply lease the equipment to the construction corporation. Therefore if someone were to win a suit against the construction company, the equipment would not be attached to the asset pool enabling owners to simply hand over the main (vacant) corporation instead of fighting senseless litigation.

Liability Protection

Although most states in America have adopted corporate statues limiting the liability of corporate Officers, Directors, and shareholders, not all states actually support their own policies. California is commonly known as a state that continues to pierce the corporate veil or taps into individual assets regardless of their state statutes. Nevada, on the other hand, is committed to protecting individuals' rights!

Nevada's consistent case law upholds its policies and specifically protects ALL corporate representatives. Anyone affiliated with the corporation is therefore free from personal liability in all cases except fraud. This means that the corporation can be sued, file bankruptcy, and be involved in other unfortunate activities and not personally jeopardize the assets of its agents or representatives.

Establishing a corporation in Nevada is, therefore, an advantage because court proceedings must be tried where the corporation is domiciled. Often the inconvenience of having to travel to another state to pursue a case is enough to discourage plaintiffs. But even if they persist, individuals being attacked can find comfort under Nevada's protective wings.

List the Local State LLC on the Name on Rental Properties

What about renters? If you currently are renting, the annual tracking statement goes out to the IRS from your landlord who tells them exactly where you are living and you get a wonderful renter's credit every year. This can be changed by either getting a new apartment or drawing up a new lease agreement with your current landlord where you use the Nevada Corporation's name instead of your own. This will take care of step one; you live on property where you are no longer listed as

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the owner or renter but the LLC is. If the property has significant equity, set up a local LLC owned by an offshore LLC owned by the Nevada LLC and all managed by a New Mexico LLC.

Finally, take advantage of our private mail service. This way there is no way for anyone to track your whereabouts. By taking advantage of these strategies and using the privacy that comes with Nevada, you have successfully found personal privacy!

THE GUESSING GAME

Although the game of chase might seem intimidating, especially against a vicious entity like the IRS, keep in mind that the IRS is basically a business, like any other. The IRS is mostly interested in one thing: profit! Its agents are instructed to track down funds that are easily accessible whether they are from individuals or corporations. If, for some reason, funds are NOT easily accessible or the profit margin will be insignificant, agents will most likely be reprimanded for spending too much time going after something that turns up empty time and again.

Here is an example to consider: Three corporations, Oak Mountain, Inc., Dexter Enterprising Company and Maple Street Corporation are all interconnected. Now perhaps you are Vice President of Maple Street Corporation, the recipient of an asset that it eventually transfers to Dexter Enterprising Company. Some of the assets are put into an annuity and some into investments with Oak Mountain, Inc. Can you see how Maple Street Corporation maintains its privacy? Even though a transaction is recorded, it is very difficult to track. Under normal circumstances it is not worth the amount of time it will take to try and pierce the veil just to profit an insignificant amount of money when it would actually be more profitable to go after easier targets.

IRS agents do not have time to waste. They have quotas to fill. The IRS will usually deem a lengthy corporate chase profitable when the profits exceed millions of dollars. The audit rates are a lot higher with the significantly large corporations. Likewise, the rate of audits for sole proprietorships is high as well because there is no distinction between the individuals and their business in the eyes of officials. Therefore it is easy to prove a co-mingling of funds without any corporate shield to protect them. Corporations in Nevada are much more difficult to pierce.

IGNORANCE IS DANGEROUS

Today's world offers asset protection and privacy, challenging each of us to remain sharp and creative. Do not take advice from others blindly. Be skeptical of what

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others tell you with respect to managing the affairs of the corporation you control. Even your accountant or lawyer may, out of ignorance, give you incorrect information regarding corporations. Nevada corporate statues differ from most states in the country and they may just be unaware if the unique advantages Nevada offers. Your counsel may have the best of intentions, but ignorance can be dangerous. Our consultants and experts at Bridgeway Financial Corporation will be glad to discuss any questions you or your counsel may have.

FORMALITIES

WHICH HAT WILL YOU WEAR TODAY?

Your relationship to the company is, in essence, a role-playing game. Your role, can and more than likely will change often, depending on the business at hand. Think of your role similar to the one James Garner played in that old television show, “the Rockford Files”. In the show, the main character would have to assume professional titles in order to solve the case. One day he would be the President of a major company and the next day he would present himself as a humble phone repairman.

Essentially, you must wear many different hats. One day you will need to be the company’s business manager to carry out certain duties; on another day you might need to present yourself as the President of the corporation to close a big sale. Many different situations will arise requiring you to play different roles within the corporate structure.

Flexibility is the key when taking on these different rolls and tasks. Occasionally in order to sign a certain document, you will need to be an elected Officer. It is important that you maintain accurate and sufficient documentation to support the changes in your role when required. Making contracts and getting into business dealings should be simple procedures if carried out correctly. Simply choose a title that will best facilitate a task and document the changes within your corporate records.

The more you practice this game in your day to day corporate routine, the easier it will be to verify your relationship to the company should you become involved in litigation. Preserving your distance from the company will help prevent anyone from piercing the corporate veil. Remember, you are not the company. If you are ever called onto a witness stand, you need to have your relationship to the company very clear in your mind so that you do not hesitate to answer the questions accurately.

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Why Maintain Documentation?

Keeping Proper Records is Key!

Maintaining complete and accurate documentation and carrying out the business formalities without fail is imperative to protect the corporate shell from being broken. Formalities are procedures of documentation

that track the company's thought process. More specifically, the formalities may be in the form of corporate resolutions, amendments, notes and meeting minutes of conducted activities.

Assembling these forms within the corporate record book legitimizes the business conducted by validating their appropriateness, authenticity and authorization. Such formalities protect the company from a procedure called piercing the corporate veil. Strong documentation gives the company a shield to defend the individuals behind it. In many states, improperly handled corporate formalities justify piercing the corporate veil. Although Nevada's policies relinquish individuals from personal liability, except in cases of fraud, many states look forward to such an opportunity.

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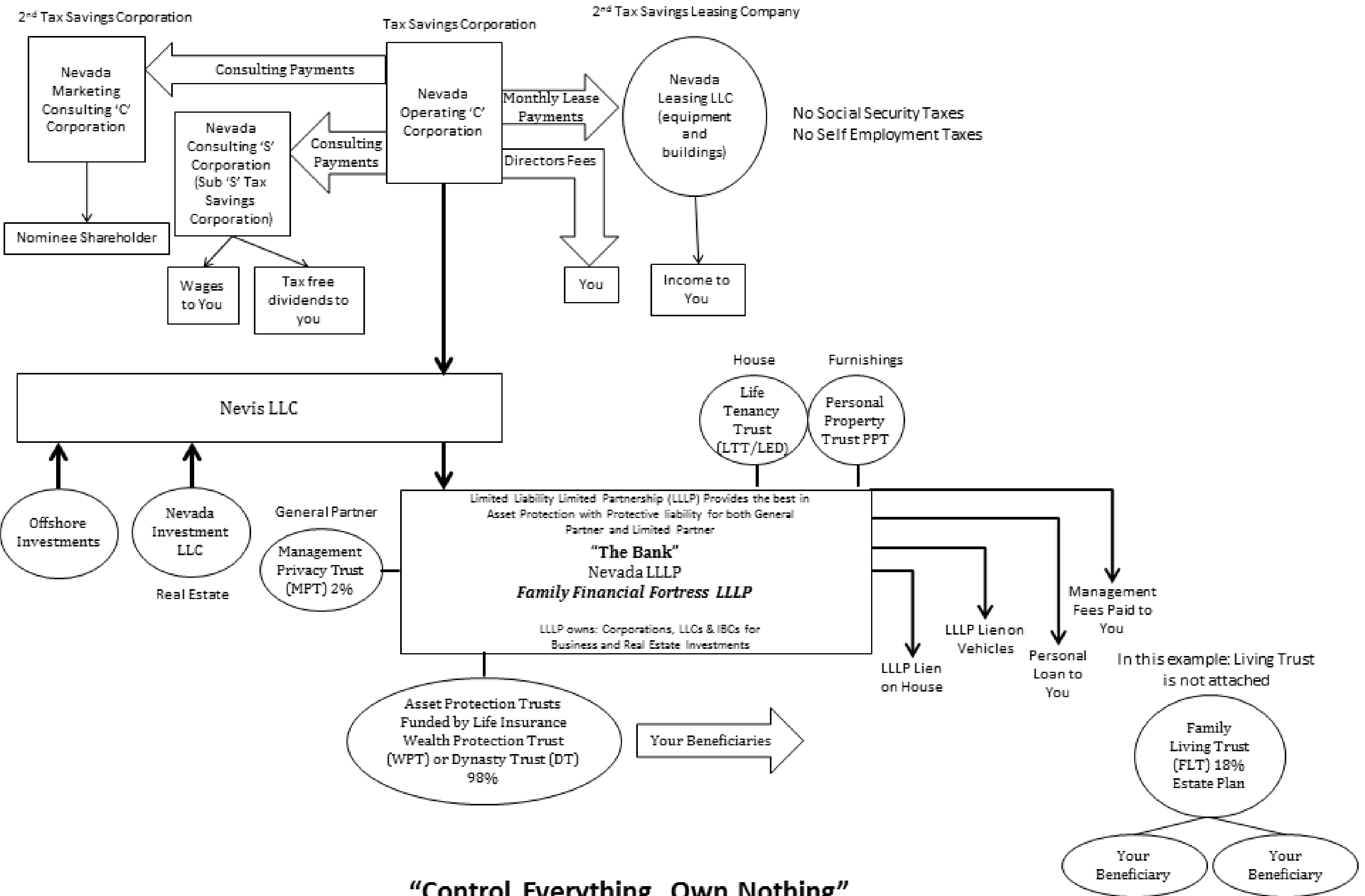

