



By Robert Lambert, JD LLM

This 10 Session Course is designed to give the reader a clear understanding of Asset-Protection and the technology behind it. Rob Lambert gives a well rounded course that will educate professionals and the lay person alike; it encapsulates the rules and regulations for freedom of financial worry. There are also plenty of examples of the traps and scams that are to be avoided. We are positive that once you have completed this course you will be educated on safe, legal and secure methodologies of implementing a solid Asset-Protection-Plan.

A note from Rob

*This course is really meant to give you the tools to help your protect what matters most. Asset-Protection is really a concept and a way of life. Much like taking care of your family or making sure your maintain good health, Asset-Protection should be a life approach, with daily steps, even if they are only baby steps to help you live without being in constant fear of the "professional takers." Our goal is help you to be able to rest easy, with the full knowledge that your life's work will not be at risk.*

# 10 Session Asset Protection Course



Dear Valued Customer,

Thank you for purchasing the 10 Session Course.

As mentioned above, this Asset-Protection-Course is designed to give the reader a clear understanding of Asset-Protection and the technology behind it. This course is considered by many to be the standard and the foundation of a solid Plan. This is one of Rob's many book and courses on the subject of Asset-Protection. If you enjoy this course you may want to look at the book, Asset Protection in a Nutshell. The book is an in depth look at the subject of Asset Protection. It is written for the professional as well as the lay person. We also offer many books, eBooks, and educational modules regarding the topic of Wealth Preservation, Asset Protection and Wealth Accumulation.

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# Table of Contents

Lesson 1.....Asset Protection Theory

Lesson 2.....Definition of Terms

Lesson 3.....Rules of Asset Protection

Lesson 4.....Practice and use of your Trust

Lesson 5.....Trusts and Taxes

Lesson 6 .....Types of Trusts

Lesson 7.....Irrevocable Trust

Lesson 8.....Security from the Law

Lesson 9.....The Cuba Clause

Lesson 10.....Jurisdiction Selection.

In addition, a comprehensive Asset-Protection overview is also included.

If you have any questions, email

[clientservices@Trustmakers.com](mailto:clientservices@Trustmakers.com)

This is the first of ten lessons in the Asset Protection 10 Session Course. I would encourage you to save this file in a folder on your computer, or print it out and put it in a binder for future reference.

Make every effort to learn the rules and take control of your life. This Course will reveal simple, legitimate, and legal techniques that will give you the knowledge to keep your assets out of the reach of creditors.

You have already made the most important decision! You have decided to take control of your financial life and do something about keeping your assets out of the hands of the "professional takers."

Okay, let's get started with Lesson One.

#### Asset Protection Dissected and Explained

To understand the subject of Asset Protection and the need for it, we need to understand that there are people on the planet who want to take your money and property away from you. I call them "professional takers." Professional takers can be cons, but they can also be well-trained professionals who are educated and who perform "taking" as a part of their line of work.

The reality is that these professional takers will exploit any chance they get to seize unprotected assets. Our society abuses litigation and it has become a known way to make money. Using our legal system, professionals contrive ways to take unprotected assets from the unsuspecting individual. Anyone can become a victim of these professional takers unless they have taken steps to protect their assets. Everyone is a potential target and no one is immune to these attacks.

This is, in simplest terms, theft. The appropriation of your assets by another individual or entity resembles a "breaking and entering," but these takers are required to challenge the process. The burden of proof is on the plaintiff. If your securitization is sloppy, it is easier to "break and enter" into your assets. It is much easier to get through an open door than a door with a dead bolt. It is not necessary to know everything about the process; all you need to know is what to do to foil the takers by locking the door with a dead bolt.

The first step is to acknowledge that these professional takers exist. This means not positioning yourself in a "bury-your-head-in-the-sand" approach. "It can never happen to me," are the famous last words of the world's once wealthy.

Many successful people believe that knowledge converts into personal power. Congratulations, you now understand that your assets are at risk. Typically, it takes an existing threat to realize that your asset-security plan is not fail-safe. This is too late. There are ways that you can stop the thieves dead in their tracks!

Throughout this seminar, I will teach you how you can frustrate the professional takers by making it too difficult and too expensive for them to take your money. What I will show you is legal, time-tested and it works!

#### **Now that we understand why Asset Protection exists, what is it?**

Simply stated, Asset Protection keeps your valuable assets (business, savings, houses, cars, stock and bonds, IRAs etc.) from ANY creditors, legitimate or otherwise, who are hell-bent on taking them from you.

We encourage you to conduct some research on Asset Protection. You will find a lot of

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conflicting advice. One of the first problems you will encounter is how most providers complicate the definition and the application. Awareness of other problems will surface later as your knowledge increases through this course.

Choosing the applicable technique is ultimately your decision, but a good counselor makes this process more efficient. Techniques apply differently to each asset. Each asset and each liability require a separate analysis.

Typically, you will need to set up your Asset Protection Plan at minimum by using a Kinetic Asset -Protection Trust. This is important. Even though it is an offshore Asset-Protection Trust, your money or property never actually have to leave the United States unless you feel more comfortable having your money abroad.

Your Plan must be set up when the financial seas are calm. I use the term "old-and-cold," which means your Plan has long been established and in force before any attack takes place, or before any creditors become known to you. This is essential to prevent any financial predator from making a valid claim that you have created your Asset-Protection Plan with the intent to commit fraud.

With a properly implemented Asset-Protection Plan, you can normally prevent:

- „ Creditors from reaching your assets, or actually the assets of the trust,
- „ A soon-to-be ex-spouse from taking you to the financial cleaners,
- „ Business partner mistakes from ruining your nest egg,
- „ A disgruntled customer or employee from putting you out of business, and
- „ The government from seizing and keeping your money.

You will also be secure in knowing that you will normally have enough assets after a suit to

- „ Start fresh,
- „ Survive with the lifestyle you are accustomed to,
- „ Spend your money where, when, and how you want to,
- „ Transfer wealth to those you love without the government or creditors touching it, and
- „ Retain complete control over the protected assets.

All Asset-Protection techniques have one thing in common: they each make it more difficult for a creditor to find and/or take your assets.

By implementing a properly crafted Asset Protection Plan, you can legitimately put a huge portion of your assets out of the reach of judgment creditors and retain complete control over those protected assets.

**The Bottom Line: the effect of Asset-Protection Planning is more than safety. This effect results in the destruction of the economic incentive to litigate.**

This is the end of the first lesson. Through these lessons, you will learn the ten governing guidelines to creating bulletproof protection.

END OF LESSON ONE

Lesson	
2	Definition of Terms

Welcome to Lesson 2 of your 10 Session Seminar on Asset Protection. I hope you are excited about what you have read so far.

This lesson is about “**The Substance of Asset Protection**” and the relationship that it has on your other financial endeavors. So let us get to it, shall we?

Asset Protection is a unique field. It is not the same as financial planning or estate planning, but it is an integral part of both. The best understanding of Asset Protection is its concept as the “LIVING” side of estate planning. Asset Protection is a method of organizing your assets and affairs before any threats to those assets surface.

In order to guard yourself against such threats, your assets need to be “switched” from an unprotected type of ownership to a new type of ownership using an Asset-Protection Strategy.

The goal of Asset-Protection Planning is two-fold. At best, it should completely insulate you from losing any of your wealth; at the worst, it is to assist you to withstand a legal storm significantly better than you would have if you had not done Asset-Protection Planning.

For example, say that you have taken steps to set up adequate Asset-Protection Planning. Let’s imagine that you have a legitimate \$1 million judgment against you. (Assume you were liable and deserved to be accountable.) Based on the fact that you had structured an Asset-Protection Plan, the claim settled against is \$100,000.

However, you still are out of pocket \$100,000! So, does Asset-Protection Planning work? Absolutely, you just saved \$900,000. You can certainly see and it would be difficult not to argue that your Plan saved you a lot of “dough.” There is one thing very important to understanding this situation: in the United States, we do not have “caps” on Torts and the losses that occur from civil suits.

Tort – A legal wrong, with or without malice where some type of damage occurs.

A tort (which is the cause of a civil lawsuit) is with or without malice. Without malice means negligence or strict negligence or negligence per se. We will discuss this in detail further down the road, but for now, you need to know that a negligence claim could wipe you out financially without your doing something intentional to cause it; accidents do happen!

Tort law may be under reform, but reform is not to be considered personal protection against liability claims.

In virtually every case, proper Asset-Protection will do more than help “just a little”; rather, it will produce significantly better results than you would have had without Asset-Protection Planning.

## ALL THE BIG CONFUSING WORDS EXPLAINED

Asset-Protection law was written to protect people from unjust appropriation of their wealth. Unfortunately, if you do not know the law, you can become a victim of certain unscrupulous lawyers who do. Unfortunately, the number of people who have found ways to use their knowledge of the law to steal wealth from uninformed individuals has increased.

In order for you to make informed decisions about your own Asset-Protection Planning, you need to know some basic terms to gain an essential understanding of Asset-Protection technology.

This lesson will serve as your reference section for many of the terms that must become familiar to you. These terms are the essentials to envisioning the entire Asset-Protection picture. The definitions are in simple terms in order to create a building block of education about the type of Asset-Protection Plan that suits your estate. For your full comprehension of Asset Planning, you should be familiar with the following words, concepts, and definitions.

**Trust** – An entity created to hold assets for the benefit of certain persons or entities with a trustee managing the trust. Persons called trustors, settlors and/or donors who execute a written declaration of trust that establish the trust and spells out the terms and conditions, upon which it is conducted, fund most trusts.

The declaration also names the original trustee or trustees, successor trustees, or means to choose future trustees. The assets of the trust are usually given to the trust by the creators, although, assets may be added by others.

**Asset-Protection Trust (APT)** – A term used to describe a trust designed to insulate assets from seizure.

**Kinetic Asset-Protection Trust** – A trademarked trust vehicle that describes the capacity to move the trust from one jurisdiction in favor of a different jurisdiction.

**Trustor or Settlor** – The one who creates the trust or provides the reason for creating the trust.

**Trustee** – A person or institution that oversees and manages a trust.

**Beneficiaries** – Under a foreign APT, the beneficiaries are usually the settlor, the settlor's spouse, the settlor's children and other blood descendants, living parents of the settlor, and possibly one or more charitable organizations.

**Donor** – One who makes a gift or transfers lands to another; also, one who creates a trust.

**Grantor** – The person by whom a transfer of property is completed; also, the creator of the trust.

**Protector** – One who serves as the champion; the overseer of the trust. Currently, the position of a trust protector is not normally encountered in domestic U.S. trusts, but this position is very common in other common law jurisdictions. Under many foreign trusts, the protector is originally the settlor, which can change later.

The trust protector often has the following powers:

- „ The power to remove and replace any trustees,
- „ The power to reject investment decisions of the trustees, and
- „ The power to reject distribution decisions of the trustees.

**Creditor** – Individual or entity to which a debt is owed.

## ROB'S IDIOMS OF ASSET PROTECTION

### **1. IT IS CHEAPER TO BE MISTAKEN...THAN TAKEN**

As you will see repeatedly in this course, Asset-Protection Planning can only be truly effective when it is done before you have a problem. It is a prevention of problems and is not a "silver bullet" for elimination of current troubles.

