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## The TRUTH About Malpractice Insurance

By Robert Lambert, CEO, Asset Protection Corporation

If you practice medicine this 70 page essay is a must. It gives clear, precise and up to date information about the world of malpractice insurance.

If you need to talk intelligently about protecting your net worth or you are a professional this book is for you!



Robert W. Lambert



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Information

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# **The Malpractice Insurance Crisis, Asset Protection and What You Can Do About It**

How To Protect  
Your Money and Assets  
In A World Gone Mad

By Robert W. Lambert, J.D., LL.M.

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# The Malpractice Problem

## A Personal Letter From Rob Lambert

The purpose of this Special Report is to alert you to some of the tools you can utilize to protect your assets. It is written in the shadow of a serious nationwide Medical Malpractice Insurance Crisis.

For the purposes of this report we will assume that the Medical Malpractice Insurance world is in upheaval and that this Crisis will continue for the foreseeable future. The problem is a hugely strong lobby representing the Trial Lawyers who make a living shaking down Physicians. This Lobby opposes caps on awards and any legislation which might reduce the outlandish awards which Juries are delivering. This creates huge problems with many Doctors leaving the practice or going bare (note, in Florida, 12,000 of the 47,000 Doctors do not have malpractice insurance at all). Currently, Doctors in six States are either “on strike” or threatening a strike because of this Crisis.

A day does not go by that we don't get a call from a Doctor who is either considering going bare or is having trouble procuring the type of protection he or she feels is necessary. Tails on policies, protecting Doctors for past claims are often next to impossible to obtain (making retirement a liability time bomb waiting to explode). Companies are in the market one day and out the next.

We always encourage Doctors to keep whatever insurance they can afford. Insurance is often required to retain hospital privileges and, even more important, insurance will in most cases provide a solid defense against attack from an opportunistic lawyer seeking to tear the Doctor apart.

The only certainty in this Malpractice Insurance world is that you CANNOT depend on malpractice insurance alone to protect your assets. The environment is fragile and insurance is literally Here Today and Gone Tomorrow.

In this world gone mad, you need to take extra steps to protect yourself. We are not going to beat this Malpractice Crisis to death. You wouldn't be reading this unless you were already convinced of the problem. Instead, this report will focus on some of the steps you can take to protect yourself. The bottom line is that it is perfectly legal and ethical

to protect your assets from the professional takers. This SELF HELP TORT REFORM may be all you can really depend on in this world gone mad.

## THE REAL PROBLEM: THE PROFESSIONAL TAKERS

They're out there.

“Dollar sign” driven maniacs, who feed on the financially vulnerable like some perverted parasite from a science-fiction movie. It's not paranoia that drives my mission. What motivates me to do what I do is the sad reality of the times we live in.

This Special Report is going to serve as your inoculation against the “parasites.” What am I talking about? I'm talking about individuals I call “professional financial predators”, these are people who make a life for themselves by using the US court system to destroy the financial lives of others. The single lethal tool of their trade is the lawsuit. Anyone... especially Doctors .... can be a target (or a victim) of a heinous lawsuit. It can turn your beautiful life into a roller coaster of stress and legal fees, or turn your already difficult life into a literal nightmare that only the strongest can survive.

The good news is there is a way to prevent yourself from being a target, and I'm going to take you through the information you need to know to ensure you are never a victim,

Don't misunderstand me; there are plenty of legitimate lawsuits filed against individuals or entities that ultimately deserve to be made financially responsible for their wrongs or for causing someone else's pain and suffering. This Special Report is not written for them. Unfortunately, the *bad guys, people who should be held responsible in a legitimate lawsuit* can use the information contained in this Special Report to their advantage as well.

I'm trusting that the message in this Special Report will primarily reach the hands of the otherwise, uninformed (and therefore unprotected) American who wants to protect what he or she has.

This Special Report is for the wealthy, the soon to be wealthy, the entrepreneur, the business owner, the guy or gal who has worked their tail off to build a lifestyle - using sheer grit and determination, smart

moves and great thinking, even for those of you who were simply financially lucky.

Whatever the case, for every one of you out there that have enjoyed an ounce of financial success, there are a dozen individuals ready, willing and able to legally rob you. Again, these individuals' are *pecuniary parasites...professional takers* because they depend on robbing the wealth of others for their own existence without making a useful or adequate return to society.

The function of this Special Report is to give you the means of stopping these parasitic individuals in their tracks. To use one of our era's more popular *buzzwords* I want to *empower* you when it comes to keeping your assets safe.

When you are finished reading this Special Report, you will have enough practical, *real world* knowledge to make intelligent decisions regarding the protection of your assets. I'll outline the steps you'll need to take to protect yourself from becoming a victim of even the most cunning financial vermin.

I will reveal to you the *sine qua non, the bottom line essential facts and information* that is the foundation of rock solid asset protection. Once you know what these "secrets" are you will NEVER again have to worry about losing your hard earned assets to some *professional taker* (lawyer, IRS, third party, creditor, etc.).

One last note, this Special Report is not written for the lawyers. Attorneys who wish to read up on the technical *particulars* of asset protection should reference my legal writings.<sup>1</sup>

This Special Report is meant to explain the solid, fundamental, concepts and strategies to protect your wealth. It is in no way meant to cover every nuance of the law or as a substitute for years of experience and expertise in asset protection or tax laws. If you have questions as you go through this Special Report, be assured that I will also provide you with reliable, credible resources to find answers.

Rob Lambert  
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<sup>1</sup> "ASSET PROTECTION TRUSTS: What They Are, How They Work and Tax Aspects" recently published by Times Mirror Corporation - Matthew Bender & Company, Inc. as part of its Debtor Creditor Law series.

# Chapter 1

## What Asset Protection Is Really About And Why You Need It

**A**s you know, we live in an economically dangerous world, a world where the threats come not only from outside our shores, but from inside as well. The sheer number of lawsuits has spun insanely out of control. Today, you could simply, and without warning, lose everything you own to a well-played lawsuit. Year after year, more families, individuals and businesses are rendered suddenly and devastatingly bankrupt. Yes, it can happen to you!

### The New Code Of Ethics

You're undoubtedly familiar with the age-old golden rule – *do unto others, as you would have them do unto you*, perhaps an equally familiar saying, and a slightly twisted version of the old standby, is “he who has the gold, rules.” Today, it's much more likely that the truer statement would be “he who has the gold, pays” unless *he* has taken steps to utilize advanced asset protection technology.

Unless you take the measures to put proper asset protection in place, your wealth can essentially become a lure for lawsuits that otherwise would have no foundational basis in the mind of even the most creative plaintiff's attorney.

### What Can Be Done?

It's been said that the best defense you can have is to be completely poverty-stricken and destitute. There's an old Bob Dylan song that says it best “When you got nothing, you got nothing to lose.” You would in essence be a rock, (and nobody can get blood out of a rock). You'd be judgment proof. Of course, there is an obvious downside! If you're completely poverty-stricken, possibly even homeless and living on handouts, sure...you've become judgment

proof. But it doesn't sound like much fun. Who in their right mind would want to pay such a price to be judgment proof?

I'll assume that you (like most folks) would prefer to safeguard your wealth than trade it for a life on the streets. I'm going to unravel for you exactly what you need to know and what you must do to protect your wealth from the ever-increasing dangers.

In less than two hours, the approximate time it will take you to go through this Special Report, we're going to reveal how you can achieve the financial security and peace of mind you need and deserve. This Special Report is meant to eliminate ALL Americans from being "financial rape victims." Yes, that's a harsh, ugly term, but it's not an exaggeration, as you'll see shortly.

## **Is The Concept Of Asset Protection Ethical?**

Here is a topic that is worth addressing right from the start. Chances are that you already have opinions about asset protection. If not, you surely will develop some while you read through this Special Report. Some people view the topic as a matter of ethics. The truth is that *some* individuals can abuse asset protection strategies and, as a result, avoid financial responsibility for actions that they truly should be held responsible for.