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CHAPTER 14: ONLY THE WISE SURVIVE

Act Now to Develop Your Asset Protection Plan

There are two fundamental goals of asset protection: Financial privacy and financial security. In order to avoid seizure an asset must either be invisible or beyond the grasp of a federal judge.

'Render unto Caesar that which is Caesar's.' Disclose what you are required to disclose. Always comply with Caesar's laws. However, disclose nothing more than is required. If possible, move that which is disclosed outside Caesar's jurisdiction. Restructure your legal and personal affairs to limit what you must disclose.

You can invest in items that are not required to be reported such as collectables, annuities, bullion, precious stones, offshore real estate, et cetera. Learn how to think outside of the box. A creative person can adjust your personal affairs to maintain privacy lawfully. For example, the IRS 1120 annual return requires identification of any person that directly or indirectly controls more than 50% of the share in a corporation. The state of Nevada does not require a new corporation to issue share within any specific period of time after initial incorporation. Nevada only requires that a corporation have a president, secretary, treasurer and one director. Therefore, if you or a person you trust is appointed president and director, you control the corporation. As president you may choose not to issue any share.

An IBC provides superior asset protection because the assets are beyond the jurisdiction of the US judicial system.

With respect to privacy, you must be realistic. Absolute financial privacy is almost impossible in the US. The American public was stripped of its right to financial privacy when the Bank Secrecy Act was enacted in the 1970s. The IRS and US Treasury Department are always going to be privy to a significant amount of your personal information, even though this information will not be available to the general public.

You can invest in items that are not required to be reported such as collectables, annuities, bullion, precious stones, offshore real estate, et cetera. Learn how to "think outside of the box." A creative person can adjust one's personal affairs to maintain privacy lawfully.

Your goal should be to limit that which you must disclose to no more than the minimum the law requires. Focus on maximizing your financial privacy in the private sector. You will need to use your Nevada Corporation to fly under the radar so that your assets will

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not be revealed by commercial asset protection searches of the public records and private data-bases, such as credit bureaus. This will prevent you from becoming a target and will encourage reasonable out of court settlements of policy limits lawsuits.

Offshore safe havens are necessary because absolute financial privacy is virtually impossible and any assets located in the US are at risk. Once litigation commences, a good attorney is going to identify and locate all your assets in the discovery process. An IBC provides superior asset protection because the assets are beyond the jurisdiction of the US judicial system.

If you are working with an attorney, you need an attorney with background and experience in asset protection. Do not rely on your family attorney or someone with a general practice for this purpose. Most attorneys know very little about asset protection. Look for an attorney who is a member of the American Bar Association Asset Protection Committee. An asset protection attorney should work with a team of multi-disciplinary professionals on a regular basis. The attorney should also have a network of professionals he or she works with in related fields such as offshore private bankers, professional trust services, certified financial planners, et cetera

Develop Wealth Preservation Consciousness

We have covered a lot of material, but sometimes we get so caught up in the details that we can't see the forest for the trees. We get so caught up in the details that we lose the big picture. The big picture refers to the goals and objectives of asset protection.

Goals of Asset Protection: An asset protection strategy will pursue the following goals:

1. Maximize financial privacy
2. Anticipate potential liabilities
3. Employ countermeasures to manage anticipated risks
4. Deter litigation
5. Encourage reasonable settlements
6. Establish indirect control of assets
7. Remove assets from litigious jurisdictions

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The objective of asset protection is to avoid liability when possible, move as many assets as you can out of harm's way and encourage reasonable settlement of litigation.

This objective is realized by implementing the Fundamental Principles of Asset Protection:

- Assets should only be held in your name if it is economically to your advantage or it is not possible to hold the asset anonymously or through an entity.
- Assets held in your name should be equity stripped, encumbered and should take maximum advantage of any statutory exemptions that may be applicable.
- Corporations and Limited Liability Companies should be used to limit your business liability. Limited Liability Companies and LLLPs should be used to obtain charging order protection from personal judgments.
- Land Trusts, Personal Property Trusts are the most expedient and inexpensive entities that can be used for financial privacy.
- Business entities should be used to minimize your tax liabilities. C Corporations are used to lawfully minimize income taxes. S Corporations, LLCs and LLLPs are used to lawfully minimize self-employment taxes. Trusts are used to minimize estate taxes and probate.
- An operating corporation's business assets should be held in a lease back company or encumbered by a 'lend back' company.
- Offshore entities are used to obtain financial privacy, maximum asset protection, and own domestic LLCs for Onshore Protection for U.S. owned assets.

You should also memorize the Six Lines of Defense and use them in your daily life:

1. Avoid unnecessary risks and always limit your liability
2. Maintain a reasonable amount of insurance coverage
3. Employ financial privacy countermeasures
4. Protect property held in your name with exemptions and encumbrances
5. Use entities and trusts to control your assets without owning them whenever possible
6. Employ pre-litigation jurisdictional planning in your asset protection strategy.

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Whenever devising a strategy you must give practical consideration to whether the strategy will be effective. Every asset protection strategy should address certain needs that most people have in common that must be fulfilled for the design to be functional. We refer to these as the Six Principles of Efficiency:

1. Containment
2. Segregation
3. Integration
4. Economy
5. Deterrence
6. Flexibility

Always remember that the transfer of assets from you to an entity must be for FMV and must occur when you are financially solvent and have no known significant claims against you by any of your creditors. A claim must be significant to be problematic. For example: Suppose you have a net worth of $5,000,000 and you have a disputed claim of $2000.00 with a vendor. This debt is of no consequence because you have enough assets to easily pay the debt. A claim is significant if it so large you might not have enough assets to pay the debt. Any transfer of assets from you to an entity or trust should also be for FMV.

Another concern about solvency tests is that they only give consideration to domestic assets. If you are going to move assets offshore, you must leave sufficient assets on shore to remain solvent. The various net worth tests employed by accountants do not take offshore assets into consideration. Only domestic assets will be used to determine if you remain solvent after the transfer of assets offshore. You must remain solvent after you transfer assets offshore. Otherwise, the transfer may be challenged as a fraudulent transfer by your creditors.

The Characteristics of a Wise Person

Originally, I was going to call this book 'Only the Smart Survive' but, after a little reflection about the title, I realized this was not true. Why? Well there once was a charismatic genius who accumulated substantial wealth, but lost it all because he had no asset protection. On the other hand, I know a young man who, although he was always a C student, was also very successful. He took the time to protect his personal wealth from unanticipated future financial calamities. Both men knew they needed asset protection, but only one incorporated asset protection into his financial plan.