It is better to have an Asset-Protection Plan and never need it, than it is not to have a Plan and hope you will never need it. Once trouble arises . . . it is too late. Like the old saying goes, "a stitch in time saves nine." In the case of Asset Protection, the "stitch" amounts to your enacting a Plan that will protect your wealth.

### **2. IF YOU CAN ACCESS YOUR WEALTH, SO CAN THE "TAKERS"**

John D. Rockefeller, who is famous for saying, "I want to own nothing and control everything," understood the primary truth underlying Asset-Protection. Think of it this way: in a game of basketball, one team has the ball and they progressively move it to the end of the court, trying to score by tossing it through the designated basket.

When a player has possession of the ball, there is always an opponent trying to take it away from him. The ball can only be stolen from someone who "possesses" or controls it.

### **3. PICK THE BATTLE YOU CAN WIN – BEFORE THE WAR BEGINS**

The trauma of being sued can be overwhelming unless an effective Asset-Protection Plan is in place. Very few people enjoy the legal fight in the courtroom, even if they think that they will win in the end. Asset Protection lessens this burden.

Imagine right now that you just received notice that you are now involved as a defendant in a lawsuit. The reality is that you might lose a significant amount or all of your assets. Your lawyer calls you and says, "I'm afraid you are going to have to pay something." This "something" is nebulous until you are well into the suit, the legal fees, the evidence, the depositions, and then the two attorneys may come to a conclusion as to "how much" the suit is worth. This is how your suit is coined to the attorneys, "what is it worth?" It sounds like your estate could end up like an antique sale. That is a terrifying thought for most of us AND a considerable advantage for the plaintiff.

**Civil Liability** – The state of being obliged for civil damages as opposed to criminal damages.

A good litigator knows this and uses it to his/her advantage. It puts you under a great deal of pressure to settle even bogus and unfounded lawsuits. Good attorneys hire recovery agents and private investigators that get commissions on what they can seize. To them this is just a job and they are working within their legal rights.

When you come under attack by creditors without Asset-Protection Planning in place, you have lost your ability to "pick your battle." Now you are forced to fight on the opposing turf.

This is NEVER the best way to keep the upper hand or maintain clear thinking. The mere cost and the accompanying hassle that is the trademark of long-drawn-out lawsuits can lead a dynamic and rational person to make mistakes based on fear and intimidation.

You are far less likely to make poor decisions when the fear of loss has been eliminated or reduced through Asset Protection Planning.

### **4. PLAN FOR THE WORST, HOPE FOR THE BEST – OPTIMISM AT ITS FINEST**

Over the years, I have spoken with hundreds of people in trouble. These people call

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wanting my help based on options that they previously heard in the event that they ever came under attack.

Although I had compassion for them, I could not help them. The worst memories for me were the conversations I had with good people who had initially contacted me about setting up a Plan. They had the money, they had the insight, but then, for whatever reason, they never followed through.

It is certainly difficult to imagine that only a few months to a year later in some cases these people would come begging for help that I just could not give. I tell people EVERY DAY to "get moving" to establish the protection you will want in case of an attack. You HAVE to Plan IN ADVANCE of any threat!

***Most of us have a sixth sense about our liability; most of us never pay enough attention to this intuition.***

Like vultures circling a troubled animal, once the financial predators have gathered, your situation is grim and your planning possibilities will be disappearing fast, if not gone completely. It is not paranoia to expect the worst, and in this case, it is actually prudent and responsible thinking.

If you have to fight a war, you must have the best tools possible to increase the chances of a favorable outcome. Optimism is to anticipate the best possible outcome. Establishing Asset Protection is to ensure it.

## **5. ASSET-PROTECTION PLANNING SHOULD BE RELAXING . . . NOT STRESS CREATING**

Through experience and sometimes pain, we learn how to avoid putting ourselves in precarious situations. If you are in business, you have undoubtedly learned how to limit your exposure to a variety of situations. You learn to utilize methods to safeguard yourself or your business from trouble. We know when the floor is slippery and that the slippery floor might be a liability.

If you are not sure of your liability, answer the questions at the end of the lesson. The more you answer "yes," the more liability you have. Whenever you discover or create a clear-cut, economical, and efficient Plan that prevents or cures potential problems, then that Plan is implemented (or at least considered) when circumstances dictate.

It is the same with your Asset-Protection Plan. You need to have a clear, simple, and systematic process to follow that is uncomplicated and effective.

It is like breathing: your body does not need to think about it or figure it out; it just does it. You need to think instinctively to accomplish what is necessary to safeguard your assets, rather than find yourself in a crisis situation trying to figure out how to save your life.

## **6. THE BEST PLAN IS ONE THAT IS NEVER USED**

When all is said and done, the absolute (best-case scenario) Asset Protection Plan may not seem ideal at first glance. For example, let's imagine that you set up a Plan, and you spend 20 or more years maintaining it. Then at the end of your life as you reflect, you suddenly decide to become irritated because you never needed it.

Is this truly the whole story? Could it be true that you never really needed it?

In fact, the whole story may be that the reason you never came under attack was BECAUSE you had the Plan in place; the professional takers may have planned or decided to attack you, but upon investigation into how easy it would be to access your wealth, they came up empty.

In this case, the Plan WAS the reason that you were never challenged. The truth of the matter is that the best Plan is the Plan that is never challenged. You need to understand that even a Plan that never comes under attack is still a WIN for you.

Proper planning will ensure that your lifestyle is preserved, and with estate integration, your wealth survives you (after your death) as you see fit. That, my friend, is security.

### **SIMPLE QUESTIONS CONCERNING YOUR LIABILITY**

1. Do you own a car?
2. Do you own a house?
3. Do you have children?
4. Do you own a dog?
5. Do you have a bank account?
6. Do you have a pension?
7. Do you have any annuities?
8. Do you own a business?
9. Do you have life insurance?
10. Are you married?

All of these are liabilities because they are either objects eligible for seizure or they are things that can cause direct harm and indirect harm. Asset-Protection is so vital that you even have to protect your liabilities these days (as in your children or your dog).

I hope you will take a few minutes to write down your liabilities or any concerns that you have concerning your assets and liabilities.

END OF LESSON TWO



Well how are we doing so far?

Welcome back to your third lesson of the 10 Session Course in Asset-Protection. I want to share with you the "terms" that are important to Asset-Protection.

You are now familiar with the tool called a "trust."

There are many types of trusts, but for our purposes, I will define an Asset-Protection Trust (APT) as any trust formed for a term of years in a foreign jurisdiction, which does not recognize (or imposes significant barriers to the recognition of) United States judgments.

This reality is in every country in the world since every country requires that the case be re-argued under their law.

This is not to say that assets have to leave the USA to be protected, because they do not. You simply use a foreign trust to force creditors to litigate abroad, NOT to move your money there.

The reason I will focus on trusts with a "foreign arm" attached is that those are the only types of trusts that are virtually impenetrable by creditors.

An Asset-Protection Trust is best thought of as a legitimate and internationally recognized vehicle for a solvent person to place a portion of his wealth into a secure entity (which allows that person substantial control over the assets), yet protects these assets from future unanticipated creditors.

**Jurisdiction** – A court's power to exercise authority.

Some jurisdictions require a trial de novo (which means trying the case anew, as if it had never been tried before).

Other jurisdictions have a procedure whereby certain United States judgments can be recognized (usually not penal or fiscal in nature) if certain procedural hurdles (which may amount to a mini-trial) are met.

#### **FUNDAMENTAL PRINCIPLE**

**No country in the world AUTOMATICALLY enforces judgments from any United States court.**

This is probably because all other nations are worried about one aspect or another of our anti-trust, environmental, securities and/or tort laws.

#### **Asset Protection language uses and references these primary entities:**

**Beneficiaries** – Under a foreign APT, the beneficiaries are usually the settlor, the settlor's spouse, the settlor's children, and other blood descendants, living parents of the settlor, and possibly one or more charitable organizations.

**Grantor** – The person by whom a transfer of property is completed, also, the creator of the trust.

**Protector** – One who serves as the champion, the overseer of the trust. Currently, the position of a trust protector is not normally encountered in domestic U.S. trusts, but this position is very common in other common law jurisdictions. Under many foreign trusts, the protector is originally the settlor, which can change later.

The trust protector often has the following powers:

- „ The power to remove and replace any trustees,
- „ The power to reject investment decisions of the trustees, and
- „ The power to reject distribution decisions of the trustees.

**Settlor** – Also, one who creates the trust or provides the reason for creating the trust.

**Trustee** – Person or institution that oversees and manages a trust.

**Statute of Elizabeth Override Provision** – A law that makes it very difficult or impossible to enforce a judgment made in one country, allowable in another country.

For example, if you have your assets protected in Belize, and a judgment is entered against you in the USA, Belize will not automatically allow that U.S. judgment to be valid in their country.

The Statute of Elizabeth is an old English law that says anything that hurts the creditor is illegal. This is not important because no country in the world automatically enforces U.S. judgments.

This is simply a term that you want to be familiar with so that you can sound smart at cocktail parties.

These terms are often loosely applied and are somewhat lacking in exactness when referring to laws enacted in foreign jurisdictions, which makes it very difficult or impossible to have the courts of that area recognize and enforce a judgment from a different jurisdiction.

The laws in these jurisdictions usually require a new trial (trial de novo), applying their own fraudulent conveyance laws.

Usually the burden of proof for the aggrieved creditor will be higher (e.g., "beyond a reasonable doubt"), the statute of limitations will be very short, and sometimes the new jurisdiction will only allow creditors existing at the time of the transfer (and not creditors coming into existence after the transfer) to bring claims.

### **Settlement of the Trust**

This refers to the complete establishment and funding of the trust; meaning, it is created and finalized as an existing entity.

Remember, for a trust to serve as a protection from creditors, the settlement of the trust must occur long before any significant creditors or liabilities materialize.

I always advise my clients that establishing a trust should involve only a portion of their assets, leaving them demonstrably solvent after the transfer. Done in this fashion, the APT is a very effective tool.

### **Practical Uses Of Asset-Protection Trusts**

The following is a partial list of the benefits of foreign trusts with Asset-Protection characteristics. Some relate to Asset Protection, and some relate to general business considerations. When documenting the trust, the business-oriented justifications for settlement of the trust should be emphasized.

#### **1. A Supplement or Replacement to Insurance**

An important motivating factor for the settlement of an APT is the dramatic rise in the United States of both the number of lawsuits and the magnitude of verdicts.

New theories of liability are created everyday and suits are being brought more often. Approximately 18 million civil suits are filed annually in this country - one for every 10 American adults.

Some professionals utilize APTs as an add-on or replacement to insurance. As malpractice rates rise, many professionals are reducing their coverage but still preserving their right to a defense under their policy, and implementing APTs.

On occasion, these professionals go completely bare, particularly once all of the relevant statutes of limitation periods have expired.

Many individuals recognize that heavy insurance in the current litigation climate serves to draw litigation. Reducing the size of the potential recovery tends to discourage and eliminate litigation. The incentive of any claimant to institute and pursue litigation becomes a moot argument. Put into the words of simplicity, litigators seek to litigate against the entities that have the capability to pay off as big a claim as feasibly possible in the settlement.

## **2. A Tool to Settle or Discourage Litigation**

The numbers of lawsuits based on principle are few. Fairness is another issue of question. This is most true when a plaintiff compensates a lawyer on a contingent-fee basis instead of a retainer, since the principle of contingent attorney fees dominate the market in tort law.