Like any powerful legal tool, asset protection techniques can be perverted. For example, an asset protection trust can provide almost complete insulation of assets from creditor attack and, at the same time, allow the person who establishes a trust, (technically referred to as the Settlor or grantor), to keep his or her interest in the trust absolutely confidential, legitimate creditors cannot touch the Settlor/grantor's assets.

For example, Robert Maxwell utilized asset protection technology in Liechtenstein to steal approximately \$450,000,000 from employee pension funds. Even though there are laws, which impose liability against a person who forms a trust specifically to defraud **legitimate** creditors, it is still virtually impossible to get to the protected assets.

This Special Report isn't being written for evil-minded individuals. Yes, they exist, but they are in the minority. For every individual who chooses to act without integrity will eventually reap the bitter consequences. That's just my opinion.

Now, let me assume that you have integrity and you may have the mindset that protecting your assets is immoral. I want to challenge you on that thinking. I say what is immoral is stealing. That is exactly what thousands upon thousands of the lawsuits filed in the United States are about...it's really no different than a big bully stealing candy from a baby.

But the stealing is not the only immoral activity occurring in the world of wealth...it's also immoral to be in a position where you have accumulated assets and NOT taken steps to protect them. Most of us have taken steps to provide for our family upon our death. We have active life insurance policies and we prepare a will, but what about preserving your wealth while you are still here?

Would you agree that it's immoral, (or at least irresponsible), to ignore taking the steps to keep what you have? Why would you want to leave yourself open to an attack by one of these *parasites*, something that could result in you and your family being the victims of financial ruin left without even the basic funds needed to survive?

You could wind up homeless, starving, on welfare, working second and third jobs, lose the cars, destroy your child's dream of going to "that" school. Yes, it sounds dramatic...but this is no daytime soap opera I'm describing, it's a regular occurrence in our country. I say it's time this nonsense was stopped.

But don't hold your breath waiting for the government to say NO-MORE! The legal system has taken on a life of it's own and it's up to each of us individually to protect ourselves. It's up to you.

The good news is this: properly implemented asset protection plans are **completely** legal and ethical and just as the parasites use our legal system to rob the unprepared, you can use our legal system to stop them dead! An asset protection plan formed when your

financial seas are calm, when you face no active threat, will simply render the professional takers helpless.

This is financial and wealth, self-defense and I want to give you your black belt in asset protection and preservation. So let's get to it shall we?

## **A Map Through The Asset Protection Maze**

If you have ever looked into the process of setting up asset protection, one of the biggest problems you've likely encountered is how most providers complicate the definition. The more complicated it sounds, the more money they can justify charging you for it. I'm going to make the *complex* simple for you.

## **So What Is Asset Protection In A Nutshell?**

In it's simplest terms, asset protection begins with the understanding that there are people who want to take your money and property away from you. I call them *professional takers*. Let me help you see the picture a little clearer. Since the 1960's the number of lawyers in our country has tripled.

There are at least 1,000,440 lawyers in the United States; our population is currently near 300 million. Japan's population is equal to almost half of the USA's but they have less than 25,000 lawyers. Each US lawyer is licensed to file lawsuits. And a large percentage of these lawyers, (estimated to be as high as 36%) are either unemployed or underemployed.

Our system also permits, encourages, rewards and fosters contingent fee lawsuits, for us this is normal (this practice is not common in any other major country). These underemployed lawyers often have little more to do with their time than search out potential *deep pocket defendants* and commence lawsuits against them.

These underemployed lawyers have become the professional takers of our society. Lawyers, like the rest of the human race, are subject to all those things that make us human: greed, envy, and egotism. They also are highly competitive. And it generally doesn't make any difference if they are right, so long as they win. And oh, don't we Americans value winning.

For lawyers, victory's reward is twofold: money and reputation. The more they win, the greater the number of cases that come their way; the bigger those cases, the more money earned. As a result, litigation is rampant. One in ten Americans is sued each year.

The average obstetrician in New York has been sued eight times. Insurance is becoming more expensive and more porous. Huge judgments are the rule rather than the exception; judgments of \$100 million are common (A classic example is the \$338 million judgment against Price Waterhouse).

These professional takers are like common burglars in that they pursue unprotected reachable assets: they go after the easy pickings. In most cases if assets are protected, contingent fee suits against those assets will be dropped as *simply too difficult or expensive*. A successfully implemented asset protection plan functions by destroying the economic incentive of the *contingent fee* litigant.

The reality is these *professional takers* hunt down and corner people with unprotected assets. Using our legal system, they find ways to take assets from those that have them.

You must acknowledge that these *professional takers* exist and devise ways to stop them in their tracks. I've made a career out of frustrating the *professional takers* by making it too difficult and too expensive to take my clients money. What I do for my clients and what I will reveal to you in this Special Report is legal, time-tested and most importantly...it works!

## **The Definition of Asset Protection Planning**

Asset protection is a unique entity; it is not the same as financial planning or estate planning but is an integral part of both. Asset protection might best be understood as the “LIVING” side of estate planning, and may be defined as the 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 is to completely insulate you from losing any of your wealth, at worst it is for 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. Then a legitimate \$1 million claim was filed against you, (assume you were liable and deserved to be accountable) and it was settled for \$100,000 based on the fact that you had structured an asset protection plan.

But you still are out of pocket \$100,000! So, does asset protection planning work? Absolutely! You just saved \$900,000. You certainly would have a difficult time arguing that your plan didn’t save you a lot of “dough.”

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.

**Simply stated, asset protection keeps your valuable assets (business, savings, house, stock, bonds, etc.) from any creditors, legitimate or otherwise, who want to take them from you.**

There are literally hundreds of different techniques to protect different categories of assets. Before I get into the explanation of what these techniques are, let’s take a look at exactly why asset protection can no longer be considered a “luxury” in this country.

## **Solvent Today –Sued Tomorrow**

On April 20<sup>th</sup> 1999, our country watched in horror and we cried for the town of Littleton Colorado. That day at Columbine High School, two gun-wielding students massacred their fellow high school classmates. The horrific news shocked the world.

What you might not know is that at least 18 lawsuits were filed as a result of this tragedy and just about everyone was a potential defendant: gun makers, the gunmen's parents, the school district and even the Sheriff's Department.

One of those lawsuits in particular really drives home the seriousness of what I will reveal to you in this Special Report. By the time of this printing, it's already old news, but it is nevertheless a timeless illustration that I couldn't help but write about.

As we go into this section, keep in mind that the individuals were not unique. They were like millions of other average American families. They woke up one morning thinking, "it was just another day" that "everything was fine" and by the time the sun went down that night, their lives were changed – forever.

After the shootings, the parents of one of the Columbine High School gunman filed a lawsuit against the Jefferson County sheriff's department and the school district. Why? They claim that had these two organizations informed them about their son's Internet ranting and violent tendencies, they would have kept their son and the other boy apart, and therefore could have prevented a mass murder. Of course the fact that their son had shotguns in gym bags, and pipe bombs in the closet is an issue that would have to be overlooked in order for these parents to justify such a position.

At first glance you might think "preposterous," a simple ploy to make money off the tragedy. If we dig deeper, you might be able to understand why they might have filed such a suit. My guess...pure economics.

You see, unfortunately for the parents of the shooters, there were a multitude of lawsuits filed against *them* by the families of the injured and slain students. To date, many families of the slain and injured students settled their lawsuits with the shooters' parents. Terms of the agreements were not made public, but the shooters parents were directed to provide more than \$1.5 million to be divided among the families of the victims.

This whole event is tragic. Two boys destroy the lives of dozens of people, and damage the lives of hundreds more, by opening fire in their school. But it becomes even more tragic when the desire of the involved families seeks to make it the parents', the sheriff's and the school's fault. This type of reasoning doesn't make sense to me! But it is the exact type of mentality that is running rampant in our country. This should make you stop and think...."Why in the world are lawsuits like this allowed to be filed?"