The lesson of this story is that a smart person is not necessarily a wise person. In fact, you don't have to be "smart" to be wise. Have you ever noticed that it is often the C students who become wealthy business persons and the A students who wind up working for them?

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There is an adage that a 'wise man learns from his mistakes.' I disagree. A wise person learns from the mistakes of others. Wise persons also have foresight. They look before they leap. They set goals and then devise a strategy and plan to achieve those goals. You must set goals because if you don't know where you are going, you will find you are going nowhere fast.

A wise person does not reinvent the wheel. After setting a goal, a wise person looks for a person who has already achieved a similar goal and emulates how he or she achieved that goal. A wise person also looks for the most successful and skillful wheel maker to emulate.

Finally, a wise person has self-discipline. This is necessary, because a goal cannot be achieved if you do not have the self-discipline to follow your strategy and do what you have to do when it needs to be done. It is sort of like auto maintenance. You know that you need to change the oil regularly and that if you do not do it, the engine will be damaged. The knowledge that the oil needs to be changed every 3,000 miles does not do you any good if you do not have the self-discipline to record the mileage when you change the oil, watch the speedometer and take your car into the shop every 3,000 miles.

ACT NOW OR RISK LOSING EVERYTHING!
You do not wait to purchase auto insurance until after you have an accident. Are you aware that you are more likely to be sued than have a traffic accident? You need asset protection and you need it now! Do not wait until an unforeseen financial disaster suddenly ruins your life.

Asset protection is no different. Asset protection should be a part of every financial plan and it must be performed at a time when you are financially solvent and without any debts or credit problems on your horizon. Asset protection is a preventive measure similar to purchasing insurance. It must be obtained before financial disaster strikes. It is a form of rainy day planning to insure that you and your family can survive economic as well as natural disasters. If you do not have asset protection your options are simple: act now or risk losing everything. After you become financially insolvent, receive a demand notice or receive a legal complaint, it may be too late to engage in asset protection. The courts will disregard any movement of funds as a fraudulent transfer. Your assets will be seized and you may be assessed additional damages, costs and fees for engaging in a fraudulent transfer.

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KNOWLEDGE IS NOT POWER!

This is a popular myth. By reading this book you have acquired some basic knowledge with respect to the fundamentals of asset protection. This is kinetic energy that is stored in your mind. It is good that you have this knowledge, but that kinetic energy does you no good so long as it is simply stored in your mind. Although potentially powerful, it is inert and useless until you take action.

A smart person acquires knowledge, but a wise person uses knowledge to obtain power by taking affirmative action in the real world to improve his or her life. If you use your knowledge to design and implement an asset protection plan, then you will have converted your kinetic knowledge into a powerful arrangement of your legal and financial affairs that will protect your assets. This is real power.

The equation Knowledge Power is false. The correct equation is knowledge affirmative action power. You now have the knowledge you need. You have been prepared by learning from the mistakes of others. Whether you achieve wisdom is up to you. Knowledge absent practical application is worthless. If you are financially solvent, you know that you must act now to protect your assets.

Take action right now! Otherwise, you risk losing everything!

-Only the Wise Survive.

- P. Thomas Adams, Jr., JD, Esq.

For further exciting and new information pertaining to Asset Protection Strategies please sign up for the free “Sentinel Newsletter” at:

http://www.AssetProtectionRevealed.com

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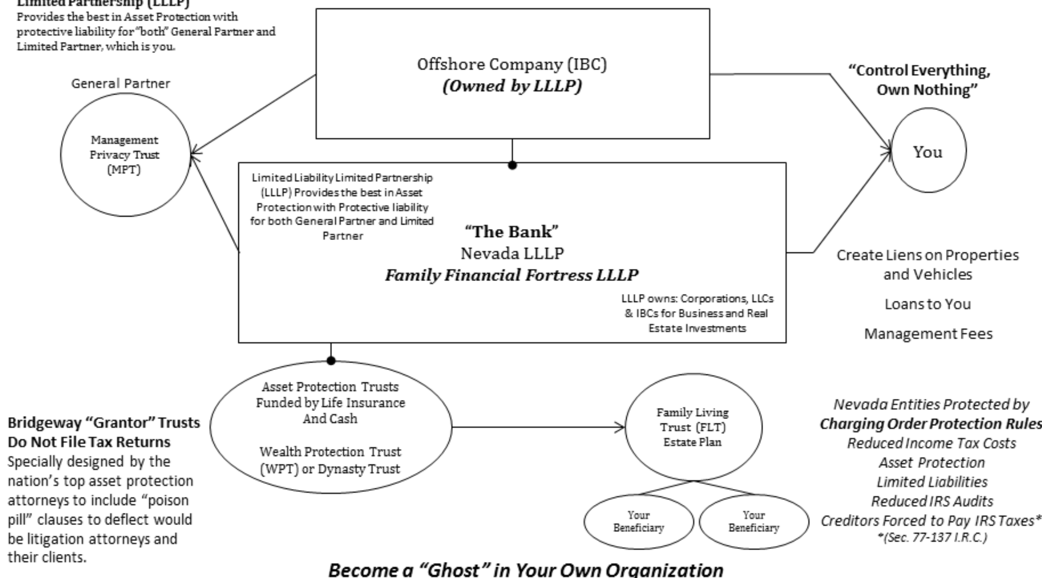
Bridgeway Asset Protection Plan ™

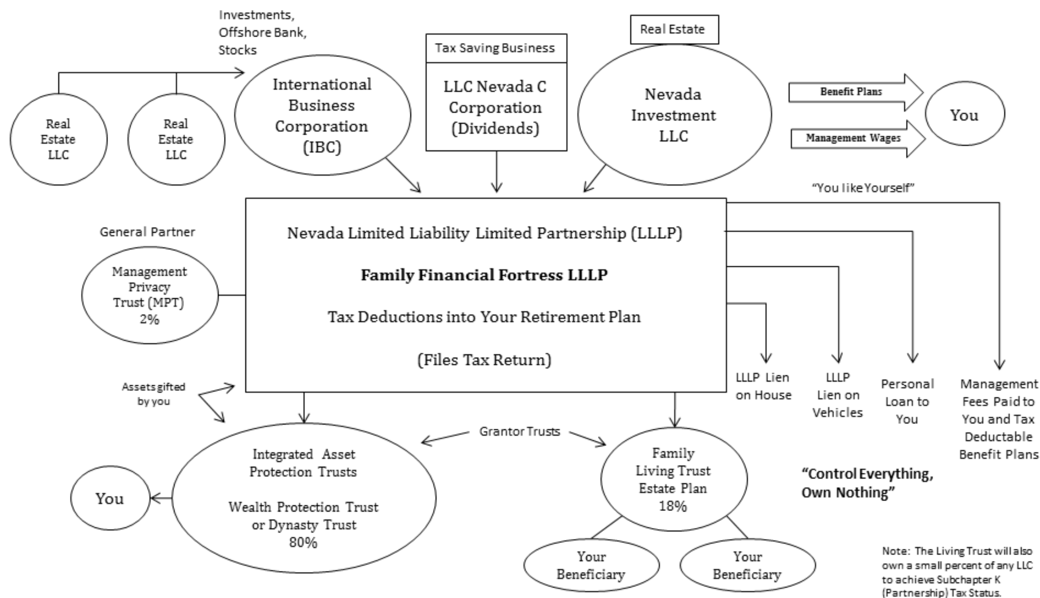


Become a "Ghost" in Your Own Organization

The following steps provide you with the best asset protection:

Step 1: List Assets (jewelry, art work, furniture, real estate, stocks, investment portfolios, et cetera)
Step 2: Limited Liability Limited Partnership (LLLP) – protects your investments. You and your family are kept private and protected by charging order protection and privacy rules.
Step 3: Management Privacy Trust (MPT) – gives you privacy because this trust is not on public record. When used as the General Partner, your personal name does not appear and allows you to control by directing the trustee.
Step 4: Wealth Protection Trust (WPT) or Dynasty Trust (DT) – Owns the family Limited Liability Limited Partnership (LLLP) units and its assets. Directs the wealth of the beneficiaries to the family living trust.
Step 5: Family Living Trusts (FLT) – contains a Living Will (medical) and Last Will & Testament, Guardianship, Durable Powers of Attorney, Letter of Wishes, Non-Contestability & Pour Over Will Provisions to finally secure your family's estate for your spouse, children and grandchildren.
Step6: Encumber (lien up) Assets through a Limited Liability Limited Partnership
Step 7: Life Tenancy Trust (LTT) & Personal Property Trust (PPT) – protect your right to permanent interest in your home and to your furnishings and personal assets.
Step 8: Nevada Limited Liability Company (LLC) – Allows you to protect cash and fixed assets and your real estate.
Step 9: International Business Corporation (IBC) – move your large nest-egg beyond the reach of US courts.
Step 10: Transfer your assets – and begin to sleep soundly, knowing that your family is protected.