Contingent – A fee charged for a lawyer’s services awarded only if the lawyer is successful in obtaining fees out of settlement or through a lawsuit.

Retainer – A fee paid to a lawyer in advance authorizing the lawyer to act on the case.

Once the plaintiff and his attorney discover that a properly settled and implemented Asset- Protection Plan is in place, and that any judgment will be difficult or impossible to collect, their motivation to proceed with litigation fades.

One principal effect of a carefully crafted Plan is the destruction of the plaintiff’s economic incentive to litigate.

## **3. To Keep the Ownership of Assets Confidential**

The confidentiality and secrecy laws of many offshore jurisdictions are taken very seriously, and in fact impose criminal penalties for their violation.

Notwithstanding the near-absolute secrecy permitted by some jurisdictions, the settlor should be aware that the settlement of an offshore trust normally does not result in any tax savings or mean that the United States government (utilizing the resources of FinCEN) cannot discover the trust through a governmental investigation.

## **4. An Alternative to Traditional Pre-Nuptial Agreements**

An unmarried person may normally settle an offshore trust without the consent of his/her prospective spouse. The offshore trust will normally protect the transferred assets in the event of a divorce. “Marriage” legally unites the assets in some numerical equitability and until you are married, you are able to plan as you please. You can pre-decide what is equitable instead of going through a long-drawn-out procedure in the event of a parting.

The primary difference is that the prospective spouse does not need to consent to the transfer. (In fact, the prospective spouse need not even know of the transfer.)

Offshore trusts are also sometimes useful in pre-divorce planning (i.e., to keep an expected inheritance segregated as separate property). In all cases, an APT is an estate-planning instrument with the same effect of a traditional domestic trust.

## **5. A Protection against Potential Exchange Controls**

There may be a time in the near future when our government suspends our ability to take money abroad. A foreign APT prevents such restrictions.

One managing director of a substantial bank in the Cayman Islands recently remarked, “Exchange controls were firmly in place in the United Kingdom before [former Prime Minister] Margaret Thatcher, and one can’t be certain that they will never be reintroduced.”

In the U.S., both the national debt and national security have become front-running issues to lawmakers in Congress. The limits, conditions for transfer and disclosure regulations on foreign investments are now issues in every session of Congress. The United State’s efforts have been towards obtaining reciprocal relations in almost every other country in the world.

## **6. To Give an Insolvent Debtor a Fresh Start**

There are situations where an individual might separate and insulate future start-up

business ventures that are unrelated to the current activities from past creditors. This is facilitated with the use of offshore trusts.

This is particularly useful when bankruptcy is not a valid option. This is where an insolvent debtor, who is entrepreneurial-minded, could protect future profits from attachment by creditors. Bankruptcy laws have changed in the last year and the attraction to "claim" bankruptcy is not what it once was.

In this case, extreme care must be taken to guard against the possibility of fraudulent conveyance issues.

Wow! That was a lot! You have completed this lesson.

END OF LESSON THREE

Lesson	
4	Practice and use of your Trust

You have now gained the building blocks and foundations of the basics in the first three lessons. Learning about Asset Protection is the first step a person takes when developing their personal plan. I hope you are feeling more confident about your abilities to safeguard your wealth by now.

Most people still have uncertainties at this point. This is only Lesson 4 and in the next six lessons, you will build on your foundation.

Onward.

By now, you are probably starting to see that having some type of Asset-Protection strategy in place is imperative in our society. No longer should the question that you ask yourself be, "will a financial disaster happen to me?"

It should be, "Am I prepared for a financial disaster?" This is not some hyped-up scare tactic; it is the unfortunate, but prudent, reality of our world today.

However, you no longer have to be a victim. Regardless of your wealth or situation, you can take simple steps to protect your hard-earned assets, whether it is ten thousand or ten billion, or even all the money you have. I have never come across a person or entrepreneur who wanted to lose their money. For many, this is all the motivation necessary to implement an Asset-Protection Plan.

If you sit back and expect the system to be fair after reading what I reveal in this course, I think that you are statistically at risk. Your risk category includes the maltreatment you are (statistically) likely to experience.

Simple legitimate and legal techniques exist to place your assets out of the reach of creditors in a comfortable manner. Again, it is the effort to learn the rules and take control of your life.

In this lesson, we are going to focus on three of the most fundamental aspects of Asset-Protection. If you remember only one lesson from this entire course, please remember what is in this lesson! If you keep the following principles in mind, you will make wise decisions regarding your Asset-Protection strategies.

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**Key One:**

**REALIZE THAT OUR SYSTEM IS A FAILURE AND ENGAGE IN SELF-HELP TORT REFORM**

We spoke of torts before and now it is time to elaborate. The word tort is French for "wrong," and refers to a civil wrong or wrongful act, whether intentional or accidental, from which injury occurs to another. Torts include all negligence cases as well as intentional wrongs, which result in harm.

Therefore, tort law is one of the major areas of law (along with contract, real property, and criminal law), and results in more civil litigation than any other category. Personal Injury suits dominate the civil courts.

**It is time for "self-help tort reform."**

What is tort reform? Tort is defined in one law dictionary as – A legal wrong committed upon the person or property independent of contract.

It may be either:

- (1) A direct invasion of some legal right of the individual, or
- (2) The infraction of some public duty by which special damages accrues to the individual, or
- (3) The violation of some private obligation by which like damage accrues to the individual.

More specifically, in regards to Asset-Protection – it is a wrongful act other than a breach of contract for which relief may be obtained in the form of damages or an injunction.

Our judicial system is a failure; litigation is out of control. Juries are not fair. Many lawyers are "situation-ally unethical" (underemployed and looking to make some money from any source, regardless of the morality). Redistribution of wealth is the norm and not the exception.

We have too many lawyers, each licensed to file lawsuits, and most often on a contingent basis. This system will not change (the Trial Lawyers Association is the strongest lobby in Washington).

**WHY THE NEED FOR SELF-HELP TORT REFORM?**

Why should you educate yourself in the aspects of American law and about the American judicial system if you are not involved in immediate litigation?

Because you ARE involved — whether you know it or not. According to a recent ABC television special, over 90 million lawsuits are filed annually in America. This bizarre legal "business opportunity" translates into a \$1,200 tort tax for every man, woman, and child in America.

That tort tax is factored into the price of goods and services . . . and you pay for it! The lawyer- dominated judicial system has given this nation the distinction of being the most litigious nation on earth.

In addition, just in case you have not noticed, your freedoms, privileges, and rights under the U.S. Constitution are being watered down daily by the lawyer culture of this nation.

**Millions of Americans are at risk legally because:**

- (1) They do not know how to protect their own financial holdings.
- (2) They do not have the information necessary (or the funds) to hire a qualified specialist to do it for them.
- (3) Unethical lawyers prey through malpractice, theft, and fraud, and rip-off thousands of Americans every year.

Americans think that it takes a lawyer to handle the most basic legal procedure. Unfortunately, this is true. Basic legal structure, motion writing, court procedure are foreign language to the average person. Civil Procedure is so complicated with Rules of Procedure that only lawyers can figure it out. This leaves the average person in a very bad position if they have to defend themselves. This is in fact one of the best cases for Asset-Protection. Asset-Protection is a subject that is within your realm of understanding.

American lawmakers (lawyers in the majority) are grinding out new laws every single day of our existence. The construction of new laws should comply with every aspect of the Constitution and The Bill of Rights. Many of the new laws are "situational and ambiguous." New laws intended to increase our national security and reduce our debt oppose wealth building and prosperity in America.

### **Key One Summary:**

Once you realize our legal system is flawed, you will also become conscious as to the distortion our country has taken from the Constitutional origin to create inalienable rights. Gone are the days of the Constitution's protection. Every once in a while a Constitutional issue pops up in criminal court or issues such as abortion, religion and discrimination. However, in financial cases, the courts transact mostly procedural law and this is namely statutes. Take control over your own life and your own assets.

### **Key Two:**

#### **IMPLEMENT ASSET PROTECTION WHEN THE FINANCIAL SEAS ARE CALM**

A precursor and guidance to implement your Plan depends upon on you being able to satisfy your known creditors both before and after the Asset-Protection Plan.

A properly implemented Plan starts the statute of limitations, relating to fraudulent conveyance, running the moment that it is funded. It is cheap insurance.

Do NOT wait until your life falls apart and the world around you starts to fall down to do your Plan. **Do the Plan when you are financially healthy.**

Remember, Asset-Protection Plans assume that there are people who want to take money and property away from you. The professional takers hunt down and corner people with unprotected assets.

You must use preventative methods that will discourage the professional takers by making it too difficult and too expensive to take your money. This is legal, time-tested, and it works!

A timely settled Asset-Protection Plan keeps your valuable assets (business, savings, house, cars, stock and bonds, IRAs etc.) from any creditors, legitimate or otherwise, who want to take them from you.

To provide solid protection, your Plan must be set up when the financial seas are calm. I use a term called "old and cold," which means your Plan is established and in force long before any attacks occur, or before any creditors become known to you.

In this way, it is impossible to levy a valid claim that you have "created your Asset-Protection Plan with the intent to commit fraud." You cannot lead with the specific intent

to keep your creditors' hands off; you must lead with the thought that you are protecting your assets, which you are legally entitled to do.

Remember from Lesson One, if you make the decision to properly implement an Asset Protection Plan, you can normally prevent:

- „ Your creditors from reaching your assets, or actually the assets of the trust,
- „ Your soon-to-be-ex spouse from taking you to the financial cleaners,
- „ Your business partner's mistakes from ruining your nest egg,
- „ A disgruntled customer or employee from putting you out of business, and
- „ The government from seizing and keeping your money.

By implementing a properly crafted Asset-Protection Plan, you can legitimately put a significant portion of your assets out of the reach of judgment creditors, and retain complete control over these protected assets.

### **Key Two Summary:**

The effect of timely established Asset-Protection Planning is the elimination of the economic incentive to litigate.

### **Key Three:**

#### **CHOOSE YOUR BATTLEFIELD**

To choose your battlefield, you must know the two fundamentals:

**NO COUNTRY AUTOMATICALLY ENFORCES U.S. JUDGMENTS.**

**WHAT YOU DON'T OWN CAN'T BE TAKEN FROM YOU.**

Those are the two bottom-line basics for Asset Protection and serve as the foundation for this key principle.

Proper planning gives you the advantage of forcing people who sue you (or try to sue you) under difficult jurisdictions. These are places where a U.S. judgment is as useless as a burnt out light bulb.

This means that to protect your assets they do not have to leave the USA. You simply use a foreign trust to force creditors to litigate abroad. Litigating abroad is very difficult.

When you control the jurisdiction of litigation, you can choose which laws favor you. Here is how to gain the advantage should you need to choose your battlefield. The first step is to "give birth" to a new entity (the trust), which will technically be living in another country. We will call this a Kinetic Asset-Protection Trust.

This trust is a NEW creation, like a brand new baby, and thus it does not owe anybody anything.

We create the trust in a country that does not automatically recognize U.S. judgments. (Remember, this is the entire world since no country in the world automatically recognizes U.S. judgments.)

Now, here is the best part: even though the trust is foreign, your assets can remain where they are, which means, under your control.

This trust is treated as a foreigner for debtor/creditor purposes. Traditionally, good solid Asset Protection will involve an offshore trust. It satisfies both fundamentals: it is foreign, and it is NOT you personally, only in the theory of control.