## **The Growing Epidemic Of Legal Robbery**

In February of 2000, Paul F. Engler, Cactus Feeders, Inc. and Cactus Growers, Inc sued daytime talk show host Oprah Winfrey. They brought suit against Oprah and her company, (Harpo Productions, Inc.) and Howard Lyman for insinuating that red meat may cause health problems.

We live in a land that believes in the First Amendment, where it's okay to speak your mind, but be careful, you could get sued for it. Has our Justice system eroded to the point of fostering incessant, frivolous lawsuits?

Step-by-step guides for filing lawsuits are now displayed on the Internet. Cut-and-paste lawsuit kits are being made available to plaintiffs' lawyers. Attorneys are on constant prowl to find something that deep-pocket corporations can be sued for. The U.S. devotes twice as much of its gross domestic product on tort cases as any other industrialized country.

Critics wonder if the nation hasn't gone litigation mad. (*I wonder what it would take for them to stop wondering and see that it has.*) A conservative estimate of total annual plaintiff-lawyer income

runs to at least \$25 billion -- not including the value of judgments won and corporate defense expenditures.

Tillinghast-Towers Perrin, one of the leading management consulting firms in the world, estimates that the overall annual cost of the American tort system -- including payments to injured people, legal fees, and administrative expenses -- was at least \$165 billion per year as we entered the new millennium.

Observers report that only hours after a big company gets into trouble, plaintiffs' attorneys begin churning out dozens of suits across the country, while coalitions of class-action law firms mount sophisticated, multi-pronged legal, political and mass-media attacks against entire industries -- actions which can drive multimillion dollar companies into bankruptcy.

Some of the actions are justified. Yet the thirst for high-priced settlements and judgments drives some law firms to launch almost laughable actions. For example<sup>2</sup>:

*In 1999, a pair of attorneys filed a national class action against Proctor & Gamble and other manufacturers, claiming that toothbrushes are actually dangerous -- because they can cause discomfort, receding gums and sensitive teeth.*

*In 1998, class-action lawyers brought a fraud suit against a sporting goods manufacturer because the company had substituted a free package of three golf balls for free golf gloves it had promised in a promotion.*

You have undoubtedly heard of the well-publicized case of a \$2.7 million judgment in favor of a New Mexico lady who was burned when a local McDonald's restaurant served coffee she claimed was too hot, here are some other examples:

*A New Hampshire jury ordered the owners of an apartment building to pay \$2.1 million to a woman who was bitten on the arms and legs by a friend's pit bulldog -- the plaintiff claiming that*

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<sup>2</sup> Source: Mike France, "The Litigation Machine," *Business Week*, January 29, 2001.

*the apartment building's owners, rather than her friend, were responsible.*

*A Virginia construction worker who refused to let doctors reattach his severed hand after he intentionally cut it off with a power saw later sued the hospital for \$3.3 million.*

*A New York jury awarded a secretary \$5.3 million on her claim against the Digital Equipment Corporation that her computer keyboard was responsible for her developing a case of carpal tunnel -- a repetitive stress injury.*

*Pedro Duran of Pensacola, FL, got incredibly drunk one night while out partying with his friends. Staggering home alone in the wee hours of the morning, Pedro passed out on the railroad tracks he was crossing. A train came by later and cut off his arm. Pedro sued the railroad and won \$900,000! The jury concluded that the railroad was negligent.*

Yes, insanity rules even in the courtroom! The truth of most of these claims and other settlements is not only that they are often the result of someone's inability to accept responsibility for their own actions, but they are often completely out of proportion to damages, and are being made simply because the defendants were known to have deep pockets.

## **Can Litigation Become A Way Of Life?**

There are some organizations that have become quite skilled at finding a big payday from making a habit of filing ridiculous lawsuits. For instance, one United States Rural Legal Aid organization, which receives money from the Legal Services Corporation, pursued a destructive lawsuit against the owner of a small Kentucky farm that resulted in the breakup of the farmer's marriage and may have resulted in the loss of his farm (if he lost the suit).

The farmer, Billy Wyatt, was sued on behalf of three migrant workers from Texas who, despite showing up at Wyatt's farm to

work in 1996, spent most of their days at a local country store. After a week of this, Wyatt drove the men back to Texas himself, only to be sued two years later on claims of housing violations and discrimination.

Wyatt had to settle his case even though he disputed the claims, simply because it would cost him over \$60,000 to fight the suit. Unfortunately, the stress caused by the suit resulted in the breakup of Wyatt's marriage.<sup>3</sup>

The same organization sued several vegetable growers as part of its campaign to help the Texas Farm Workers Union organize workers in the High Plains area of the state. In that case, a federal district court dismissed all charges against the growers.

Notwithstanding that the organization had been dismissed from the case, they sued to recover their attorney's fees. The judge awarded \$250,000, compensating the attorneys at a rate of \$175 per hour despite the fact that the local attorneys' billing rates in the area were \$50-75 per hour.

The end-result of this taxpayer-subsidized fiasco was to stick the growers with a half-million dollar legal bill and the demise of the local vegetable industry. Of the nineteen major growers in the Texas High Plains area in 1980, only two remain today.<sup>4</sup>

## **So Who Needs Asset Protection?**

The fundamental answer is anyone with ANYTHING that they don't want to lose needs some form of asset protection. If you have assets or a business worth at least \$25,000 or more you are a potential target for a financial attack from one of many predators...including creditors, unscrupulous attorneys, even the IRS.

If you run your own business, if you have stocks and bonds, if you are in the public eye as a celebrity or even known in small circles as

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<sup>3</sup> See James Malone, "Farmer Decries Suit By Migrant Workers," *Louisville Courier-Journal*, June 28, 1999

<sup>4</sup> See Congressional Testimony of Libby Whitley. June 15, 1995

someone who is “doing well,” you could become the target of a sue-happy individual.

What’s more, if you happen to engage in activities in your business or personal life that could create a liability situation for you, you need to think very seriously about what would happen to you and/or your family if you were to be sued...could you easily fund and weather the mental and financial burden of a lawsuit? Could you recover if you were to lose everything?

### **What Are The Odds?**

A business owner or a licensed professional has a one in three chance of being named a defendant in a lawsuit in the next year. And it will only get worse with more than 100,000 law school students in school each year.

### **Any Of These Could Leave You Penniless And In Debt:**

- Divorce;
- A negligence or injury claim, whether justified or not, that exceeds any insurance coverage you may have;
- Lawsuits from disgruntled business partners or employees;
- Huge fines for violating state or federal law;
- Lawsuits because of the actions of an employee;
- A costly accident and negligence claim;
- Nursing home or catastrophic medical bills;
- A lawsuit for defamation;
- Claims from creditors should your business fail;
- Breach of contract through no fault of your own;

- Catastrophic medical bills;
- Seizure of your home or other assets without due process by U.S. Customs or other government agencies with forfeiture power;
- A huge tax bill and escalating penalties following an IRS audit;
- A professional malpractice suit.

Everyone will flirt with liability and financial disaster, regardless of lifestyle, occupation or caution. Dangers can be minimized but never entirely avoided.

In the chapters that follow, I will show you that even if you can't eliminate the possibility of the above listed points, you can greatly reduce your financial exposure due to them. No...you can't take it with you when you're gone but you can make very sure nobody takes it from you while you're still here.

## **Summary**

**We live in a society where suing for profit has become the norm. Anyone who has not taken steps to insulate themselves financially is a likely target. Properly implemented asset protection, protects your valuable assets (business, savings, house, cars, stock bonds, IRA's etc.) from creditors or predators who try to get their greedy little hands on them.**

# Chapter 2

## All The Big Confusing Words Explained

Unfortunately, law was written so that lawyers, (like me) would have a reason to live. Okay, that's a bit of an exaggeration...but in order for you to make informed decisions about your own asset protection planning, you need to know some basic terms to form an essential understanding of the technology.

This chapter will serve as your reference section for many of the terms you must familiarize yourself with. These are terms that are essential to seeing the entire asset protection picture.