Tax & Cash Flow



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"Exploded Comprehensive Version"

Bridgeway Comprehensive Multiple Tax Savings and Asset Protection & Estate Planning Privacy Structure

2nd Tax Savings Corporation
Nevada Marketing Consulting 'C' Corporation
Nominee Shareholder
Consulting Payments
Tax Savings Corporation
Nevada Operating 'C' Corporation
Consulting Payments
Nevada Consulting 'S' Corporation (Sub 'S' Tax Savings Corporation)
Wages to You
Tax free dividends to you
Monthly Lease Payments
Directors Fees
You
2nd Tax Savings Leasing Company
Nevada Leasing LLC (equipment and buildings)
Income to You
No Social Security Taxes
No Self Employment Taxes
Nevis LLC
Offshore Investments
Nevada Investment LLC
Real Estate
General Partner
Management Privacy Trust (MPT) 2%
House
Life Tenancy Trust (LTT/LED)
Furnishings
Personal Property Trust PPT
Limited Liability Limited Partnership (LLLP) Provides the best in Asset Protection with Protective liability for both General Partner and Limited Partner
"The Bank"
Nevada LLLP
Family Financial Fortress LLLP
LLLP owns: Corporations, LLCs & IBCs for Business and Real Estate Investments
LLLP Lien on House
LLLP Lien on Vehicles
Personal Loan to You
Management Fees Paid to You
Asset Protection Trusts Funded by Life Insurance Wealth Protection Trust (WPT) or Dynasty Trust (DT) 98%
Your Beneficiaries
In this example: Living Trust is not attached
Family Living Trust (FLT) 18% Estate Plan
Your Beneficiary
Your Beneficiary

"Control Everything, Own Nothing"

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GLOSSARY

Absent: Without

ACLU: America Civil Liberties Union

Administrative Law: the body of rules and principles that governs the duties and operations of federal or state administrative agencies, as commissions and boards.

Alter Ego: 'Other Self', a person or legal entity who is legally the same as, and interchangeable with, another.

APT: Asset Protection Trust

Arrearage: An amount on a loan, cumulative preferred share, or any credit instrument that is overdue.

Articles of Incorporation: A formal document that creates a corporation; a charter.

Articles of Organization: Articles of Organization are like a corporation's Articles of Incorporation or a partnership's Certificate of Limited Partnership; they are filed with the Secretary of State's office: They usually include: the name of the LLC, the principal place of business, the date the LLC will be dissolved, if the business is not perpetual, the appointment of a registered agent for service of process.

BFC: Bridgeway Financial Corporation

Board of Directors: Group, elected by shareholders, to oversee the day to day operations of the corporation.

BSA: Bank Secrecy Act of 1970

Capital Stock: The outstanding shares of a joint-stock company considered as an aggregate.

CCPA: Consumer Credit Protection Act

C Corporation: A corporation that tax on its own income under the general rules of subchapter C of the Internal Revenue Code.

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CD: Certificate of Deposit

CFC: Controlled Foreign Corporation

CFR: Code of Federal Regulations

Chapter 7 Bankruptcy: A complete liquidation where all the debtor's non-exempt assets are distributed to creditors and the debtor immerges free of the unsecured debts discharged through the bankruptcy.

Chapter 11 Bankruptcy: The debtor usually remains in possession of his assets and continues to operate any business, subject to the oversight of the court and the creditors committee. Typically for corporations who are behind on suppliers' and/or creditors' payments and/or taxes.

Chapter 13 Bankruptcy: A repayment plan for individuals with regular income and unsecured debt less than $290,525 and secured debt less than $871,550. The debtor keeps his or her property and makes regular payments to a trustee out of future income over about a 3 to 5 year period.

Charter: A formal document that creates a corporation; Articles of Incorporation.

Civil Forfeiture: The purpose of civil forfeiture is to confiscate property used in violation of the law or acquired from the proceeds of criminal activity.

CLE: Continuing Legal Education

Closely Held Company: A company whose shares are held mostly by a small group of investors, management, founders, and/or family members.

CMIR: Currency or Monetary Instruments

Consumer Credit: Consumer credit accounts are secured by products purchased with the credit cards. Furniture and expensive household goods such as washers, dryers, refrigerators and home entertainment equipment are collateral until the debt on the card is paid off.

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Common Law: The unwritten law, esp. of England, based on custom or court decision, as distinct from statute law.

Common Stock: All capital stock except for preferred stock.

Contingent Interest: An interest that is contingent upon something to happen. For example, your interest as a plaintiff in an auto injury law suit is a contingent interest because it does not exist unless you win the lawsuit and obtain damages. A lotto ticket is a contingent interest as is a healthy twenty two year old person's interest in social security. (It is contingent upon their living old enough to collect).

COP: Charging Order Protection

Corporation: A body formed and authorized by law to act as a single person, although constituted by one or more persons, and legally endowed with various right and duties, including the capacity of succession.

Correspondent Account: Any US bank that has an account reserved for a foreign bank used to receive deposits, make payments or disbursements or handles other transactions for or related to a foreign bank.

Creditor: A person (or institution) that extends credit by giving permission to borrow money if he or she promises to pay it back at a later date. Creditors can be classified into either personal or real. Those who have lent money to friends or family are personal creditors. Real creditors (i.e. a bank or finance company) have legal contracts with the borrower granting the lender the right to claim any of the debtor's real assets (e.g. real estate or car) if he or she fails to pay back the loan.

CRT: Charitable Remainder Trust

Deed of Trust: S written instrument legally conveying property to a trustee, such as a bank, often for the purpose of securing a mortgage or promissory note.

Default Judgment: If the defendant fails to respond, the plaintiff can file a motion for default judgment.

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Default Provision: If the members do not specify their business relationship with each other in the operating agreement, the rules of the state in which the LLC was formed apply by default. Provisions imposed on the members are known as 'default provisions'. In some states, the statutes include default provisions that members deem so important they do not allow them to be changed even by agreement. These are known as 'bulletproof provisions' and 'bulletproof acts'.

Defendant: People, or company, et cetera, against whom a claim or charge is brought in a court (as opposed to plaintiff).

Deposition: A statement under oath, taken down in writing, to be used in court in place of the spoken testimony of the witness.

Deprivation: Dispossession; loss

Director: A person elected by the shareholders to oversee the management of a corporation.

Discharged: To relieve of a charge or load; unload: to discharge a ship

Discovery: Compulsory disclosure, as of facts or documents.

Double Taxation: Taxation by the federal government of corporate earnings once at the corporate level and again at the shareholder level upon distribution of dividends.

Draconian: Rigorous; unusually severe or cruel

EEOC: Equal Employment Opportunity Commission

EIN: Employer Identification Number

Encumbrance: A burden on either title to property or on the property itself (e.g. a mortgage or lien).

Entireties: The state of being entire; completeness

EPLI: Employer practices liability insurance

Equity Stripping: To encumber property by using it as collateral for legitimate debt to lower the owner's equity in the property.