Trust assets will rarely ever leave the USA.

The Perfect Foreign Jurisdiction Does Not Exist.

Dozens upon dozens of offshore financial centers exist and they all have different features and benefits, and I cannot tell you that there is "one" single entity that is the "perfect" jurisdiction.

In the process of constructing your Asset-Protection Plan, you will need to look at the positive and negative features of a few different jurisdictions. I have a couple favorites that I have studied and used for my clients very successfully.

Your personal preferences may make a difference in deciding what jurisdiction is right for you. A wise strategy is to sometimes design and implement a structure that utilizes one or more locations.

*If you need more information on this, please contact [clientservices@Trustmakers.com](mailto:clientservices@Trustmakers.com).*

**Key Three Summary:**

Picking your battlefield means a U.S. judgment against you means nothing if foreign laws protect your assets.

That's it for now.

END OF LESSON FOUR



Welcome to Lesson 5

You now have more information than 90 percent of the "at-risk" population after reading Lesson 1 through Lesson 5.

By the time you have completed this course, you will have more knowledge than 99 percent of the "at risk" population . . . that is good news isn't it?

Today I want to talk to you about trusts and taxes. We will explore the realities and the atrocities.

So let's get to it, shall we?

**Here is a new idea:**

"Never Trust Anyone With Your Hard-Earned Money."

I think that you should have good professionals to consult in the event that you have any doubts when you ask yourself this question because money is a tool that flows through us. We must control the flow to get to the end-user that we desire.

You should never trust anyone with your hard-earned money, PERIOD. What I am specifically referring to is any entity that says they need control over your assets in order to keep them safe.

This is absolute nonsense!

This causes more problems for people than anything else. It is not because people are dishonest, but rather it is not necessary to HAVE to trust someone.

Many people simply put their funds into a trust with a foreign trust company often with the advice of "experts," and this protects their assets from this point.

I think that this is foolish. It is rarely necessary to delegate control over your money to another person or entity, and certainly not when a Plan is initially implemented.

Each year hundreds of millions of dollars are lost to unscrupulous trust companies that simply walk away with people's money.

Take these words to heart: never delegate control of your money to anyone. The object is to keep control of all of your assets. There is a difference between keeping control and losing money. Losing money, though not desirable, happens every day in business. Of course you should minimize this, but I am referring to stealing and cheating.

Finally, yes, swindling has become a common profession. We all know the likes of Bernie Madoff and his slippery dealings. However before Madoff there were a host of other bad actors in the high stakes game of separating you from your money. One character on point is Marc Harris.

Harris "the swindler" story begins and ends between the lines of dollar signs (\$).

**The Case of Marc M. Harris:**

Allow me to preface this case with an introduction: This case exemplifies what I call "a professional taker."

Founder and CEO of The Harris Organization financial services group of Panama, operates banks, insurance companies, and a trust company, and also offers stock broking, in-house mutual funds, and other money-management services—all without a single license!

In March 1998, Offshore Alert published an article accusing The Harris Organization of being insolvent, stealing clients' funds, operating a Ponzi scheme, and money  
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laundering.

The Harris Organization sued for libel at Federal Court in Miami, and lost after a bench trial in July 1999, then appealed and lost that too. Harris did not testify at the trial. His attorney told the court that Harris was “concerned” about what might happen to him should he travel to the U.S.

Harris not only refuses to honor redemption requests made by his clients, but he also generally refuses to take their irate telephone calls or see them when they turn up in Panama to demand the return of their money.

Harris’s MO was to fly easily impressed Americans to Panama, have them whisked through customs and transported in a chauffeur-driven Jaguar to Downtown Panama City, where they are wined and dined and then parted from their money.

He does not tell his clients that his CPA license was suspended in Florida in 1990 for incompetence and negligence after he audited a Florida-based mutual fund without disclosing in the notes of the financial statements that he also owned and operated it.

Additionally, the sum of the individual assets did not equal the number given for total assets, there was insufficient information on investments in operating affiliates, and there was an absence of information on the aggregate cost and market value of marketable securities held by the company.

Harris was also involved in illegally run Montserrat banks that were closed down by British police in 1989-90, and buying offshore “shell” banks from notorious bank charter broker Jerome Schneider. In June 2002, Harris was evicted from his commercial premises in Panama for non-payment of \$47,000 in rent, causing him to move what was left of his dwindling operations to Managua, Nicaragua.

Harris proved himself as a sociopath, deviant, but smart. This is why I use the term “professional takers.” These types of people have no conscious or care about injury to others.

#### **Key Four Summary:**

Never delegate control of your money to anyone. Keep control, and you cannot be cheated. This is the art of a properly structured Plan. (We do this every day for clients, and we will be happy to do it for you.)

#### **Key Five:**

Don’t Let the Tax Tail Wag the Dog

Asset-Protection Planning will almost never save you any taxes. If you use an APT, count on NO material income-tax savings and probably an increase in compliance costs.

If somebody advises you that offshore trusts will save you tax—walk away. You are almost certainly in the hands of a scammer. In the very least, you are dealing with an unqualified professional who does not know what they are speaking of.

How do you know if the promises people make to you about saving on taxes is fraud?

SIMPLE . . .

U.S. citizens are taxed “**on their worldwide income from whatever source derived.**”

Anytime ANYONE who claims that an offshore trust or an offshore bank is going to save you taxes is advising you to commit a crime, RUN. Offshore trusts and offshore accounts alone will not save you money on your taxes. In a like matter, Asset Protection is a tax- neutral situation; alone, it will NEVER save you taxes.

In fact, the IRS specifically requires the reporting of every offshore account (and if you have unreported accounts, you should remedy this before the IRS does it for you). Remember, abuse of foreign trusts has become a major focus of the IRS.

The IRS has the personnel (often ex-CIA), the computers, the data, and other necessary resources to catch this brand of tax cheater.

### **Key Five Summary:**

With a few minor exceptions, Asset Protection and tax savings are not synonymous. Be wary of anyone or any organization that tells you otherwise. Americans are taxed on their worldwide income; no matter where it is earned, it is still income taxable in the U.S.

If you are a U.S. citizen, your worldwide income is taxed, period. There is one exception: If you earn it and reside outside the United States for most of the year, some or all of your foreign income may be excludable. See IRS Publication 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad.

### **My Final Notes on Lesson 5**

One of the biggest components of Asset Protection is to avoid lawsuits and liability altogether. Asset Protection will keep your wealth out of the hands of creditors, but it will not always prevent you from being sued.

The key factor that I create in my clients' Asset-Protection Plans (which your own Asset-Protection Plan should provide for you) is to reduce your chances of being sued because the “would-be attacker” perceives that you do not have enough wealth to pursue, therefore, you reduce the economic incentive to litigate.

Therefore, if you are living a very public, very extravagant life, driving the fanciest car on the road etc., you may be advertising yourself as a good target for financial predators.

Common sense Asset-Protection is this: “If you got it, and you flaunt it, you increase your risk of losing it.” Having said all that, I still believe that you have the right to live your own life the way you decide you have deserved to live it.

If you are more interested in being who you are than conforming to avoid the financial predators, the next lesson will show you what you can do. Take a few minutes to list some ways in which you may be less visible to attackers.

**Are you ready for Lesson 6?**

END OF LESSON FIVE

Lesson	Types of Trusts
6	

Welcome to Lesson 6 of your 10 Session Course in Asset Protection. I hope that you are energized by your new knowledge.

In lesson six I want to talk to you about the “substance” of Asset Protection, and how it relates to your other financial endeavors. So let’s get to it, shall we?

This is a rather involved concept, so do not be discouraged if it does not sink in right away. You may want to review the lessons and the definitions for added reinforcement. This lesson is probably the most involved of any of the previous lessons.

By now, you should be aware of some of your liabilities and the relationship that they play in destabilizing your assets. This is only the beginning of your awareness and I look forward to teaching the techniques that will give you personal security in your hard-earned wealth.

Disclaimer: remember, this information is not a substitute for legal advice. You always need to involve your local lawyer with any Asset-Protection Planning.

**DIVIDE AND CONQUER**

Each category of assets should have its own “container.” You should never mix liability-generating assets (like an apartment house or stock in a privately held business) with an investment account.

For example, if an apartment house is in the same entity as an investment fund, a simple slip and fall at the apartment could endanger the entire investment fund.

This is not usually true if the asset ownership is by separate entities in a properly structured Plan. This is why a person can use a possible entity called a Family Limited Partnership (FLP) used underneath an Asset-Protection Trust (APT) to separate ownership.

An Asset-Protection Plan with multiple investment assets (e.g., an apartment and a stock

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portfolio) will use multiple Limited Partnerships to divide and conquer.

Family Limited Partnerships are just simple Limited Partnerships, which have been renamed. A partnership—is a partnership—is a partnership.

The main purpose of a partnership in an Asset-Protection structure is to separate ownership from control. The General Partner (you) exercises one-hundred percent (100%) control over the assets held in the partnership.

It is common to give the general partner one percent (1%) of actual ownership, and one-hundred percent (100%) of the control. At the same time, the limited partner (which is often the APT) will have ninety-nine percent (99%) ownership and NO control at all.

A partnership is normally only necessary when there are multiple categories of investment-grade assets, such as property and a stock portfolio.

Many practitioners have touted the FLP as a viable Asset-Protection vehicle, citing the decades- old “Charging Order protection” offered by all partnership statutes.

Charging Order is a statutory means for a creditor of a judgment debtor, who is a partner of others, to reach the debtors beneficial interest in the partnership without risking dissolution of the partnership.

However, in many states, Charging Order protection borders on extinction due to the ever- increasing abuse.

It is my belief that Charging Order protection is not enough, and I do not think Limited Partnerships (and for that matter LLCs) can provide material Asset Protection. Their best use is for separating ownership from control.

## **WHEN IS FRAUD REALLY FRAUD?**

Before we get into this extensive section on fraudulent conveyance, I want you to understand the bottom line. If you are already in deep trouble, you cannot practice self-help; you will need expert help.

The purpose of this seminar is to provide you with a solution BEFORE you are upside-down. The following discussions inform you of which creditor is a future unanticipated creditor at the time of the transfer.

A receipt recorded as “less than a reasonably equivalent value” in exchange for “such transfer” may qualify for the criminal and civil categories of fraud.

If a creditor desires to bring about a fraud claim against the debtor, the creditor bears the burden to prove the transaction was fraudulent—that it hinders or delays their rights as a creditor to reach the debtor’s property.

In their effort to categorize the transfer as fraudulent, the creditor will rely upon either the Uniform Fraudulent Conveyance Act (UFCA), or the Uniform Fraudulent Transfers Act (UFTA). The two laws are nearly identical. These two laws are combined for the sake of discussion. The term “fraud” may scare you to death as it scares just about everyone, but this is NOT an issue if you execute your Plan BEFORE trouble arises.

If you are currently in trouble, you will need to hire an expert. One mistake can lead to a trickle-down effect in a court of law. Acting alone is a very dangerous behavior when a fraudulent claim exists. For more information on what to do if you are in trouble, email me at [clientservices@TrustMakers.com](mailto:clientservices@TrustMakers.com), and I will help you with a free consultation.

If the law can prove that a transfer was fraudulent, your Asset Protection Plan may not keep your assets safe.