I want to define in simple terms the things that are important for you to know. In order to truly feel “educated” about the type of asset protection I’m suggesting you employ, you’ll need to be familiar with the following words, concepts and definitions.

### Rob’s Idioms Of Asset Protection

#### **It’s Cheaper To Be Mistaken...Than Taken**

As you will see over and over again in this Special Report, asset protection planning can only be truly effective when it’s done *before* you have a problem. It is a prevention of problems and is not a “silver bullet” for elimination of current troubles.

It’s better to *do* asset protection and never need it than to not do it and hope you’ll never need it. Once trouble arises...it’s too late. Like the old saying goes “A stitch in time saves nine...in the case of asset protection the, “stitch” is dollars.

#### **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. Imagine right now that you just

received notice that you are being sued and the reality is that you might lose a significant amount or all of your assets. That is a terrifying thought for most of us AND a considerable advantage for the plaintiff.

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. If you come under attack by creditors without asset protection planning in place, you've 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. That's because the mere cost and the accompanying hassle that is the trademark of long-drawn-out lawsuits can lead an otherwise dynamic and rational person to make fear- and intimidation-based mistakes.

You are far less likely to make poor decisions when the fear of loss has been eliminated or reduced through asset protection planning.

### **Plan For The Worst, Hope For The Best-Optimism At It's Finest**

Over the years I've talked with hundreds of people in trouble, people who called wanting my help based on options that they had *heard* would help them in the event they ever came under attack.

Although I had compassion for them, I couldn't 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 just never followed through.

Here they were, maybe only a few months to a year later in some cases, begging me for help that I just couldn't 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!

Like vultures circling a troubled animal...once the *financial predators* have gathered, your situation is grim and your planning possibilities are disappearing fast, if not gone completely. It's not paranoid to expect the worst...in this case - it's prudent and responsible thinking.

Optimism is to anticipate the best possible outcome. Establishing asset protection is to assure it.

### **Asset Protection Planning Should Be Like Breathing... Not Choking**

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 in a variety of situations. You learn to utilize methods to safeguard yourself or your business from trouble.

Whenever you discover or create a clear-cut and economical and efficient plan that prevents or cures potential problems, then that plan is implemented (or at least considered) when circumstances dictate. It's the same with your asset protection plan. You need to have a clear, simple step-by-step process to follow, which is uncomplicated and effective.

It's like breathing. Your body doesn't need to think about it or figure it out... it just does it. You need to be able to almost instinctively do what is necessary to safeguard your assets rather than find yourself in a crisis situation, trying to figure out how to "save your life."

### **The Best Plan Is One That Never Is 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 us imagine that you set up a plan, you spend 20 or more years maintaining it and then on your deathbed you suddenly decide to become irritated because you never needed it.

Is this truly the whole story, that you never needed it? In fact the whole story may be that the reason you never came under full attack was because you had the plan in place, that the *professional takers* may have decided to attack you, but prior to doing so investigated the ease of access to your wealth and came up empty.

In this case the plan WAS the reason you were never challenged. The truth of the matter is that the best plan is one that is never challenged. You need to understand that even a plan that is never attacked is a WIN for you. Proper planning will ensure that your lifestyle is preserved and with estate integration, your wealth can be passed on (after your death) as you see fit. That, my friend, is security.

## **What Is An Asset Protection Trust**

There are many types of trusts, but for our purposes I will define an asset protection trust 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. Honestly, this is every country in the world since every country requires that the case be reargued under their law.

This is not to say that assets have to leave the USA to be protected, they don't. 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 because 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.

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) provided certain procedural hurdles (which may amount to a mini-trial) are met.

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. 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.

**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.

**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 Provision**

The terms “Statute of Elizabeth override provision“ or “anti-Statute of Elizabeth provision” refers to a modification to traditional United Kingdom fraudulent conveyance laws eliminating or reducing the protection given to future unexpected creditors.

These terms are often loosely applied and are somewhat lacking in exactness to refer to laws enacted in foreign jurisdictions, which make 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 conveyancing 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 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 asset protection trust 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 asset protection trust 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 asset protection trusts 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 asset protection trusts. 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 judicial climate serves to draw litigation and that by reducing or eliminating the size of the potential recovery the incentive of any claimant to institute and pursue litigation is likewise reduced.

## **2. A Tool To Settle Or Discourage Litigation**

Few lawsuits are brought on principle, particularly if the lawyer for the plaintiff is being compensated on a contingent fee basis. 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 prospective spouse. The offshore trust will normally protect the transferred assets in the event of a divorce. The primary difference is that the prospective spouse does not need to consent to the transfer (in fact, the spouse need not even know of the transfer).

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

# Chapter 3

## 5 Of The 10 Keys To Asset Protection

**B**y now you're probably starting to see that having some type of asset protection strategy in place is a must in our society. No longer should the question you ask yourself be, "*Will a financial disaster happen to me*" it should be "*when will it happen to me?*" This is not some hyped-up scare tactic, it's 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 \$10 thousand or \$10 billion, if it's all the money you have...and you don't want to lose it...then take steps to protect it! If you sit back and expect the system to be fair after reading what I reveal in this Special Report, I'm sorry...but you deserve the maltreatment you are statistically likely to experience.

Simple legitimate and legal techniques exist to comfortably put your assets out of the reach of creditors. Learn the rules and take control of your life.

You have already made the most important decision IF 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*.

In this chapter we're going to focus on the first five of the 10 most fundamental aspects of asset protection. If you learn nothing else, stick in a Special Reportmark or dog-ear a page in this chapter as a reference point during any of your own personal asset protection planning.

If you keep the following principles in mind, you will make wise decisions regarding your asset protection strategies.

## **Key One:**

### **Realize That Our System Is A Failure And Engage In Self-Help Tort Reform**

Tort means “a wrong” and refers in this case to damages due to an injured party. Our judicial system is a failure; litigation is out of control<sup>5</sup>. Juries are not fair. Many Lawyers are “situationally 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. As I mentioned in chapter one, we have too many lawyers, each licensed to file lawsuits, most often on a contingent basis. This system will not change (the Trial Lawyers Association is the strongest lobby in Washington).

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;
- (2) The infraction of some public duty by which special damages accrues to the individual;
- (3) The violation of some private obligation by which like damage accrues to the individual. More specifically in regards to asset protection - a wrongful act other than a breach of contract for which relief may be obtained in the form of damages or an injunction.

### **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

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<sup>5</sup> See “Litigation Explosion” by Patrick M. Garry.

lawsuits are filed annually in America. This bizarre lawyer “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. And just in case you haven’t noticed, your freedoms, privileges and rights under the US 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, through malpractice, theft and fraud, rip off thousands of Americans every year.

We Americans have been bamboozled into believing it takes a lawyer to handle the most basic legal procedure and nothing could be further from the truth. Today we have a nation that resembles a giant law factory. American lawmakers (lawyers in the majority) are grinding out new laws every single day of our existence. Many of these laws are truly needless and are destroying America!

## **Key One Summary:**

**Realize our legal system is flawed and will not protect you.  
Take control over your own life and your own assets.**

## **Key Two:**

### **Implement Asset Protection When The Financial Seas Are Calm**

The guidance in this Special Report depends on you being able to satisfy your known creditors both before and after the asset protection is implemented.

A properly implemented plan starts the statute of limitations – relating to fraudulent conveyance – running the moment it is funded. It is cheap insurance. Do NOT wait until the world starts to fall down around you to do your plan. Do the plan when you are financially healthy.

Remember, asset protection assumes that there are people who want to take your 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, stocks, bonds, IRA's etc.) from any creditors, legitimate or otherwise who want to take them from you.

To provide solid protection, your plan needs to be set up when the financial seas are calm. I use a term called “old and cold,” which means your plan has been established and in force long before any attack takes place or before any creditors become known to you.

That way, no valid claim can be levied that states “that you created your asset protection plan with the intent to commit fraud;” in other words, that you did it with the specific intent to keep your creditors hands off. 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;
- The government from seizing and keeping your money.