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ERISA: Federal Employee Retirement Income Security Act

FinCEN: Financial Crimes Enforcement Center

FIUB: The Financial Intelligence Unit of Belize

FISA: Foreign Intelligence Surveillance Act

FLP: Family Limited Partnership

FLT: Family Living Trust

Foreign Corporation: A corporation carrying on business in any state other than the state of its creation; in all such states, it is 'foreign'

FPP: Family Protection Plan

Fraud: deceit, trickery, sharp practice, or breach of confidence, perpetrated for profit or to gain some unfair or dishonest advantage.

Fraudulent Conveyance: A contractual misrepresentation of the nature, quality or existence of transferred assets. Fraudulent Transfer: A transfer made with the intent to defraud, hinder or delay a creditor

FSCB: Financial Services Commission of Belize

FTC: Foreign Trade Commission

Garnishment: A means of collecting a monetary judgment against a defendant by ordering a third party (the garnishee) to pay money, otherwise owed to the defendant, directly to the plaintiff. In the case of collecting for taxes, the law of a jurisdiction may allow for collection without a judgment or other court order.

General Partnership: A partnership in which there are no limited partners, and each partner has managerial power and untitled liability for partnership debts.

Grantor: One that makes a grant: as a: one that conveys property or a right in property by deed b: Settlor or Trustor

GSTT: Generation Skipping Transfer Tax

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HELOC: Home Equity Line of Credit

HEWS: health, education, welfare and/or support benefits

IBC: International Business Company

ILIT: Irrevocable Life Insurance Trust

IMPUTED: The US Member's share of an IBC's annual profits is taxable income even if the profits are never distributed to the US member.

Inside liability: pertains to potential litigation arising from the ownership, maintenance or operation of an asset. For example, a rental property may be subject to suits for personal injuries or landlord tenant actions. A business may be subject to lawsuits filed by employees, vendors or customers. Shareholders cannot be held personally liable for corporate debts unless the creditors pierce the corporate veil. This is also why assets are divided among several different business entities to compartmentalize liabilities

Involuntary Debt: Involuntary debt generally arises from litigation or government assessments or sanctions.

IPRT: Irrevocable Personal Residence Trust

Irrevocable: Unchangeable

IRC: Internal Revenue Code

IRT: Irrevocable Residential Trust

Judgment-Proof: Having few, if any, assets that can be reached by a judgment creditor; thus, persons against whom money judgments are of no practical effect.

LED: Life Estate Deed

Limited Liability: Liability (as a stockholder) limited by statute or treaty.

LLC: Limited Liability Company

LLLP: Limited Liability Limited Partnership

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LTT: Life Tenancy Trust

Manager: All members of an LLC can manage the business; management can also be delegated to fewer than all members or to a single member. A manager can be an individual, a partnership, a corporation, or even another LLC. Managers may appoint officers but are not required to do so. The Articles of Organization would specify the scope of the manager's authority, if any.

Medicaid: A joint federal and state program that helps low-income individuals or families pay for the costs associated with long-term medical and custodial care provided they qualify. Although largely funded by the federal government, Medicaid is run by the state where coverage may vary.

Membership Ownership: LLC's are owned by members, which are like shareholders in a corporation. Unlike S Corporations, which are limited to 75 shareholders, the LLC can have an unlimited amount of members. Some states even allow one member to own the LLC.

Membership Interest: A member's ownership interest in the LLC is referred to as a 'membership'. It is like stock in a corporation.

MLM: Multi-Level Marketing

MMI: Maximum Medical Improvement

Motion for summary Judgment: NAPT: Nevada Asset Protection Trust

NAACP: National Association for the Advancement of Colored People.

Net worth essentially means what remains after you subtract all of your debt from all of your assets. However, it is not that simple and there are different ways of calculating net worth. Consequently, at times when it is important to verify whether you are solvent, have your accountant calculates your net worth for you and documents it in writing. Keep these records available in case you may need them in the future.

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Nolo Contendre: A statement in a criminal trial where the defendant declines to refute the evidence presented but agrees to the charges presented in the complaint

Notice of lis pendends: Foreclosure notice

NRS: Nevada Revised Statute

NTSC: Nevada Tax Savings Corporation

OAPT is a term of art of our own creation. Technically speaking pursuant to IRS analysis, trusts are either domestic or foreign. Hence, with respect to tax matters an OAPT is a Foreign Grantor Trust

OCC: Office of the Comptroller of the Currency

Operating Agreement: The operating agreement establishes the rules for the operations of the LLC. It is similar to a corporation's bylaws or a partnership agreement. The operating agreement can control such things as profit and loss and how management powers are divided up amongst members or managers. An operating agreement is essential because things always go smoother when the rules for potential 'issues' are put in writing before the LLC gets started. Unless specifically stated in the original agreement itself, the operating agreement can only be amended with the written consent of all members.

Par Value Stock: Stock for which a specified dollar amount is indicated on the share certificate; the par value must be set out in the charter.

Partnership: The association of two or more persons who have expressly or implicitly agreed to carry on, as co-owners, a business for profit.

Passive Income: Income to certain taxpayers (including S corporation shareholders) that is subject to the passive activity loss (PAL) rules because the taxpayer does not materially participate in the business activity producing the income. This generally includes receipts from royalties, rents, dividends,

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interest, annuities, and the sale and exchange of stock and securities.

Perfect: Complete

Personal Property: Is private property that is moveable, as opposed to real estate or real estate.

Piercing the corporate veil: To disregard the corporate entity and thus hold the shareholders liable for corporate actions; this is possible under circumstances involving fraud and in many states, if corporate formalities are not maintained.

PIP: Personal Injury Protection

PJP: Prelitigation Jurisdictional Planning

PMCP: Perth Mint Certificate Program

PPT: Personal Property Trust

Preferred Stock: Stock guaranteed priority, by a corporation's charter, over common stock in the payment of dividends and usually in the distribution of assets.

Professional Corporation: A corporation created by a professional or professionals in order to gain corporate tax advantages for traditional partnership or proprietary activities.

QPRT: Qualified Principal Residence Trust

RCW: Revised Code of Washington

Real Estate: Refers to land and the improvements made by human efforts—buildings, machinery, the acquisition of various property rights, and the like. It is also termed realty, real property, and immovable property.

Resident Agent: A person or entity authorized to receive service of process and other official papers for a corporation.

RICO: Racketeer Influenced and Corrupt Organizations Act

Rule 230: A Rule 230 opinion requires a written opinion citing all the facts and relevant authority with a conclusion on a 'more

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reasonable than not' basis that the tax shelter discussed is lawful.

SAR: Suspicious Activities Report

S Corporation: A corporation that is eligible and elects to be taxed under Subchapter S of the Internal Revenue Code. Basically, shareholders pay tax on the corporation's income by reporting their pro-rated shares of pass-through items on their own individual tax returns.

SEC: Securities and Exchange Commission

Segregated: restricted to one group

Shareholder: An owner of a share of a corporation through the ownership of its stock.

Six Principles of Efficiency: Containment, Segregation, Integration, Economy, Deterrence, Flexibility

SMLLC: Single Member Limited Liability Company

Sole Proprietorship: The simplest form of business in which a sole owner and his or her business are not legally distinct entities; the owner is personally liable for business debts.

SSN: Social Security Number

Stock: A share; also, the physical evidence of share ownership, the share certificate; also, the aggregate of corporate shares.

Stock Certificate: An instrument evidencing ownership of one or more shares of the capital stock of a corporation.

Subpart F Income: The definition of Subpart F income is very broad. It does include portfolio income and most kinds of passive income and investments.

Subrogation: Refers to claims by insurance companies, government agencies, and health care providers seeking reimbursement for the expenses they paid on your behalf from the settlement you obtain.

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TIN: Taxpayer Identification Number

Tort: Wrongful conduct under the common law. It includes claims such as negligence, personal injury, auto accidents, wrongful death, defamation, emotional distress, outrage, et cetera.

Transfer: every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the debtor's equity of redemption.