Every transfer with the “intent” to delay, hinder, or defraud creditors is subject to attack.

## **FRAUDULENT TRANSFERS FALL WITHIN TWO CATEGORIES:**

- Fraud-in-law or constructive fraud
- Fraud-in-fact or actual fraud

Fraud-in-law occurs when there is a gift or sale of the debtor's property, and it was for less than fair market value, and took place in the face of a known liability, and the transfer rendered the debtor insolvent or unable to pay the creditor.

Fair Consideration – That which is fair or equal to what is being exchanged.

Each element must exist for there to be practical fraud or fraud-in-law, but there is no need to prove that the debtor actually planned to defraud the creditor.

The theory is that assets owned by an insolvent debtor gainfully belong to his creditors. When the debtor (however innocently) transfers property without receiving in exchange assets of roughly comparable value, the debtor's creditors are entitled to recover the transferred property.

This is true even without proof that the transfer intended to dispossess the creditor at the time of the asset transfer.

A fraudulent transfer occurs even if the debtor had charitable motives when transferring the property.

### **We must answer the two following questions:**

1. What determines fair consideration (exchange of value or money) and fair value adequate to make a transfer non-fraudulent?
2. When does a debtor become "insolvent" under the fraudulent transfer laws?

Fair consideration, or the fair value of the property, is what a reasonably sensible seller would be able to sell the asset for using commercially reasonable methods.

This does not mean the price must equal the precise fair-market value. In the case of a home or other real estate, a payment of at least 70 percent of the actual market value is sufficient consideration.

The law recognizes that some belongings are difficult to market under distress conditions, but publicly listed securities can be sold for a known price any business day. If a debtor sells securities for considerably less, the courts can conclude there was no fair consideration.

When less-than-fair value is paid, the transferee can be required to return the property, but only upon the repayment of what he paid.

Otherwise, a payment from the debtor that is the difference between what was paid and the actual fair value of the asset may be required at the determination of the court.

Protection of a transferee occurs when the transferee acts in good faith without knowledge of fraudulent intent and pays fair value. This fair value does not have to be money.

Fair value can be the exchange of other property or even services. The court will closely examine the services rendered to ascertain it was worth its claimed value.

Consideration, however, cannot be for future services, but must be for services previously or concurrently rendered.

The second question is, "when does a debtor become 'insolvent'?" Recall that a conveyance is not fraudulent if the debtor remains with sufficient other assets to satisfy

creditor claims.

The law says you are “insolvent“ if the market value of your total property is less than the amount necessary to pay your apparent liability on your existing debts as they become fixed and due.

Liabilities include all your debts whether now due or due at a future date, contingent or non-contingent, disputed or undisputed.

The important point to bear in mind is that you cannot transfer assets for less-than-fair consideration when your remaining assets will not cover your apparent liabilities as they fall due.

In short, the law does not prevent you from making valid gifts of your property as long as you stay adequately funded to pay in full those debts you can reasonably anticipate as due and payable in the future.

When you transfer property without fair consideration, and the transfer makes your liabilities exceed your assets, the courts automatically infer the transfer is committed with fraudulent intent.

However, it is difficult to prove your state of mind or compel you to confess fraudulent intent.

Creditors bear the burden to prove fraudulent intent through circumstances or factors that tend to prove intent.

**Such factors include the relationship between transferor and transferee:**

- Whether the transfer is for all or only a small part of the debtors' assets
- Whether the transfer is concealed
- Whether the transferor has knowledge of the claim or possible claim

Again, these factors only suppose fraudulent intent. They do not create the presupposition of fraud. Often, the transfer is explained effectively as an attempt to accomplish justifiable estate planning, investment or business objectives.

The court may then uphold the transfer as appropriate even though its ultimate effect was to hinder, or delay, creditor's claims.

It is easier for a creditor to recover under a claim of actual fraud, or fraud-in-fact, because the creditor can then ignore the issue of intent.

Here the creditor need only show the claim existed (whether known or not), the transfer was for too little consideration, and the transfer rendered the debtor too insolvent to cover the creditor's claim.

It is difficult to understand fraudulent conveyances in conceptual terms. Let us look at a few case examples to demonstrate the consideration of fraudulent transfers, and others that are valid.

**LOOKING AT FRAUD FROM THE EYES OF THE LAW**

Fraudulent crimes distinguish the guilty from the innocent by the extent of the intent to commit that fraud. In order to defraud there must be “intent.” If there is no intent or malice, in civil law the culpability lowers into a different category of tort responsibility, called negligence.

**Culpability – The extent of blame or guilt.**

This is the reason why a person should not act without professional advice and guidance. It is likely that acting alone will increase the culpability of a person because his action is without witness. Both civil and criminal frauds are crimes that fall under procedural law as outlined by statutes.

The type of law that governs fraud does not derive a strong base of protection for the accused in Constitutional Rights. The Constitution protects your inalienable rights; an inalienable right is a right that is not transferable. Examples are your right to a fair and speedy trial, or the right to bear arms, or worship freely.

Fraud can be pure or it can be simple, but it cannot be a mistake. Pure fraud is when a person orders "blue" shoes and finds out that the shoemaker he is ordering the shoes from does not have any shoes to sell; the shoemaker is a total fake. Simple fraud occurs when a person orders "blue" shoes and he receives red shoes in the mail because the shoemaker never had blue shoes so he "conned" and the sale is based on different terms than the shoemaker represented. Suppose the shoemaker sent the red shoes by accident, with no intent to defraud, then this is a mistake often called negligence in law.

My analogy is a summary from an Appellate Court decision on fraud where the court based the analogy on the "shoemaker." The reason I have given you this analogy is so that you can see how the court judges and often misjudges the actions of the debtor in fraud cases.

Whether criminal or civil, the extent of intent is the determining factor in fraud cases. Do not think for a minute that a creditor or plaintiff's attorney will not try to heighten your intent or "make it worse." This is why you should not act alone and this is why you should act while the seas are calm.

### **Example 1:**

You acquire a business loan of \$750,000. While the note was in good standing, you make a gift of virtually all your assets to various family members.

A year later, your business fails and the bank looks to recover on your guarantee. Would a court find the gifts to be a fraudulent transfer and order them set aside?

The court would probably not find fraud if the court views this as a simple mistake and normal course of business and not with the intent to defraud if:

1. There was no consideration, nothing received in exchange because the assets were gifted.
2. The transfer did render you insolvent at the time and it was later that your business failed.

If however, there are other complications or any misrepresentation on your part, even if you honestly represented the scenario to the best of your knowledge, you could be in a situation whereby you should seek professional assistance.

The fact that you remain with too few assets to pay back the note is troublesome, even if you did not intend it to happen.

Now the third issue – was the bank note guaranteeing a probable liability? It was a possible liability, but that does not make it a probable liability.

Lawyers here would focus on whether you could reasonably predict the failure of your business and the need to pay on your guarantee. The bank's attorney would point to all the signs of business decline to show the likelihood of liability.

Your attorney would take the reverse position in your defense. We all take risks in business and to an entrepreneur, risk equals reward; to the courts, risk equals fraud. When a good Asset-Protection Specialist examines your risk and your liability, he will put your assets and liabilities on a scale. Together, you will find the right balance.

For this reason, you can never expect your legal representative to guarantee your assets are safe. As an alternative, your lawyer will give you a qualified “practically” or “probably” safe, or that they are the safest they can possibly be under the conditions.

**Example 2:**

Buck lives in Texas. He transferred his home to his brother as trustee in trust for Buck’s minor children. Homes in Texas are homesteaded, and therefore, exempt from creditor claim.

At the time of transfer, Buck had a \$200,000 lawsuit against him from a rodeo incident where one of his bulls mauled a competitor. Buck has no other assets to satisfy the claim.

This would not be a fraudulent conveyance because creditors had no right to the home to begin with since it was protected under a Homestead Act . . . .

This example exemplifies the point that creditors cannot declare a fraudulent conveyance unless their right to the asset had been hindered.

**Example 3:**

Assume that Buck owned \$300,000 worth of non-exempt assets, and in the face of several lawsuits, acquired exempt property with the \$300,000.

This is a more difficult case. Most courts hold that it is not a fraudulent transfer because there is a fair value exchange—even though the replacement asset is beyond the reach of creditors.

This reinforces the soundness of an Asset Protection Plan that exchanges non-exempt assets for exempt assets. However, not all courts agree this approach is legitimate. Decisions vary among courts.

This stresses still another complexity in Asset-Protection Planning: court rulings do vary. In fact, the same court may change its own position on an issue over time.

This adds to the uncertainty of whether your Asset-Protection Plan is totally safe. At the least, it requires your attorney to thoroughly complete research on the recent cases in your state in order to make an accurate prediction on how the court will view your transfers in the event that they are challenged.

**Example 4:**

Suppose John transferred the title to his home (non-exempt) to his new bride (20 years his junior) who, in return, promised to care for him in his later years. What would happen if he later went bankrupt?

The bankruptcy court could overturn this transfer if the transfer took place after the debts were incurred.

Because the liabilities existed at the time, the transfer would most likely be set aside as fraudulent.

**Why?**

Because the consideration anticipated the future services rather than services that had been previously or concurrently furnished. This form of consideration is not sufficient.

Now, if John had no debts at the time of the transfer, the property is not recoverable by later creditors.

The creditor could not logically dispute that the transfer was to defraud, hinder, or delay their efforts to the property when they were not even creditors at the time.

These cases give you only a glimpse of some of the possible situations and hopefully they have provided you with a general idea of fraudulent and non-fraudulent transfers.

The bottom line with actual fraud cases is this: your creditor must prove you actually intended to hinder, delay, or defraud your creditors.

Historically, because of the difficulty in proving actual subjective intent to defraud a creditor, common law courts have pointed to “badges” of fraud as evidence of the settlor’s subjective intent.

Any Asset-Protection Planner should be familiar with these “badges” and should document any transfer to minimize these factors.

Fraudulent transfer law provides remedies for creditors (people or businesses to whom money is owed) who find that their debtors (people or businesses who owe money) are unfairly transferring assets beyond creditors’ reach.

It is thus a limitation on debtors’ freedom of contract and of disposition. Current law can be traced to a 1571 English statute.

In particular, fraudulent transfer law allows creditors to void transfers of property or obligations incurred to the extent these transactions are made either with the intent to hinder, delay or defraud creditors (the words of the original 1571 statute of Elizabeth), or are made for less than the reasonably equivalent value and leave the transferor or obligor in a precarious financial state.

Remember, a classic fraudulent transfer occurs if a person, when pressed by creditors and in an effort to avoid collection activity, transfers his or her assets such as a car or home to relatives for little or no consideration.

Under the Act, a creditor of the person transferring the car or home would have the ability to ignore this change of title, and could sue the relative for the value of the car or home.

Similarly, a gift of property or money made when the transferor is insolvent (that is, does not have enough assets to satisfy all creditor claims) is also a fraudulent transfer. This is but one instance of the maxim that one must be “just before being generous.”

#### **Other Badges of Fraudulent Transfers:**

1. The transfer or obligation is to an insider.
2. The debtor keeps possession or control of the property transferred after the transfer.
3. Not disclosing or concealing the transfer of obligation.
4. The threatening of the suit incurs before incurring the transfer or obligation.
5. The transfer was of substantially all of the debtor’s assets.
6. The debtor left suddenly, fled, absconded.
7. The debtor removed or concealed assets.
8. The value or the consideration received by the debtor was a reasonable equivalent to the value of the asset transferred or the amount of the obligation incurred.
9. The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.
10. The transfer occurred shortly before or shortly after a substantial debt was incurred.