In the unlikely event that you are sued, you'll also be secure in knowing that you'll normally have enough assets after a suit to:

- Start fresh
- Survive with the lifestyle you're accustomed to
- Spend your money where you want and on whom
- Transfer wealth to those you love without the government or creditors touching it
- 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 either find or take your assets.

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 still 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.**

Know the two fundamentals:

- 1. No country automatically enforces US judgments.**
- 2. 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 allows you the advantage of forcing people who sue you, (or try to sue you) to do it in places where a US judgment is as worthless as a burnt-out light bulb. This is not to say that assets have to leave the USA to be protected, they don't. You simply use a foreign trust to force creditors to litigate abroad, NOT to move your money there.

Here's how to ensure that you can choose your battlefield, if your assets ever become the target of attack. The first step is to "give birth" to a new entity, (the trust), which will technically be *living* in another country. We'll call this a foreign trust.

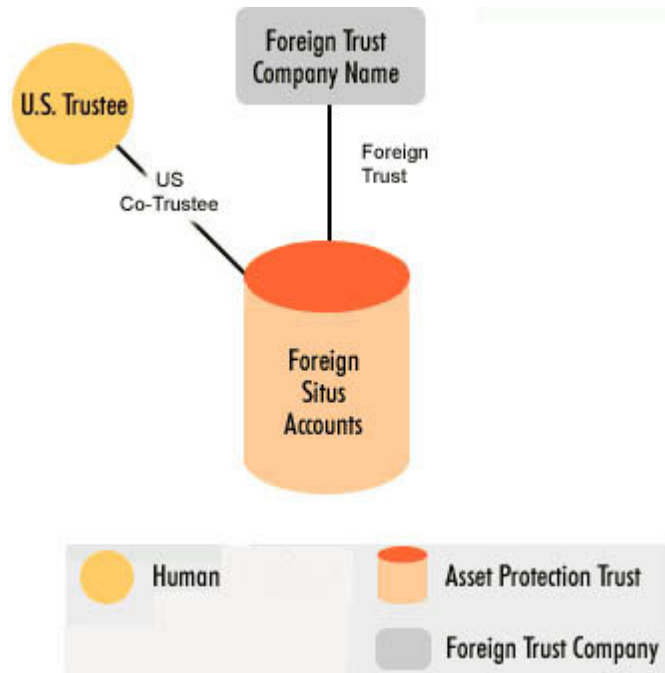
This trust is a NEW creation, like a brand new baby, and thus owes no one anything. This trust needs to be created in a country that does not automatically recognize US judgments (and remember, this is the entire world since no country in the world automatically recognizes US judgments).

Now here's the best part. Even though the trust is foreign, your assets can remain where they are, 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.

Trust assets will rarely ever leave the USA.

**Diagram Of The Typical Structure:**



**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 can't tell you that there is one single entity that is the "perfect" jurisdiction.

In the process of crafting your asset protection plan you'll 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.

**Key Three Summary:**

**Picking your battlefield means a US judgment against you, means nothing if foreign laws protect your assets.**

## **Key Four:**

### **Never Trust Anybody With Your Hard-Earned Money**

You should never trust anybody with your hard-earned money. PERIOD. What I'm specifically referring to is any entity that says they need control over your assets in order to protect them.

This causes more problems for people than anything else. There's a point to what I'm saying. It's not because people are dishonest, it's just that it is not necessary to HAVE to trust someone.

Many people, often with the advice of "experts," simply put their funds into trust with a foreign trust company and think that they are protected. I think that this is foolish. It is almost never necessary to delegate control over your money to another person or entity, and certainly not when a plan is first implemented.

Each year, hundreds of millions of dollars are lost to unscrupulous trust companies that simply walk away with your money. You have no alternative. Take these words to heart: Never delegate control of your money to anybody. Keep control and you cannot be cheated.

And yes people are swindled all the time. Here's an example of just such a swindler.

### **The Case Of Marc M. Harris**

Founder and CEO of The Harris Organization financial services group of Panama, which operates banks, insurance companies and a trust company and offers stock brokering, 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 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, with his group's attorney, Ohio-based AC Strip, telling the court that two Harris officers had been served with SEC subpoenas during the trial and that Harris was "concerned" about what might happen to him should he travel to the US.

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' specialty is 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 parted from their money.

He doesn't tell them 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 to the financial statements that he also owned and ran it, according to a complaint. 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, 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.

According to those who know him, Harris has an insufferable ego that his business and professional failures have done nothing to diminish. This is, perhaps, best illustrated by Harris once handing out signed copies of his self-published Special Report 'The Intellectual Spirit of Marc M. Harris' to strippers who were performing at a Panama strip club, according to a former employee.

Source: "Offshore Alert newsletter" <http://offshorealert.com>

Guess what? You can still buy his Special Reports in the stores and online as well as find his website.

### **Key Four Summary:**

**Never delegate control of your money to anybody. Keep control and you cannot be cheated.**

## **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 asset protection trust, you can count on NO material income tax savings and probably an increase in compliance costs.

If somebody advises you that an offshore trust (or indeed most offshore structures to protect assets) will save you tax – walk away... you are almost certainly in the hands of a scammer.

How do you know if promises people make to you about saving on taxes is fraud? SIMPLE...US Citizens are taxed “on their worldwide income from whatever source derived.” Anytime ANYBODY says an offshore trust or an offshore bank will save you any taxes, they are advising you to commit a crime: RUN. Offshore trusts and offshore accounts alone will not save taxes. In a like matter, asset protection is tax neutral; alone it will NEVER ever save you taxes.

In fact, any offshore account needs to be specifically reported to the IRS (and if you have unreported accounts please 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's earned it is still income taxable in the U.S. If you are a US citizen – you are taxed on your worldwide income, period.**

## **Final Notes**

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 won't 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 reducing your chances of being sued because the “would be attacker” perceives that you do not have enough reachable wealth to pursue –you reduce the economic incentive to litigate.

# Chapter 4

## A Crash Course In Self-Protection

**H**istorically, asset protection was something that only the wealthy or ultra rich could afford. Small businesses and individuals often lost their businesses and were left penniless due to a real (or hyped up) situation and a sue-happy individual, accompanied by a shrewd litigator. The sad truth is until recently there was no way a person with less than a half-million in assets could establish an *affordable*, LEGAL rock-solid program to help protect himself.

I'm going to show you that you don't have to be ultra-wealthy to properly protect yourself. I'll reveal the components that will empower you to create an impenetrable fortress around your assets, so impervious that not even the craftiest litigator could move fast enough to get your wealth.

### Beginning Your Process Of Protecting

One of the first things you need to know is that you will likely encounter 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 community-owned assets. Make sure you involve them 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 way of life, not a one-time event. Your financial picture will change over time.

You will add assets and give away or sell assets. Laws may change, thus affecting the way your plan is structured. You will be

in it for the long haul, so I encourage you to keep the important people up to speed.

One word of caution; be careful who (and what) you tell about your planning. Tell only your most trusted relatives and advisors even 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. The lawyers and the capitalists that are making a killing each year off of the countless *other* strategies will probably want to hunt me down and eliminate me for revealing this information, because 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% of all the individuals in the United States.

Typically, you'll 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. This 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? The following is an excerpt from a letter I wrote to a client who inquired as to whether or not his trust was domestic or foreign.

## **Definition of Foreign Trust:**

A foreign trust is defined as any trust other than a domestic trust. Thus, a foreign trust is any trust that fails to meet the legal definition of 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<sup>6</sup> jurisdiction over the assets or IN PERSONAM jurisdiction over the trustee.

All a court needs to 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!).

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<sup>6</sup> Latin: All legal rights are either *in personam* or *in rem*. *In rem* rights are proprietary in nature; related to the ownership of property and not based on any personal relationship, as is the case with *in personam* rights.

## **The Control Test:**

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; and
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 US 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:

“Example: A trust has three trustees, two of whom are U.S. persons. Only the trustees have the authority to make 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, although good minds could differ, for the US Co-Trustees of this trust to be deemed to possess suitable control of this trust.