UFCA: Uniform Fraudulent Conveyance Act

UFTA: Uniform Fraudulent Transfer Act

UIM: Uninsured/Underinsured Motorist Coverage

ULLCA: Uniform Limited Liability Company Act

ULPA: Uniform Limited Partnership Act

Underinsured means that the party that is at fault carried the minimum amount required by law or the policy otherwise is overwhelmed by the extent of your damages. For example, perhaps you have not reached maximum medical recovery and your medical expenses are already $500,000 and the guy that hit you has a policy limit of $25,000. He is underinsured.

Unity of Interest: each party has an equal interest in the property

UPC: Uniform Probate Code

UTC: Uniform Trust Code

Voluntary Debt: Credit cards, mortgages, leases, loans, promissory notes and contracts implied, oral and written

WPT: Wealth Protection Trust

Writ of Attachment: After obtaining a judgment, a creditor may seek a writ of attachment to seize the debtor’s property and/or

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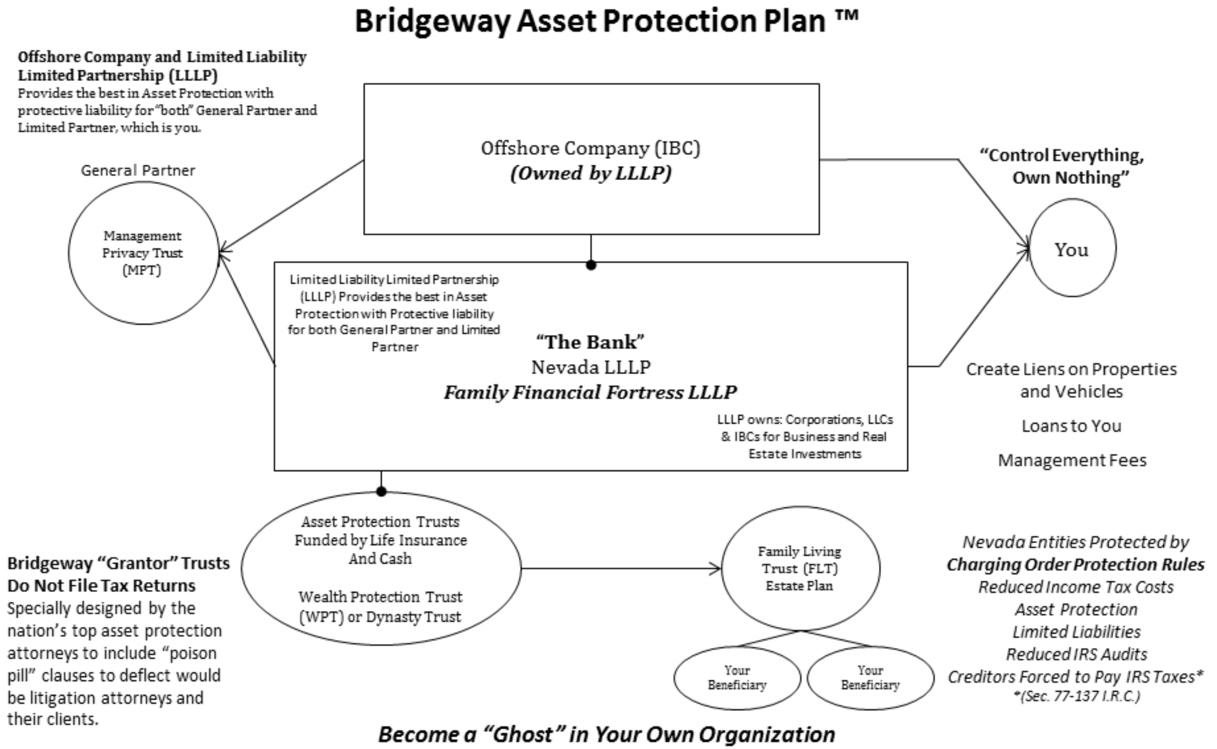
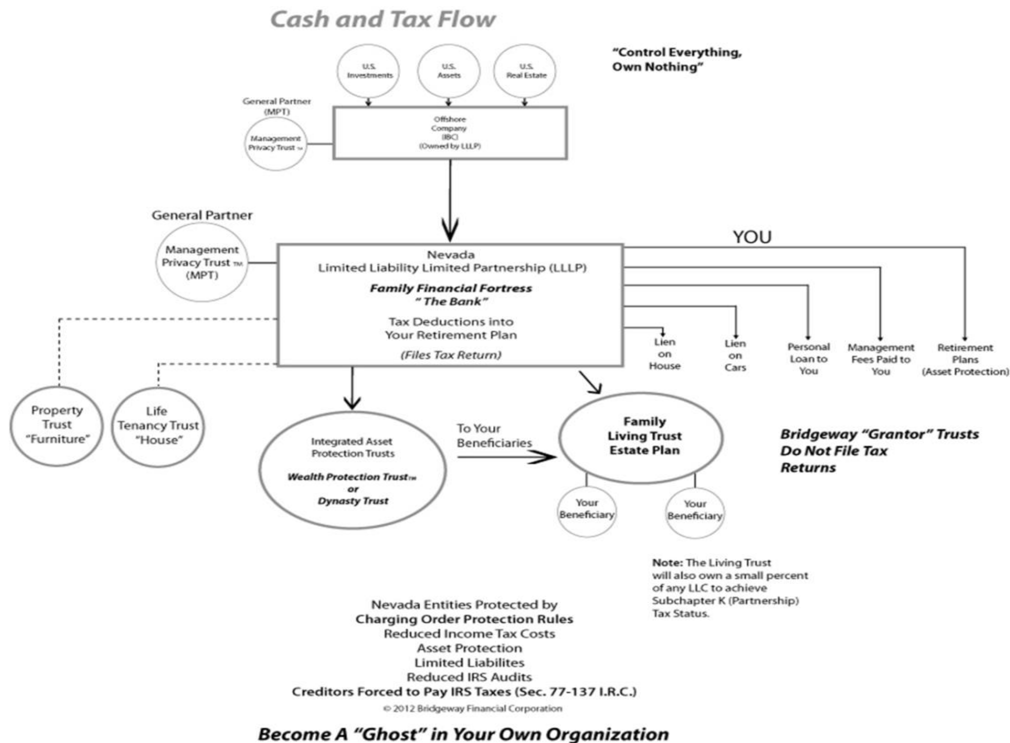
sell it at a public auction. Notice and a hearing are generally required to obtain a writ of attachment





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END NOTES

[1] Uninsured motorist coverage also covers any situation where the person at fault is underinsured and does not have enough coverage to “make you whole” financially for damages you received as a result of your injury.

[2] Civil proceedings and post judgment collections procedure applies primarily to private parties such as individual persons and businesses. It does not necessarily apply to government agencies which operate under administrative law, not civil law.

[3] *Olympic Forest Products Inc. v. Chaussee Corp*., 82 Wash. 2d 418, 511 P.2d 1002 (Wash.1973) See: *Fuentes v. Shevin* and *Parham v. Cortese*, 407 US 67, 32 L. Ed. 2d 556, 92 S. Ct. 1983 (1972).

[4] RCW 60.04.181(3) See also: *Lumberman's of Washington v. Barnhardt*, 89 Wn. App. 283, 286, 949 P.2d 382 (1997).

[5] In Washington State a lien for a debt for unpaid labor, services, materials or equipment expires after eight months unless the creditor initiates a civil foreclosure action. RCW 60.04.141

[6] *Sniadach v. Family Finance Corp. of Bay View*, 395 US 337, 89 S. Ct. 1820, 23 L.Ed.2d 349 (1969); *Fuentes v. Shevin*, 407 US 67, 92 S. Ct. 1983, 32 L.Ed.2d 556 (1972); *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 US 601, 95 S. Ct. 719, 42 L.Ed.2d 751 (1975); *Mitchell v. W. T. Grant Co*., 416 US 600, 94 S. Ct. 1895, 40 L.Ed.2d 406 (1974).