11. The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

In addition to minimizing these “badges,” a careful Plan should emphasize the other business justifications for the settlement of a foreign trust.

Provided a trust is properly crafted and careful settlement procedures are followed, the issue of whether or not a trust formed with the sole purpose of protecting assets from creditors is per se fraudulent, should never come up because any carefully conceived Plan would document substantial and independent business justifications for the trust.

Careful justification of the independent business reasons for the foreign trust should make it difficult for a distressed creditor to effectively argue that a transfer that was not fraudulent under any objective criteria, was nevertheless fraudulent because the transferor harbored some internal, biased, actual fraudulent intent.

The use of a Family Limited Partnership is a popular way to turn attractive assets (i.e. an apartment house) into unattractive assets.

It is also a technique whereby the APT may indirectly own U.S. situs assets (situs means location). The asset becomes unattractive to a creditor because, by placing the apartment house into the Limited Partnership. This technique changes the judgment remedy process of the creditor's.

The judgment creditor cannot execute directly upon the apartment house and force its sale. Instead, the remedy is outlined by the Uniform Limited Partnership Act which provides that “on application to a court . . . by a judgment creditor, the court may charge the partnership interest of the partner with payment of the judgment . . . the judgment creditor has only the rights of an assignee of the partnership interest.”

This act also provides that “an assignment entitles the assignee to receive . . . only the distribution to which the assignor would be entitled.”

**In plain English, the creditor gets only what the general partner decides to distribute, which will normally be nothing if there are creditor problems.**

The drafters of the Uniform Limited Partnership Act inserted this charging order concept into the act to prevent the creditors of a partner from disrupting the partnership business.

It is possible to use these same provisions in the Family Limited Partnership context to prevent the distribution of funds to the judgment creditor.

This is because under relevant partnership law, the general partner, who is likely to be a family member or a corporation controlled by family members, can prevent distributions.

### **Lesson Summary**

Asset Protection protects your valuable assets (business, savings, house, cars, stock and bonds, IRAs, etc.) from creditors and predators who try to get their hands on them.

The best way to protect your assets is with an APT, and the best place to set that type of trust up is in an offshore jurisdiction. That does not mean your assets will leave the United States.

In the majority of cases, they will stay right where they are; the only difference will be that now they are untouchable.

**An APT is any trust formed for a term of years in a foreign jurisdiction which:**

” Either does not recognize or impose significant barriers to the recognition of United States judgments.

- „ Has no Statute of Elizabeth law or has enacted an override provision.
- „ Also imposes strict procedural barriers to actions brought in that jurisdiction- attacking trusts settled in that jurisdiction.

While § 548 of the Bankruptcy Code treats transfers made within one year of bankruptcy, state fraudulent transfer laws may extend this time.

For example in Illinois, the Uniform Fraudulent Transfer Act treats transfers made within four years. 740 ILCS 160/10 and the Bankruptcy Code allows the trustee to take advantage of such state laws.

The person for whom the trust is set up must follow specific rules of proceeding. These rules favor the interests of the individual trustee.

The trust should hold non-liability-producing assets, normally bank accounts and securities. (Sometimes you may put in a home, which requires the services of a local expert, to transfer).

Okay. That is it for Lesson 6. (As if that was not enough, right?)

NOTE: If after reading this lesson, you feel overwhelmed, and you would like our firm to create an impervious Asset-Protection Plan for you, please email [clientservices@Trustmakers.com](mailto:clientservices@Trustmakers.com).

We will respond to you within 48 hours. Please understand the Plans we create for clients are very personalized, and we will be “holding your hand” through the entire process.

You will benefit from years of expertise and save yourself the hassle of doing all the extensive work. The fee for this service varies, DEPENDING on the complexity of your situation.

We DO NOT over sell our services. Unlike some of the providers we have trained who charge a standard \$25,000 plus for everyone . . . you will get only what you need at the proper and fair fee.

If your situation either prevents you from affording this type of professional attention, or does not require it, we would ask you a few questions and then make a recommendation about what you can then do.

END OF LESSON SIX

Lesson	
<b>7</b>	<b>Irrevocable Trust</b>

increased your awareness about your liability in today's legal system in the previous sessions.

It is time to get back to work because the financial predators never take a break, and they will seize the moment if you do not.

I recommend only one type of trust to my clients. Experience teaches us to repeat what is successful and it makes sense to use a technique that will accomplish your goal, personal security. Read this lesson to learn how to create an impenetrable trust.

### **Creating an Impenetrable Trust**

The Irrevocable Trust is the ONLY type of trust I recommend and put together for my private clients. I recommend this protection tool for you and only this tool.

Irrevocable – committed beyond recall.

Why?

Because it is the only trust that truly provides you with a very high level of protection from judgment creditors.

I summarize this lesson like this: creating a trust is like birthing a new baby. When a baby is born, he or she comes into the world owning nothing and owing nothing.

If you give that baby a gift, you no longer own what is given. When you put your assets into a trust, you no longer own them so YOUR creditors cannot take them from you. At first, this concept may seem foreign or cause you to feel fear.

Remember the quote from John D. Rockefeller "own nothing, control everything"? What Rockefeller is teaching is a concept of possession. Possession is not just a concept; it also has procedural law surrounding it.

**Possession – (verb) the fact of having or holding property in one's power.**

**Possession – (noun) any article, object, asset or property that one owns, occupies, holds or has under control.**

We think of possession in pure terms. If you possess something, you possess it, right? The definition of "possession" becomes very important. Notice the words, "in one's power."

The TRUST is like a new baby without ownership of anything; and remember, what you do not "own" cannot be taken from you. The most important issue is the concept of "one's power." If a creditor gains power over your assets, then you have obviously lost control.

For a moment, think of an asset as a tool that you possess. For instance, money is something that you use to get something else; thus, it passes or flows through the possessor or the one who controls.

Let's learn more about the concept of possession so that the thought of using an Irrevocable Trust does not scare you. I will start by explaining some different types of possession. Think of possession as a term concept that is constantly moving; in other words, possession is always short-term and never "forever" because you cannot take it with you when you die. You have heard me refer to the "Kinetic" which means pertaining to motion and caused by motion.

**Actual Possession** – physical control or occupancy over property.

**Constructive possession** – control or dominion over a property without actual possession or custody of it, involves property or assets that are not immediately held, but which one has the right to hold and the means to get (such as a key to a storeroom or safe deposit box).

**Criminal possession** – is the holding of property, which it is illegal to possess because of a statutory ban, such as controlled narcotics, stolen goods or liquor by a juvenile, or the holding of something that is illegal to possess because it was illegally transferred. The old adage "possession is nine-tenths of the law" is a rule of force and not of law, since ownership requires the right to possess as well as actual or constructive possession.

### **Remember Key Number 2?**

To ensure the bulletproof effectiveness of the trust, you must complete the transfer of assets into the trust under a circumstance that does not fall under the statutory limits as a Fraudulent Conveyance.

A Grantor cannot revoke or rescind an Irrevocable Trust. This Irrevocable Trust is created for a documented definite term.

This means that once you establish and fund the trust, for a designated length of time, you voluntarily surrender your ability to reclaim your property.

With the transfer of assets to an Irrevocable Trust, you technically give up both control and ownership of the property.

An Irrevocable Trust can own any type of property, but it should only hold property that adds value to the trust.

The trustees' management decisions must follow wise investor rules and be guided by the investment objectives stated in the trust.

While the trust is in effect, you can legally and securely make an outright gift of property to the trust, or even sell assets to the trust if it has accumulated adequate assets to pay you.

To be effective as an asset protector, the Irrevocable Trust must be correctly structured and maintained in five important ways:

1. You as the grantor cannot retain any power to revoke, rescind, or amend the trust. The trust must explicitly state that it cannot be rescinded, amended, or revoked by the grantor.
2. You (the grantor) cannot retain any rights, either directly or indirectly to reclaim property once transferred to the trust. All conveyances to the trust must be absolute and unconditional, with no strings attached.
3. You (the grantor) cannot assert any authority on how the assets will be managed or invested, or whether trust property should be sold or retained. Delegation of these decisions must be exclusively up to the trustee.
4. You (the grantor) cannot assert any authority over income generated from the trust property or how the income will be distributed, except as initially provided in the trust.
5. You (the grantor) cannot serve as trustee or appoint anyone as trustee who is not considered arms length. The courts can closely examine the relationship between grantor and trustee to determine whether the trustee is merely the grantor's alter ego.

The ultimate protection provided by your trust depends greatly on the degree to which you give up control.

The more control you maintain, the greater the chance creditors can reach the assets you transferred to the trust.

Equally, less control means less chance that your creditors can successfully attack the trust assets.

## **Why a Revocable Trust Offers No Protection**

A Revocable Trust, or “nominee” trust, as it is sometimes referred to, is a much more common type of trust only because it allows you (the grantor) the comfort of changing your mind.

Caution should be considered when considering Revocable Trusts as adequate protection under your Asset-Protection Plan. These trusts are useful for estate and tax planning purposes.

Creditors can generally reach assets transferred to the revocable trust as easy as they can attack assets that are simply in your name.

By reserving the right to revoke the trust, you also reserve the ability to take the property back from the trust.

Therefore, any of your creditors, through a number of techniques, could compel you to re-transfer the trust assets for their benefit.

The rights of your creditors to access property placed in a Revocable Trust are different in each state.

Some states provide that in the absence of a fraudulent transfer, the grantor’s creditors cannot reach the conveyed assets, even though the grantor reserved the right to revoke the trust and income from the trust.

In most states, the decision depends on, whether you retained a general power of appointment\* (the right to leave property by will, transfer, gift or distribution under a trust) as to the remainder\* (the right to leave property by will, transfer, gift or distribution under a trust), together with a life estate.

This combination of powers has been viewed by several courts as comparable to property in the name of the grantor.

It is not smart to retain both powers, and is riskier in some states than in others.

Either a life estate or power of appointment standing alone does not give you the same result. For example, a life estate would be considered an asset in a bankruptcy proceeding.

It would then go to your creditors.

The bankruptcy trustee can also declare any other right or claim to any other interest in the trust, whether present or future, actual or contingent, that the bankrupt grantor reserved.

If you transfer assets into a Revocable Trust and reserve the right to revoke the trust, or control the disposition of principal and interest, your creditors, by common law or statute, can reach the assets transferred to the trust.

Normally, your creditors must first proceed against assets in your name. Only when these assets cannot satisfy the claims can the creditors look to your revocable trust property.

These scenarios take for granted that the transfer to the trust was not fraudulent. The rights of creditors, in these instances, are not based upon the conditions surrounding the transfer, but upon the powers of the grantor in respect to assets now in the trust.

In the predominant number of cases, circumstances will allow your creditors to reach your revocable trust assets.

**So, avoid a Revocable Trust if you want definite protection from creditors. The IRREVOCABLE trust remains THE ONLY trust that gives you sound protection.**

Revocable Trusts have become popular with the Living Trust (or “Loving” Trust), which is usually nothing more than a Revocable Trust.