Automatic migration or *flee* clauses.

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 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, that 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 be not 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.

That is the end of the relevant portion of the letter. I think that it is important to point out that this is an 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.

The next of my ten keys to asset protection is so important, that it will take us to the end of this chapter. This is a rather involved concept, so stick with me here.

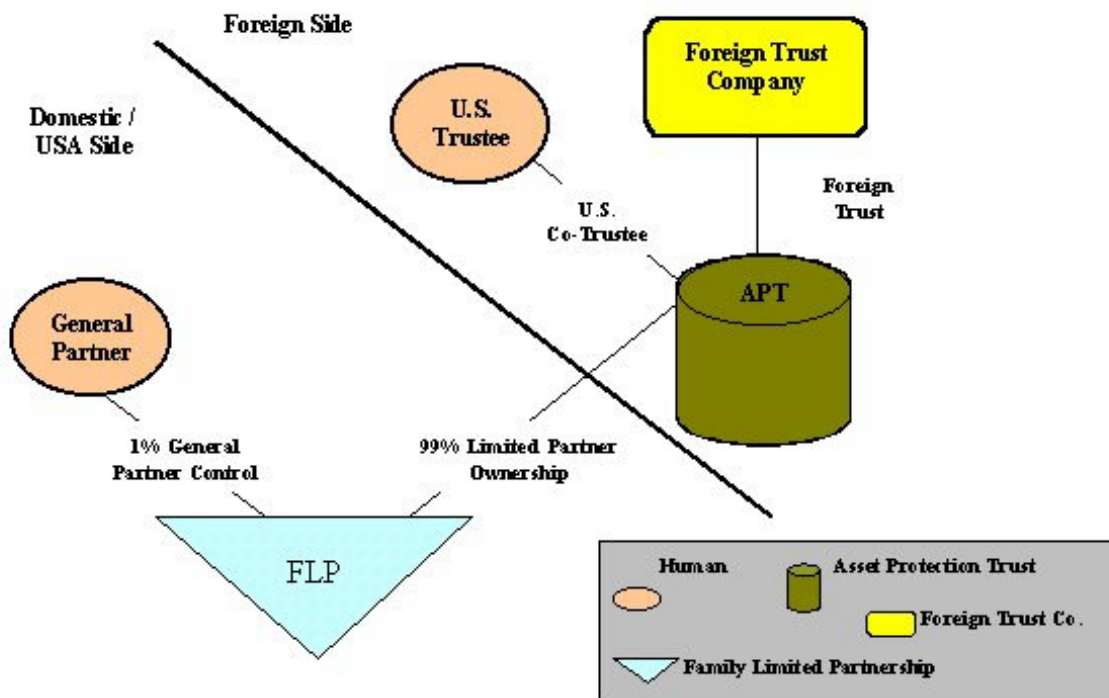
## Key Six:

### 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 they are owned by separate entities in a properly structured plan. This is why you should sometimes use a Family Limited Partnership underneath an asset protection trust to separate ownership. We’ll discuss this in greater detail in Chapter 5 of this Special Report. An asset protection plan with multiple investment assets (e.g., an apartment and a stock portfolio) will use multiple limited partnerships to divide and conquer.

A typical, multiple assets, asset protection plan will look like this:



Family limited partnerships (FLP) 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 100% control over the assets held in the partnership. It is common to give the general partner 1% of actual ownership and 100% of the control. At the same time, the limited partner (which is often the asset protection trust) will have 99% ownership and NO control at all.

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

Many practitioners have touted family limited partnerships as an asset protection vehicle citing the decades old “charging order protection” offered by all partnership statutes.

Charging order is a statutorily 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 is being done away with due to ever increasing abuse. It’s my belief that charging order protection is not enough, and I do not think Limited Partnerships (and for that matter Limited Liability Companies) can provide material asset protection. They are best used for separating ownership from control.

## **Key Six Summary:**

**The asset protection trust is sometimes positioned as a limited partner. Care should be taken to make sure that the asset protection trust does nothing to potentially avail itself of the jurisdiction of any United States court.**

**It is my opinion that the asset protection trust should never be the general partner of a limited partnership because to do so runs the risk of subjecting the asset protection trust to the jurisdiction of a United States court. It is always preferable that the asset protection trust owns no United States situs (located) assets.**

**Charging order protection has and is being abused. The California courts have departed from the charging order provisions in the Uniform Limited Partnership Act and permitted actual attachment and sale of a partnership interest provided that this does not disrupt the business of the partnership<sup>7</sup>.**

**This reasoning is becoming ever more popular and many jurisdictions have permitted attachment of the partnership interest.**

**Charging order protection is not adequate. The time when you could tout the asset protection advantages of a limited partnership (also called a family limited partnership) is over. The main reasons to utilize family limited partnerships are:**

- 1) To divide and conqueror (meaning separate liability generating assets) and**
- 2) To separate ownership from control.**

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<sup>7</sup> See, Crocker National Bank v. Jon R. Perroton 208 Cal. App. 3d 1; 255 Cal. Rptr. 794 (1989).

## Chapter Summary

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

The best way to protect your assets is with an asset protection trust and the best place to set that type of trust up is in an offshore jurisdiction. That doesn't mean your assets will leave the United States. In the majority of cases, they'll stay right where they are, the only difference will be that now they are untouchable.

An asset protection trust is any trust formed for a term of years in a foreign jurisdiction which:

- **Either does not recognize nor imposes 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.**

There will be specific rules of proceeding, which will favor the interests of the individual for whom the trust was set up. The trust should hold non-liability-producing assets, normally bank accounts and securities. (Sometimes you may put a home, which requires the services of a local expert, to transfer).

# Chapter 5

## What Type Of Asset Protection Trust Can You Trust?

**A**lthough establishing a trust is essential to protecting yourself from financial predators, not all trusts will accomplish “true” asset protection. In this section, I want to explain what a properly designed asset protection trust should achieve and tell you what to avoid. First and foremost, an asset protection trust will achieve the following legal results:

**Creditor Protection - *Derived from location***<sup>8</sup>:

This is achieved by subjecting the trust to the laws of a jurisdiction with specifically enacted asset protection legislation.

**Creditor Protection - *Derived from structure of trust***:

Asset protection trusts are often structured to separate you, the Settlor from all marks of ownership. You will not be the trustee, and will often be prohibited from ever becoming a beneficiary and the trust will be irrevocable for a substantial number of years.

Normally, applying domestic law, the trust assets should be impregnable during the period of irrevocability provided that the trust is not formed in violation of any fraudulent conveyancing laws – and as long as the trust is irrevocable for a period of years - and the Settlor is not a beneficiary but merely retains a contingent right of succession or future possession, judgment creditors stand in the same relationship to the trust assets as does the Settlor/debtor.

This structure is traditionally used for evidentiary reasons to minimize one of the traditional “badges” of fraud which is the debtor’s “continuance in possession and ability to represent the goods as his/her own.”

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<sup>8</sup> Legal but not necessarily physical location of assets-also referred to as Situs

By structuring the trust under domestic trust law so that the debtor is nothing but a “mere contingent,” the transfer is less likely to be characterized as fraudulent. This form of structure is optimal, but usually not *required* for a trust to provide effective asset protection. It is also not normally required by the jurisdiction in which the trust is settled. For example, the Settlor can usually be the beneficiary under the law of the jurisdiction of settlement

**Tax neutral:**

An asset protection trust with a United States citizen or resident as the Settlor should normally be structured to be tax neutral.

The principal burden, which is triggered in the cases where the trust is classified as “foreign” (for tax purposes), is that the trust should not be the shareholder of a Subchapter S corporation and it must comply with specified reporting requirements.

Utilization of an asset protection trust does not increase nor decrease the tax burden on the Settlor of the trust who is treated as the owner of the assets and grantor of the trust. The United States tax treatment of an offshore asset protection trust, where the “Settlor” is treated as the owner of the trust assets and is taxed on all of the income from it, is completely opposite from his treatment under domestic debtor creditor law.