[7] *Mullane v. Hanover Central Bank & Trust*, 339 US 306, 313, 70 S. Ct. 652, 94 L.Ed.2d 865 (1950)

[8] *Tri-State Development, Ltd. v. Johnston*, 160 F.3d 528 (9th Cir. 1998)

[9] RCW 60.04.081(4)

[10] RCW 60.04.141

[11] RCW 60.04.091

[12] After the federal forfeiture laws were enacted in 1985, by 1991 the total value of federal asset seizures was over $2.4 billion, including over $643 million for the Department of Justice. See *US v. $12,390*, 956 F.2d 801, 807 (8th Cir. 1992) (Beam, J., dissenting); Department of Justice, Annual Report of the Department of Justice Asset Forfeiture Program 1991 (foreword of Attorney General William Barr).

[13] *United States v. $12,390*, 956 F.2d 801 (8th Cir. 1992)

[14] *"History and Purpose of Arizona Forfeiture under A.R.S. sections 13-4301,"* at 1 (1990)

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[15] *State v. City Construction Development, Inc.,* Superior Court of Hudson County, New Jersey, docket no. W-0021126-89

[16] *State v. Real Property known as 451 Rutherford Avenue*, Superior Court of Sussex County, New Jersey, docket no. S.S.X-L-120-91

[17] This information was acquired from a PUCO brochure: http://www.PUCO.ohio.gov

[18] This information can be found in the congressional records and is based upon the sworn testimony of James Hoyle before Subcommittee on Legislation and National Security of the House Committee on Government Operations, Sept. 30, 1992.

[19] An ERISA plan that provides benefits only for the owners of the business is not exempt. In order for an ERISA plan to be exempt from Bankruptcy the plan must include one employee other than the owners in the pension plan. *See:* Yates v. Hendon, 541 US 124, S.Ct. 1330 (2004).

[20] 11 USC. §§ 522

[21] §§ 522(d)(12) (the pure federal exemption scheme) and §§ 522(b)(3)(C) (state exemptions plus specified federal exemptions)

[22])[22]. *See:* Rousey v. Jacoway, 125 S. Ct. 1561, 544 US 320, 161 L.Ed.2d 563 (US 04/04/2005)

[23] RCW 6.15.010,

[24] In 2004 there were 1,618,385 voluntary bankruptcies and 602 involuntary bankruptcies according to the Administrative Office of the US Courts.

[25] *See*: 11 USC. section 522(b)(3)(A).

[26] *See:* UFTA § 1(2)(i) and *Mehrtash v. ATA Mehrtash*, 93 Cal. App. 4th 75, 112 Cal. Rptr. 2d 802 (4th Dist. 2001); *Epperson v. Entertainment Express,* Inc., 338 F. Supp. 2d 328, 343 (D. Conn. 2004).

[27] 11 USC §§ 101(5), 101(10).

[28] UFTA §§ 1(3)

29 11 USCA § 101(16)

[30] In re Blatstein, 192 F3d 88, 97 (3d Cir. 1999)

[31] § 6, Comment (1) (UFTA § 1(12) a

[32] UFTA § 1(11)

[33] *Linden v. US*, 254 F2d 560, 568 (4th Cir. 1958)

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[34] *US v. Murray*, 83 AFTR2d 99-1665 (D. Mass.), aff'd on reconsideration, 84 AFTR2d 99-5529 (D. Mass. 1999), aff'd on other issues, 217 F3d 59 (1st Cir. 2000).

[35] *US v. Anna Patej*, 90 AFTR2d 2002-7235 (ED Mich. 2002)

[36] See: *In re Newman,* 15 BR 658 (SDNY 1981)

[37] *In re Spatz*, 209 BR 907, 930 (Bankr. ND Ill. 1997); *Scholes v. Lehmann*, 56 F3d 750, 757 (7th Cir. 1995)

[38] *Kelly v. Armstrong*, 206 F3d 794, 799 (8th Cir. 2000).

[39] *BFP v. Resolution Trust Corp*., 114 S. Ct. 1757 (1994).

[40] *In re Knox Kreations, Inc.*, 474 F. Supp. 567, 571 (ED Tenn. 1979)

[41] UFTA § 2(b).

[42] *In re Schick Oil & Gas, Inc.*, 35 BR 282, 284 (Bankr. WD Okla. 1983) ; *Furniture Mfrs. Sales, Inc. v. Deamer, Utah*, 680 P2d 398 (Utah 1984)

[43] Stratton v. Edwards, 174 Mass. 374, 378, 54 N.E. 886, 887 (Mass.1899).

[44] Schreyer v. Scott, 134 US 405, 414-415, 10 S.Ct. 579, 582 (1890).

[45] M1 is an abbreviation for one million in assets. M1+ status indicates persons who have attained their first million in assets.

[46] Some states hold the owners of vehicles, boats and/or planes liable for the use by third parties if the use is consensual. However, many states do not hold an owner liable for use by a third party absent negligent entrustment.

[47] This is done to so that the signature is proof for the judge to review to insure that the plaintiff is really naïve enough to voluntarily waive PIP coverage, and to insure the judge that the insurance company is not taking advantage of the insured.

[48] The Bank Secrecy Act has been codified into the Code of Federal Regulations (the ‘CFR’) at Title 31 Volume 1.

[49] 31 CFC 103.18(a)(1)

[50] 31 CFR 103.24(a).

[51] IRS forms can be located on the Internet at *http://www.irs.gov*

[52] 31 CFR 103.33(e)(1)(i)

[53]31 CFR 103.33

[54] The definition of Subpart F income is very broad. It does include portfolio income and most kinds of passive income and investments.

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[55] Mejia v. Erwin, 45 Wash. App. 700, 704, 726 P.2d 1032 (1986).

[56] Cameron v. Downs, 32 Wash. App. 875, 880-81, 650 P.2d 260 (1982)

[57] Simon Service v. Mitchell, 73 Nev. 9, 307 P.2d 110 (Nev., 1957)

[58] Fenimore v. Donald M. Drake Constr. Co., 87 Wash. 2d 85, 94, 549 P.2d 483 (1976); Seattle Aerie 1 v. Commissioner, 23 Wash. 2d 167, 171-72, 160 P.2d 614 (1945); W. Prosser, Torts § 468 (4th ed. 1971).

[59] See: In re Philip Schuster, Bankruptcy Case No. 00-58526 (NJ 1995)

[60] 11 USC. 541(c)(2)

[61] (15 USC § 1673)

[62] RCW 6.27.150.

[63] 662 P.2d 1332 (Nev. 1983)

[64] NRS 78.138: Directors and Officers: Exercise of powers; performance of duties; presumptions and considerations; liability to corporation and shareholders.

[65] (78.037)

[66] In some instances, the only way to protect the home is to place it in the LLLP or LP. When this occurs, you must rent the home from the LLLP/LP and make monthly payments at FMV (plus extra for insurance and other costs). There should be a standard written rental agreement and a security deposit. In addition, rental payments should be made to the LLLP/LP in a timely fashion. The property must be transferred into the LLLP/LP's name also.

[67] NRS 86.401(1)

[68] RCW 25.15.255

[69] http://www.cof.org/

[70] http://nonprofit.about.com/od/glossary/g/famfound.htm

[71] http://www.cof.org/files/Documents/Pressroom/Presskits/ffsff99.pdf

[72] http://en.wikipedia.org/wiki/Foundation_(nonprofit)

[73] http://www.cof.org/whoweserve/templates/311.cfm?ItemNumber=15753&navItemNumber=14851

[74] http://www.cof.org/whoweserve/templates/311.cfm?ItemNumber=15753&navItemNumber=14851

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[75] http://legal-dictionary.thefreedictionary.com/Non-profit+organization

[76] The grantor cannot be the sole trustee, the Settlor cannot have the unilateral power to make distributions to himself or herself (or for his or her own benefit), and the distributions from the NAPT cannot be mandatory, but must be in the trustee's discretion.

[77] Failure to make periodic rent and lease payments and to keep accurate records of the transactions will result in a finding of constructive fraud and the trust will be set aside. It is imperative, that the monthly rental and lease payments methodically be paid on time.

[78] See: IRS Private Letter Rulings 199916030 and 9723030. IRC sec. 1.671

[79] Sec. 1.671-3(a)

[80] See: IRC Sec. 676(a).

[81] Medical and educational expenses are exempt from the GST tax. See 26 USC Sec. 2611(b)(l).