These are commonly seen in magazines and newspaper ads for a few hundred bucks. The Living Trust is useful as a way to avoid the expense, delay, and notoriety of probate, but it certainly DOES NOT offer you any noteworthy Asset-Protection.

### **Why a Domestic Irrevocable Trust Isn't Enough**

Even if your trust is irrevocable, as long as it is living in the United States, meaning subject to the long arm of our country's laws, your assets are in jeopardy.

As we have already covered, no country in the world automatically enforces judgments from any United States court.

This is probably because all other nations are worried about one aspect or another of our anti-trust, environmental, securities, and tort laws.

Some jurisdictions (countries) simply do not recognize any United States judgments and require a trial de novo (meaning a brand new trial).

Other jurisdictions have a way of doing things whereby certain United States judgments can be recognized (usually not criminal or financial in nature), provided certain procedural hurdles (which may amount to a mini-trial) are met.

The decisive U.S. case is *Hilton v. Guyot*, (1895). In essence, “No law has any effect, of its own force, beyond the limits of the dominion from which its authority is derived.”

The bottom line is simply this: “No country in the world will automatically enforce U.S. judgments.” Every country requires the matter to be litigated again in one manner or another.

Thus, if you have an attack pending, you will most probably move the trust to another country (a two-hour process at most).

At this stage, you might find it helpful to choose a country with an aggressive set of Asset- Protection laws, but perhaps not. So in order to provide maximum protection, you need to choose an offshore jurisdiction. How do you do that?

The easiest and smartest way would be to consult with a credible provider; they will give you the information and guidance to better select your options.

It is not critical to choose one of the “favorites” of the Asset Protection crowd. In fact, stay away from many jurisdictions, especially the Cook Islands.

My favorite jurisdictions to initially settle a trust are Belize and St. Lucia for three reasons:

1. Trust companies in these countries are easy to deal with.
2. Each of these trust companies is content with my evaluation that the client is clean.
3. Neither of these trust companies insists that they have power over and knowledge of your assets.

Many trust companies (just try to hire one in The Caymans, Bermuda, The Bahamas, England, or Canada) insist that they have full knowledge of the assets in trust and power over them.

This is simply not acceptable.

Choose a trust company in a country that recognizes trusts, and the trust company is not insistent on control over the client.

Again, U.S. judgments cannot be enforced abroad. That is the reason APTs are set up using an offshore trust company, therefore invoking the laws of an offshore jurisdiction.

The jurisdiction does not matter because nobody recognizes our judgments . . . Period.

## SUMMARY

Remember, creating a trust is like birthing a new baby. When a baby is born, this baby comes into the world owning nothing and owing nothing. If you give that baby a gift, you no longer own what was given . . . so YOUR creditors cannot take it from you.

The TRUST is like a new baby. What you do not “own” cannot be taken from you. Let this sink in before reading further. . . .

NOTE: If after reading this lesson, you feel overwhelmed and you would like me to create an impervious Asset-Protection Plan for you, please email [clientservices@Trustmakers.com](mailto:clientservices@Trustmakers.com).

We will respond to you within 48 hours. Please understand that the Plans we create for clients are very personalized, and we will be “holding your hand” through the entire process. You will benefit from the years of expertise, and save yourself the hassle of doing all the extensive work.

If your situation prevents you from affording this type of professional attention, we will ask you a few questions and then recommend what you should do to set up your Plan.

END OF LESSON SEVEN

Lesson	
8	Security From The Law

You are getting close to graduation day and that means that you have surpassed today’s average person in terms of understanding your liabilities and protecting your assets. This 10 Session course increases the self-confidence that you need to have to conduct your personal life and your business practice with ease.

In Lesson 8, I want to talk to you about the reality of "security" from the law when it comes to Asset Protection.

### Can The Courts Unravel A Tightly Tied Asset-Protection Plan?

This is an important consideration when completing your Asset-Protection Planning. As I am sure you know by now, Asset-Protection Planning does not work if you take half measures.

Many people have invested thousands of dollars in Asset-Protection technology that was not sound. The results are consequently similar to having no protection at all.

Other than the primary situation where you did not construct an Irrevocable Plan, the system has created another form of attack. This form of attack comes from the judiciary and is labeled as Contempt of Court.

**Contempt of Court** – Conduct that defies the authority or dignity of the court; the act of despising the condition that is being despised.

This conduct, considered interfering with the court or legislation falls into two classifications.

**Civil** – Generally imposes a monetary penalty to force the defendant to comply with the court order.

**Criminal** – Generally imposes a criminal penalty such as an incarceration to comply with the court order.

You should be aware that once a Contempt of Court charge levies upon a person, a person must serve the punishment regardless of whether or not they have filed for a direct appeal. This transcends to the fact that the defendant serves the punishment while the issue is under reconsideration. An appeal can take years to move through the court system. Criminal Contempt of Court holds a sentence of up to five years of incarceration and \$10,000 per charge.

It boils down to your knowledge of Asset Protection and the laws pertaining to your rights.

### **Your Rights Regarding Disclosing Assets**

Typically, creditors cannot require you to release information about your assets until they have obtained a judgment.

The reason for this is the value of your assets and your ability to pay has no bearing on the question of your liability.

It is important for you to know that according to evidentiary rules, anything that is not completely relevant to the proceedings is untouchable by the creditor and NORMALLY is not pursuable.

Knowing this empowers you to object to a creditor's request to find out about your assets.

Keep your creditors in the dark about your finances for as long as possible. Do not volunteer information unless your attorney informs you that it is compulsory. You should never speak to a member of law enforcement, the court, or the judiciary without an attorney representing you. What you say to any of these professionals will become a matter of record in law. These people are required to document their work to become recorded in the legal system if need be.

There are two PROMINENT exceptions to the rule concerning pre-judgment disclosure of assets. They are:

1. If a lawsuit has a claim of wrongful conduct involving punitive damages because of your net worth, it is relevant to your ability to satisfy a punitive damage award.

**Punitive Damages** – Damages awarded in addition to actual damages, usually applied when the defendant has acted recklessly or with malice.

In this case, the plaintiff needs to present evidence of fraud or malice—this is not hard for a good attorney to establish.

2. A pre-judgment creditor may also explore an alleged fraudulent transfer, and may even file suit to set aside a professed fraudulent transfer—even though the main claim has not reached judgment.

Again, the inquiry and action must center only on assets allegedly transferred

fraudulently. No questions can be asked about other assets; better stated, you are not compelled to answer any questions about your assets until a judgment is official. The court will determine which assets they are requiring you to compel.

Other than these two situations, a pre-judgment creditor cannot NORMALLY compel you to disclose your assets. (Each state may have different requirements.)

This does not mean they cannot find out or learn about your assets through other means. A creditor can independently investigate your assets as long as they do not breach your right of privacy. In fact, a creditor in a major lawsuit would be foolish not to perform an investigation.

This brings forth the question: **What is my right to privacy?**

You have no direct right to privacy or Constitutional right to privacy. The Constitution implies that you may have some protection, but only in specific instances. When it comes to privacy issues, statutory or procedural law provides more rights than the Constitution. States rights may also provide additional rights to individuals who reside in that state. This is another reason that you need a professional setting up your Asset-Protection Plan; there is no alternative or counter-protection implacably applied to the Right to Privacy.

This is why I recommend this type of Asset-Protection Plan. Our TrustMakers Plans will withstand this legal scrutiny. A creditor will not waste time, money, and effort pursuing a claim that they cannot collect!

Your capital, what you have to lose, and what you can afford to pay is essential information to any creditor, looking to pursue a claim.

**Sound Asset-Protection prevents your assets from being exposed.**

If you are unprotected, the "investigators" will soon uncover every single stock brokerage account, every parcel of real estate, every bank account, and any business interests you have.

Yes, your wealth makes you vulnerable, and motivates the creditor to enthusiastically pursue a claim and stubbornly push, no matter how long it takes, to win a big settlement.

It is vital that your assets meet professional and legal standards in order that attractive visible exposure does not result in the loss of your property! You and your attorney can use what is called "on paper poverty" as the most convincing argument possible for the creditor to either drop the claim or settle cheap.

That should be your message, your mantra . . . and you want your creditors to hear it as soon as possible and as convincingly as possible.

Produce proof of your poverty because it makes you a rock . . . and as I have stated before, "you can't get blood from a rock."

### **Lesson Summary**

Although there are numerous strategies a creditor can use to unravel your Asset-Protection Plan, their chances of success are extremely slim, provided you have a PROPERLY structured Plan.

Even a Plan funded with a Fraudulent Conveyance may withstand the court's power, if one can bear the possible consequences of facing a short-term incarceration. When a person is in trouble with an Asset-Protection Plan, they can choose their money or their time for their wrongs. However, without Asset Protection, it may be your money and your time.

It is advisable that you do not rely on waiting until you NEED Asset Protection to establish a Plan.

The strongest defense against a Contempt charge is the impossibility of performance defense. This means if the court makes an order that the defendant does not have the ability to complete, the defendant cannot be held in Contempt.

Only self-created impossibilities, which have been executed at or during the time the court order was issued, can be classified as true Contempt.

I promise you that you will avoid hundreds of hours and many days or weeks of hassle and stress if you establish your Plan while the financial seas are calm.

In spite of the fact that creditors have an almost impossible task of unraveling a Plan that was set up after an attack is started, it is far better for your peace of mind and to limit the costs and complications involved, by setting up a Plan right now.

It is worth mentioning that if you wait to establish a Plan while an attack is eminent or ongoing, your costs to do so will increase exponentially.

Setting up a Plan while the financial seas are calm is your safest and least expensive option.

In other words, you must do it before you need it!  
Feel free to contact our offices with any questions at 888.916.7070.

END OF LESSON EIGHT

Lesson	
9	The Cuba Clause

Welcome to Lesson 9 of your 10 Session Course in Asset Protection. You are now among the elite few in this country who have a solid foundational understanding of the basic points to keeping your assets safe.

Today I want to talk to you about the dynamics of iron-clad Asset Protection. At the end of this lesson, you will be able to discriminate and sort the good Plans from the bad Plans.

I also want to mention is that one of the first things you will likely encounter is resistance from the individuals around you who have an interest in your financial affairs.

If you are married, your other half might be apprehensive, even scared, when you start making changes to your jointly owned assets. Make sure you involve all those who are involved in your assets from the beginning and throughout the entire process.

Proper communication is vital to proper understanding, and proper understanding is essential to success.

This is important because Asset Protection is a belief by where you live your life, not a one-time event. Your financial picture will continue to change over time.

Through your life, you will add assets and you will give away or sell assets. Laws may

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change, thus affecting the way your Plan is structured. Think of it as maintaining your financial health, so I encourage you to keep the important people up to speed.

One word of caution: be careful what (and who) you tell about your Planning. Tell only your most trusted relatives and advisors only the slightest details of your Planning strategies.

### **The Best Asset-Protection Plan, Bar-None**

There are hundreds of different kinds of products being touted as Asset-Protection tools.

A multitude of lawyers and capitalists make a large profit each year from the countless strategies. Those who profit from "the system" will not be joyous at the thought of the information that I am giving you. When enough people know about it, they (being the folks getting rich selling overpriced and/or ineffective protection strategies) will suffer the impact on their wallets—but here goes.

Let's cut through all the hogwash and focus on two simple tools that will fit the Asset-Protection needs of 99 percent of all the individuals in the United States.