**No criminal or civil violations:**

The provisions of the trust and the circumstances surrounding its formation must not violate any criminal provisions or create civil liability. There are criminal penalties applied against the Settlor, and his attorney, for certain types of fraudulent transfers to a trust and for failing to meet certain Federal filing requirements.

**Withdrawal of funds:**

In certain circumstances, particularly where the Settlor is working for a corporation or partnership owned by the trust, the Settlor may, in his or her capacity as consultant or employee, be able to extract funds from the trust as compensation. Of course, the compensation must be reasonable in light of the particular services provided.

The extraction of funds from the trust by the Settlor is evidence of “continuance in possession and ability to represent the goods as his own,” one of the traditional “badges of fraud.”

**The Assets are kept safe:**

Either the Settlor or a professional management entity approved by the Settlor manages the assets. There are many techniques to achieve this result without subjecting the Settlor or his assets to collateral attack. In the case of a trust holding liquid assets, it can often be as simple as holding the assets in a limited partnership in which the trust is the limited partner and the general partner is a corporation controlled indirectly or perhaps even directly by the Settlor.

Alternatively, the trust might keep its liquid assets with a bank or brokerage firm. For example, dollar denominated investments, such as U.S. stocks and bonds, could be held in non-certificated form usually by an institutional custodian and be accounted for in the Special Reports of the custodian.

In many cases, mainly where the Settlor is satisfied with specifying both the type of investment (*e.g.*, a category of municipal bonds) and the classification of the custodian (*i.e.*, banks meeting certain criteria), the Settlor may be satisfied with only a “blind trust” type of report in which only the performance of the portfolio and not the location of assets or the identity of the manager or assets, is actually reported. Substantial institutional custodians in most offshore centers offer this type of custodial service.

**Duress provisions:**

The trust will contain “duress” provisions. If the trustee or the trust assets are threatened in any way whatsoever, the duress provisions will be triggered.

The key duress provisions are as follows:

- ✓ **Automatic extension:** In duress, the term of the trust is extended, automatically or at the discretion of the trustee, if creditors appear near the end of the term of the trust or an event constituting “duress” occurs.

- ✓ **Removal of assets:** In duress, the trustee is directed to remove the assets from any jurisdiction in which the trustee believes that they may be subject to seizure.
  
- ✓ **Selection of alternate trustee and jurisdiction:** In duress, the trustee may be instructed to appoint a different trustee in another, or any one of several asset protection jurisdictions and arrange to have the trust become subject to the laws of that jurisdiction. Under some types of provision, this can happen automatically. For example, if a court in the offshore situs of the trust was petitioned to order a trustee subject to the jurisdiction of that court to surrender assets, the trustee could be automatically removed as trustee and the jurisdiction of the trust switched to a different jurisdiction.

Each of these duress provisions is specifically designed to thwart collection efforts.

**The Settlor is protected from contempt.**

The trust is structured so that; any instructions received by the trustee from the Settlor (or any beneficiaries) - that are delivered pursuant to court order - are deemed given under duress and are to be disregarded. Any act taken by the Settlor under duress will be ineffective to bring the assets within the ordering court's jurisdiction. As a result, the Settlor can fully comply with any court orders to instruct the trustee to deliver assets.

**Trust treated as valid legal entity.**

The trust and the transfer of any assets to the trust will be classified as a transaction worthy of judicial respect. This means it will have legal substance, and not be regarded as merely a sham. All formalities required by the United States and the foreign jurisdiction, including registration, are observed, with the expectation that this will start the running of any statute of limitations, at least in the foreign jurisdiction.

Now that you know what a properly created trust should do, let's examine how to create such a trust.

## **Creating An Impenetrable Trust**

The irrevocable trust is the ONLY type of trust I recommend and put together for my private clients AND it is THE protection tool that I recommend for you. Why? Because it's the only trust that truly provides you a very high level of protection from judgment creditors.

Remember key number two? To ensure the bulletproof effectiveness of the trust, the transfer of assets into the trust must be made under circumstances that cannot be considered as a fraudulent conveyance.

A properly structured and funded asset protection trust removes the protected assets from your balance sheet; yet, allows you to remain in control of the protected assets with the power to reach and utilize the protected assets in normal circumstances.

## **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.

These trusts *are* useful for your estate and tax planning purposes, but are not good enough to even consider adequate for asset protection. Creditors can generally reach assets transferred to the revocable trust as easy as they can attach 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.

Now that we've covered the essential points for choosing the right type of trust, let's get back to my list of ten keys to asset protection.

## **Key Seven:**

### **Pigs Get Eaten**

I encourage the majority of people I communicate with to DO asset protection... but I also advise them not to *overdo* asset protection.

What I mean by this is that you must make sure that after your plan is complete that you still have plenty of assets in an unprotected environment to pay your reasonably anticipated bills.

I also advise that asset protection is not for personal residences. Normally, you leave personal residences outside of the protected environment.

Many clients ask about reducing or eliminating insurance once proper asset protection is implemented. This is almost always a bad idea because insurance is:

- Treated as unprotected cash available for creditors (thus insulating against a claim that a plan was settled with a fraudulent conveyance).
- Insurance policies normally provide a good defense. Remember, asset protection can keep your money safe; it cannot keep you from being sued and perhaps being eaten up by the costs of defense. Also, a plan is for long-term savings and should never be settled with assets necessary for day-to-day (or even month-to-month) expenses.

### **Key Seven Summary:**

**Keep enough wealth outside of your plan to fulfill your reasonable anticipated debts.**

## **Key 8:**

### **Beware Of Asset Protection Scammers**

One of the most utilized resources for information is the ever-growing Internet. So it's worth mentioning that you should stay off the Internet if you are looking for reliable, credible asset protection. As the popularity of the Internet has increased, so has the number of asset protection scammers. Fully 95% of the sites on the Internet advocating asset protection are also advocating some sort of tax evasion or secret (illegal) bank account.

I'll soon be repeating this survey (it was widely reported and covered by MSNBC, FOX, CBS, CNN and many other news programs). I am sure that the information on the Internet has gotten even slimier since then. Remember, if it sounds too good to be true, it probably is. As we've already covered, asset protection is not a strategy designed to save you any taxes.

Most of the sites offering asset protection or offshore tax planning are simply well-worded scams. Recently, I surveyed 1,000 online "offshore banking sites" and fully 99% of them encouraged or advocated some sort of tax fraud (normally claiming that the deposited funds were invisible to creditors and the IRS and often combining this with an offer of a debit card). That is nonsense.

Get advice from a seasoned pro with a brick and mortar presence. PERIOD.

If you need advice other than what you discover in this Special Report, or you want to find out about tax reducing strategies, then get advice from an international tax professional.

In the meantime, please, familiarize yourself with the telltale signs of a scammer:

- If they ask you to trust them or promise a big tax saving with an offshore trust, RUN.

- Familiarize yourself with the good sources of information on traps and scams.
- Educate yourself before you make a move and you will avoid a lot of problems.

### **Key Eight Summary:**

**Be damned sure your source of information is credible before you buy into anything they are saying.**

## **Key 9:**

### **A Plan Should Be Transparent To You**

A properly done asset protection plan should not change the way you live your life or what you do with your day. You should not be spending your time secretly hiding things, or have the feeling that you must lie to benefit from your asset protection. Avoid convoluted, expensive and confusing structures. It should be simple and easy.

Also, your asset protection plan should also integrate seamlessly with your estate planning choices.

### **Key Nine Summary:**

**The goal is to remove the fear of financial attack and to “sleep better” once you have your asset protection plan in place, not engage in a moral dilemma or struggle with a guilty conscious and constant monitoring.**

## **Key 10:**

### **Reread Key Number 4.**

Okay...maybe you're thinking, "*Gee what a copout, he added this just so he'd have an even ten.*" No...this is the real key. Stay in control of your money. You never have to give up control or risk your assets in order to protect them. Assume every trust company is crooked and trust *nobody*... not because there aren't *trustworthy* companies, but simply because you don't *have to* trust them. Just use common sense. Realize that asset protection is more than a "plan," it's a process and the best way to start is to educate yourself and take control of your destiny.