[82] First Federal v. Pogue, 389 N.E. 2d 652 (1979)

[83] Chicago Federal Savings and Loan v. Cacciatore, 185 NE2d 670, 25 Ill2d 535 (1962).

[84] The Trust itself will be free of US tax on income earned outside the US and also on most types of investment income earned in the US (including interest and capital gain on stocks, bonds, and commodities).

[85] Continued tax deferral also protects Beneficiaries from an IRS interest charge that otherwise would be due on distributions of taxable income accumulated by the Trust after the Grantor's lifetime.

[86] You hold these powers as *Grantor.* Your successor as Protector won't have these powers.

[87] During your lifetime, any distribution to a Beneficiary other than you or your spouse is potentially subject to gift tax – but only to the same extent, and with the same credits and exemptions, as if you had made the gift directly.

[88] If the deceased Life Tenant Owner(s) has assets with a value of more than the Estate tax value, an Estate tax return will have to be filed and Estate taxes paid before title to the real estate would be clear. Whether or not the real estate is owned in Life Estate ownership form has no effect whatsoever on whether or not Estate taxes must be filed.

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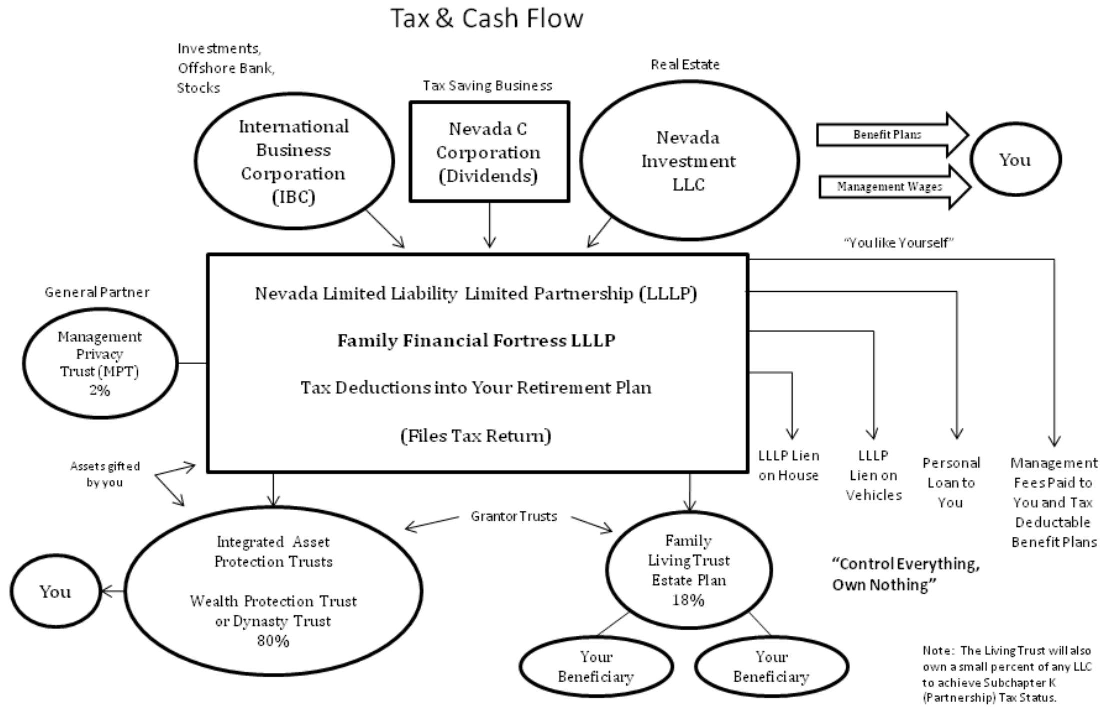

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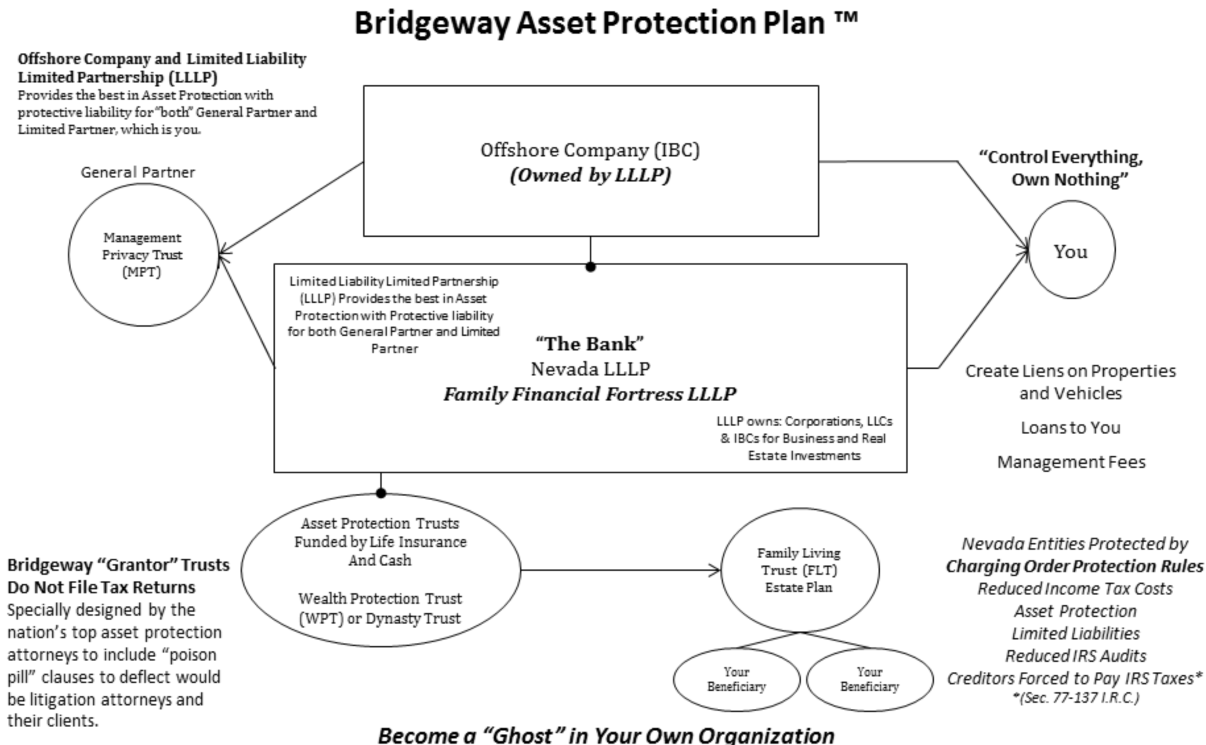

The following steps provide you with the best asset protection:

Step 1: List Assets (jewelry, art work, furniture, real estate, stocks, investment portfolios, et cetera)

Step 2: Limited Liability Limited Partnership (LLLP) – protects your investments. You and your family are kept private and protected by charging order protection and privacy rules.

Step 3: Management Privacy Trust (MPT) – gives you privacy because this trust is not on public record. When used as the General Partner, your personal name does not appear and allows you to control by directing the trustee.

Step 4: Wealth Protection Trust (WPT) or Dynasty Trust (DT) – Owns the family Limited Liability Limited Partnership (LLLP) units and its assets. Directs the wealth of the beneficiaries to the family living trust.

Step 5: Family Living Trusts (FLT) – contains a Living Will (medical) and Last Will & Testament, Guardianship, Durable Powers of Attorney, Letter of Wishes, Non-Contestability & Pour Over Will Provisions to finally secure your family's estate for your spouse, children and grandchildren.

Step6: Encumber (lien up) Assets through a Limited Liability Limited Partnership

Step 7: Life Tenancy Trust (LTT) & Personal Property Trust (PPT) – protect your right to permanent interest in your home and to your furnishings and personal assets.

Step 8: Nevada Limited Liability Company (LLC) – Allows you to protect cash and fixed assets and your real estate.

Step 9: International Business Corporation (IBC) – move your large nest-egg beyond the reach of US courts.

Step 10: Transfer your assets – and begin to sleep soundly, knowing that your family is protected.

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