Typically, you will want your Asset Protection Plan set up utilizing, at minimum, a foreign trust.

Even though it is a "foreign trust," your money or property never actually has to leave the United States. The option is, however, available if you feel more comfortable having your money abroad.

You should keep your trust domestic for tax purposes. Foreign trusts are a significant reporting burden.

What is the difference between a foreign and domestic trust?

### **Explanation of Foreign Trust**

A foreign trust is defined, as any trust other than a domestic trust.

A trust is treated as domestic if:

- (1) A court within the United States is able to exercise primary supervision over the administration of the trust (the "court test"), and
- (2) One or more U.S. fiduciaries have the authority to control all substantial trust decisions (the "control test").

In February 1999, the IRS issued regulations articulating and expanding on its position with respect to these two tests.

### **The Court Test:**

The regulations provide that the term "court" includes any Federal, state, or local court, while the term "the United States" includes only the states and the District of Columbia, thus excluding territories, possessions, and Puerto Rico.

The term "primary supervision" means that a court has or would have the authority to determine substantially all issues regarding the administration of the entire trust.

If a court wants to have jurisdiction over the trust, it must have IN REM (against a thing) jurisdiction over the assets or IN PERSONAM (against a person or personal rights) jurisdiction over the trustee.

All a court must do is have personal jurisdiction over you as trustee or the assets in an IN REM proceeding and they have complete control (at least enough to take the money away!).

### **The Control Test:**

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The control test requires that one or more United States persons have the authority to control all substantial decisions of the trust.

They further provide that "substantial decisions" are those decisions that persons are authorized or required to make under the terms of the trust instrument and applicable law, and that are not ministerial in nature.

Substantial decisions include, but are not limited to:

1. Whether and when to distribute income or principal
2. The amount of distributions
3. The selection of beneficiaries
4. Whether a receipt is allocable to income or principal
5. Whether to terminate the trust
6. Whether to compromise, arbitrate, or abandon claims of the trust
7. Whether to sue on behalf of, or defend the trust
8. Whether to remove, add, or replace a trustee
9. Investment decisions.

The term "control" means the ability (by vote or otherwise) to make all of the substantial decisions of the trust, with no other person having a veto power over those decisions.

If your trust is structured so that you and your spouse have the responsibility for each of these decisions, you are clearly in "control" and are clearly a "United States person."

The trust will have a provision to the effect that you and your spouse in your capacity as U.S. co-trustees have complete and total veto power over any decisions of any foreign trustee.

This provision probably provides: "Notwithstanding the above provisions of this article, at all times when this Trust has a United States Co-Trustee and regardless of the number of other Trustees serving at such time; if, after consultation with each other, the Trustees cannot agree regarding any matter affecting the Trust, the decisions of the United States Co-Trustee shall govern."

The following is an example from the BNA tax management portfolio citing the regulations: A trust has three trustees, two of whom are U.S. persons. Only the trustees have the authority to make the substantial decisions of the trust, and such decisions must be made by the unanimous vote of the trustees.

The trust does not pass the control test and is treated as a foreign trust, since a non-U.S. person has veto power over substantial decisions of the trust.

If, however, the trust instrument stated that all substantial trust decisions are to be made by a majority vote of the three trustees, the trust passes the "control test."

It is not unreasonable to think that the U.S. co-trustees of this trust are deemed to possess suitable control of this trust. Good minds may differ on this point.

Automatic migration or flee clauses. Also Known As "**Cuba Clause**"

The proposed regulations provide that a trust will not satisfy the court test if the trust instrument contains an automatic migration clause that would cause the trust to migrate from the United States if a United States court attempts to assert jurisdiction or otherwise supervise the administration of the trust.

Commentators argue that the rule in the proposed regulations concerning automatic migration  
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clauses is too broad.

They argue that an automatic migration clause should not cause a trust to be treated as a foreign trust if migration is triggered only by events that are not particular to a given trust, its trustees, beneficiaries, or grantors.

For example, if a trust will migrate because of foreign invasion of the United States, the residency of the trust should not be affected.

The final regulations adopt the suggestion and provide that a trust will not fail the court test if the trust instrument provides that the trust will migrate from the United States only in the case of foreign invasion of the United States or widespread confiscation or nationalization of property in the United States."

Though it seems logical that if the automatic "flee" clause does not and cannot affect the USA, it is not determinative.

The basic law is that the trust will not be treated as a United States trust for purposes of the control test if the trust has an automatic migration provision affecting control.

Even if a trust is deemed to be a United States trust, under the control test (i.e., all substantial decisions are controlled by United States persons), it will not be considered to be controlled by United States persons if any attempt by a governmental agent or creditor to collect information from or assert a claim against the trust would cause a substantial trust decision to not be controlled by United States persons.

With all of this said, each person must make a decision on a year-to-year basis whether or not the trustee is domestic or foreign.

I think that it is important to point out that this is an ever-evolving area. Note further, as long as you have an arguable position that your trust is domestic AND that you pay all of your taxes, your exposure is slight.

I know that all of this can seem confusing. If you feel you are a candidate for Asset Protection, I would strongly encourage you to take our firm up on my free consultation.

I will ask you a few simple questions to determine your risk and answer your questions. This will help you decide how to set up a Plan that is structured correctly to meet your needs.

Please email at [clientservices@Trustmakers.com](mailto:clientservices@Trustmakers.com). We will respond to you within 48 hours. Please understand that the Plans created for our clients are very personalized and we will be "holding your hand" through the entire process.

You will benefit from years of expertise and save yourself the hassle of doing all the extensive work.

END OF LESSON NINE

Lesson <b>10</b>	<b>Jurisdiction Selection</b>
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This is Lesson 10 of 10. I think congratulations are in order! You have gained substantial

knowledge thus far. This is graduation day!

You have now gone from being a potential victim of a financial predator, to being in the top one percent (1%) of informed individuals—you now have the power to make choices about whether or not you will be a victim.

I do hope you understand that you have the power to change your life for the better and that you now possess the peace of mind to understand that you have the command to control your assets.

This last lesson is simply about what to do with your newfound knowledge. This is a lesson and it is a recap.

### **Choosing a Foreign Trustee**

When the financial seas are calm and there is no danger of imminent creditor attack, a trustee in any jurisdiction, which recognizes trusts, will do just fine, although normally, it is best to choose a trustee in a jurisdiction, which has enacted specific Asset Protection legislation.

A properly drafted APT should always be structured so that the foreign trustee does not have any access to the protected assets.

It is key that you never enter into any contract (and a trust agreement is just a contract) that forces you to trust anybody else (especially a foreign trust company) with your assets.

In addition, if an attack comes, the trust will likely be migrated to a different jurisdiction, utilizing the **Cuba Clause** (from Lesson 9).

Since, with a properly structured APT, you are not in any way vulnerable to the foreign trustee, the primary consideration should be ease of communication and cost. Unless there is a good reason to pay more, I believe the annual cost for an **offshore trust company** (OTC) should normally be \$2,000 or less; any more is unjustified.

NOTE: We have special relationships with offshore trust companies in all jurisdictions. We can help you with a cost effective solution.

If creditor attack comes, then I believe that a private trust company should be formed to become the foreign trustee. You should endeavor to choose a jurisdiction, which is perceived as "clean."

Some jurisdictions have gone overboard in promoting themselves as Asset-Protection havens, and are perceived as having many trusts settled with fraudulent conveyances.

You do not want to be tainted if you are ever forced to defend your structure in a U.S. court.

Please feel free to contact our firm if you are in the process of choosing a foreign trustee.

I have my favorites and am willing to make suggestions.

### **Just remember one key:**

Never ever put yourself in a position where you are forced to trust a foreign trust company with any of your assets. If you are asked to do this, you are getting bad advice.

### **Jurisdiction Selection**

The jurisdictions which have enacted or proposed specific legislation which is relevant to an Asset-Protection-oriented trust are the Bahamas, Barbados, Belize, Bermuda, British

Virgin Islands, Cayman Islands, Cyprus, Gibraltar, Guernsey, Isle of Mann, Jersey, Labuan, Liechtenstein, Madeira, Mauritius, St. Lucia, the Turks and Caicos Islands, and Western Samoa.

APTs should always be structured so that the foreign trustee does not have any access to the protected assets. Remember, you should never trust anybody with your money, especially a foreign trust company.

Because APTs, if properly established, insulate the protected assets from the trustee, it is our opinion that any of the above jurisdictions will do just fine when there is no danger of imminent creditor attack.

In most cases, the primary consideration should be ease of communication and cost. If a creditor attack comes, then extra care should be taken to choose the best jurisdiction to migrate the trust to (utilizing the Cuba Clause of a typical trust).

I also think that you should endeavor to choose a jurisdiction, which is perceived as "clean." Some jurisdictions have gone overboard in promoting themselves as Asset Protection havens and have attracted many scammers. You don't want to be tainted if you are ever forced to defend your structure in a U.S. Court.

As we have discovered in this seminar, the number of lawsuits has escalated out of control in this country. Asset Protection is one of the elements of estate planning and wealth protection that cannot be ignored.

If you have a moderate amount of wealth, you simply must take practical steps to protect it. In the United States, no one has been immune to the ravages of litigation, liability, malpractice, divorce, bankruptcy, estate and death taxes, attachments, civil forfeiture and seizure, the weakness of America's banks and insurance companies, as well as the radical and calculated wearing away of personal privacy. Personal assets and property rights are far too important to forfeit by doing nothing.

Life is full of surprises. Law enforcement organizations and attorneys have what seems to be *carte blanche* to violate the Fifth Amendment. Most of us have experienced moments of anxiety or fear over what the future may bring.

You may have had the experience of projecting all sorts of "what-if" scenarios and tried to create a contingency plan.

Sometimes these scenarios play themselves out exactly as you have feared, other times you are blindsided by a situation that you never saw coming.

This seminar is my contribution to help you prepare for those "blindsided" situations that will threaten your emotional, mental, and financial well-being.

You may never expect to face a creditor, a bankruptcy, a lawsuit, or a Federal agency that will threaten to destroy your way of life. Yet, the reality is that a majority of people who never saw it coming are faced with one or more of those scenarios all the time . . . you cannot predict, with any accuracy, liability situations that the future may bring.

It is far better to be safe than sorry.

In my years of experience in this field, I have seen countless lives ruined by freak occurrences and the legal arm of the law run rampant.

I still feel that as an American, I live in the greatest country in the world. However, the same freedoms that can liberate us can allow us to be destroyed as well.

That is why we cannot rest on our laurels when it comes to securing our financial "present" as well as our future.

Therefore, to sum it all up, the next step for you to take . . . is simply act. The knowledge you have gained over the last few weeks will mean nothing if you don't implement it.

I cannot stress it enough . . . take action. Do Not Put It Off!

Time will pass and if you do nothing, you are no better prepared for an attack than you were prior to learning what the last three weeks have brought you.

I promise you, the emotional pain I have watched people go through who are financially attacked, after they have had the chance to set up Asset Protection, but DIDN'T is worse than the folks who have never even heard of the option.

It is not something that is easy to live with.

If you need help, we are here: [clientservices@Trustmakers.com](mailto:clientservices@Trustmakers.com). I wish you a happy and protected life. Remember, luck is good, planning is better.

I wish you the very best,

Rob Lambert

Asset Protection Services, Since 1987

We can proudly say not one of our trusts have been pierced!