# Chapter 6

## The Family Limited Partnership

**A**lthough the trust is the primary asset protection device, you might also benefit from the use of a Family Limited partnership. To gain the ability of obtaining charging order protection, discounts for federal gift tax purposes, and having control over certain designated assets, you can combine a foreign APT with a domestic family limited partnership (FLP).

Let's first examine what a family limited partnership is. The family limited partnership is a popular way to separate liability-producing assets and turn assets that are attractive to creditors into assets that are unattractive to creditors.

For example, you might own an apartment house and a nice stock portfolio. You can separate your apartment house into one family limited partnership and put your portfolio into a different family limited partnership or an asset protection trust. It's not a good idea to put liability-generating assets into a trust.

It's important that you know an FLP in and of itself is NOT a solid asset protection strategy. In light of its growing popularity (and its importance in conjunction with an asset protection trust), I've included the important details for you here.

The trust should hold non-liability producing assets, normally bank accounts and securities. (Sometimes you may put a home, which requires the services of a local expert to transfer). If you hold liability-producing assets in your own name, such as a business or an apartment house, these should be put into a FLP for protection. If you own stock in privately held businesses, this stock should be put directly into the trust.

The benefit of this structure is this; if there is a slip and fall at your apartment house and you are sued, the creditors can't attack all of your assets. By putting the apartment house into the limited

partnership, the judgment creditor cannot seize either the apartment house or the stock portfolio; instead, they must get a “charging order.” This means the judgment creditor can only attack the asset involved in the litigation... in this case, that would be the apartment house.

So, a family limited partnership is a best used as a way of separating ownership from control. A family limited partnership has three parts:

1. The investment (the apartment house)
2. The limited partner (who has no say in what is distributed or done in regards to the investment)
3. The general partner (who has complete say in what is done).

Under this structure, the foreign APT is the 99% limited partner and the Settlor is the 1% general partner. Under this structure, you will settle a foreign APT at the same time that you create the domestic FLP. As the illustration on the following page will show, you, the client, are initially the general and the limited partner.

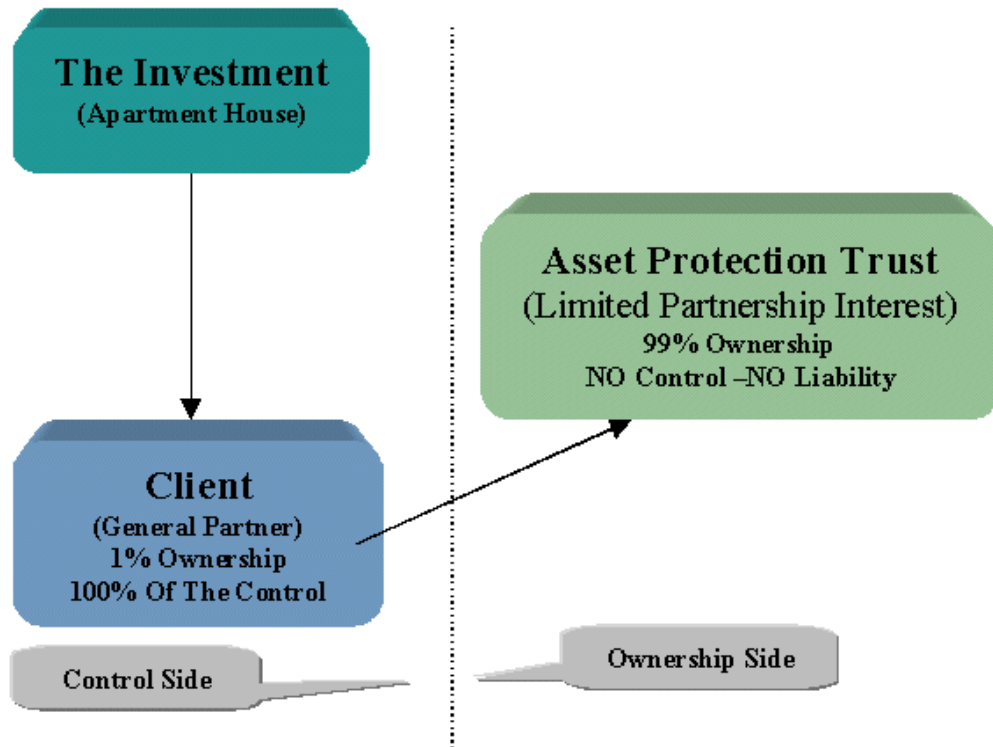
The 1% general partner has full control over the FLP and its assets. The 99% limited partner has no control over the FLP or its assets, but has almost all of the ownership.

Because a partnership requires at least two different partners under state law, another person or entity can attain a temporary interest until the foreign APT becomes a limited partner. Of course, use of such a person or entity would not be necessary if your spouse were involved as a second partner in the planning.

Here’s how it works. You give the limited partner 99% interest (ownership) and 0% control with no liability. You give the general partner 100% control and 1% interest (ownership).

The limited partnership interest is held by your asset protection trust. If a creditor tries to attach a judgment to the family limited

partnership, you (the general partner with all the control) get to decide how much, if anything, to distribute.



The process is outlined by the Uniform Limited Partnership Act, which says the judgment creditor only gets what the general partner (you) decides to distribute... which is often nothing.

The folks who wrote the Uniform Limited Partnership Act inserted this charging order concept into the act to prevent the creditors of a partner from wreaking havoc on the partnership business. However, these same provisions can be utilized in the family limited partnership context to prevent the distribution of funds to the judgment creditor. This is because under the law the general partner, who is likely to be the establisher of the asset protection trust, can prevent distributions.

An additional little bonus is that the Internal Revenue Service has also held in Revenue Ruling 77-137 that the creditor with a charging order is treated as a substituted limited partner for tax purposes.

As a result, the judgment creditor is burdened with the tax bill resulting from ownership without gaining the ability to force a breakup or a sale of the partnership or distributions from the partnership. In other words, he gets no money, but acquires the tax responsibility.

## **Chapter Summary**

Asset protection protects your valuable assets (business, savings, house, cars, stock bonds, IRA's etc.) from creditors and predators who try to get their hands on them. An FLP is often incorrectly touted as a reliable tool for protecting assets. It is best used ONLY as a way to separate ownership from control and can be a powerful add-on to your asset protection trust.

If you hold liability-producing assets in your own name, such as a business or an apartment house, these should be put into an FLP for protection. If you own stock in privately held businesses, this stock should be put directly into the trust. An FLP, in and of itself, is not sufficient enough to be termed a complete asset protection solution.

# Chapter 7

## What To Do Now

**A**s we've discovered in this Special Report, 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. We project all sorts of "what if" scenarios and try to create a contingency plan. Sometimes these scenarios play themselves out exactly as we have feared, other times we are blindsided by a situation that we never saw coming.

This Special Report is my contribution to help you prepare for situations that will threaten your emotional, mental and financial well-being. You may never expect to face a creditor, a bankruptcy or a federal agency that will threaten to destroy your way of life. You cannot predict, with any accuracy, liability situations that the future may bring. It's 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 citizen, 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.

# About The Author

Rob Lambert is the Author of “ASSET PROTECTION TRUSTS: What They Are, How They Work and Tax Aspects” published by Times Mirror Corporation - Matthew Bender & Company, Inc. as part of its Debtor Creditor Law series. He has been invited to become a Permanent Contributing Author to Debtor Creditor Law. Rob has a Bachelor of Arts in International Economics (*summa cum laude*) from Claremont McKenna College (1972); a Doctor of Jurisprudence from the University of California (1975) where he was an Editor of the Law Review and President of the Moot Court Honor Board; and a Masters of Law (taxation and international) from New York University School of Law (1976), where he received the Schwid award and Hertzfeld fellowship. He was an Assistant Professor in the Masters of Taxation program at the University of Southern California (1978-1984).