

Compliments of
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PROTECTING YOUR ASSETS WITH THE FAMILY LIMITED PARTNERSHIP



Are you worried about being sued? Well, you should be. Lawsuits continue to rise each year. However, that isn't the whole story. Have you ever heard of the "deep pocket" syndrome? The deep pocket syndrome means that the person claiming to have been harmed files a suit against anyone even marginally connected with the incident. The list includes the shopper who spilled the milk on the supermarket floor; the employee who failed to clean it up quickly; the supermarket that hired the employee, the designer of the "defective" shelf that held the milk and the manufacturer of the "defective" milk carton are all sued. This kind of lawsuit is done to ensure that the person with the money, or "deep pockets," is covered by the claim for damages.

With so many people being sued each year, what can you do about it? You can create what many consider to be the premiere asset protection entity, the Family Limited Partnership, or FLP.

WHAT IS AN FLP?

An FLP is one of the most popular estate tax and asset protection planning devices. An FLP is simply a limited partnership similar to the real estate or business operating limited partnerships with which many are familiar.

HOW IS AN FLP FORMED?

The estate planning attorney prepares a limited partnership agreement for you. Once the FLP is properly formed, you transfer your business and investment assets into the FLP in return for:

General Partnership Interest — You receive general partnership interests. Generally, you only receive 2% of the total partnership interests in the form of general partnership interests. That means that you control all of the decision making for the FLP's activities. We find that control is very important to our clients.

Limited Partnership Interests — You receive the remaining 98% of the FLP in the form of limited partnership interests. Limited partnership interests do not give the limited partner any rights in partnership income or activities. While the general partners may not treat a limited partner unfairly, a limited partner essentially has no control or rights.

You are now the proud owner of your very own FLP. You are the 2% general partners and control the partnership. Now what happens? You will give your children some of your limited partnership interests. That means that the partnership has partners other than just you.

ENTER THE CREDITOR

If you are successfully sued, all the creditor receives is what is called a **charging order**. A charging order is a judgment against the partner that tells the partnership that any distributions of profit

that would otherwise be made to the debtor partner must instead be paid to the creditor. The creditor has no power to interfere in partnership matters. The charging order is a very hollow victory. Because the general partners decide if profit is to be distributed to the partners, the general partners can withhold distributions from all of the partners and the creditor receives nothing.

WHAT DOES THE CREDITOR DO?

Obviously, the creditor does not just go away, but because the charging order provides so little leverage, creditors frequently settle the claim for less than face value. Those who might consider filing a unjustified lawsuit may change their minds when they realize that all they will receive is a hollow charging order.

WHAT HAPPENS TO THE MONEY IN THE FLP?

As general partner, you have complete control and access to the assets and income of the FLP. If you have given your children 10% of the FLP, they are entitled to 10% of any distributions that you decide to make, but they cannot force you to make any distributions.

SUMMARY

A properly designed and operated FLP is a formidable deterrent to unjustified lawsuits and a formidable negotiating advantage against a successful creditor. While an FLP should never be formed to defeat the interests of an existing creditor, the sooner you create your own FLP, the safer your family is from the "deep pocket" syndrome.

Note: If estate tax reduction is one of the other purposes of the FLP, additional restrictions may be required.

ABOUT THE FIRM

Schneider Rasche LLC is devoted primarily to estate planning. Our attorneys are members of the American Academy of Estate Planning Attorneys. We offer guidance and advice to our clients in every area of estate planning. This list offers a sampling of these services.

Wills. Prepare a Last Will and Testament to provide for the orderly transfer of your estate upon your death.

Revocable Living Trust. Prepare comprehensive, customized plans according to your needs.

Special Needs and Divorce Protection. Protect loved ones and get informed advice on these important estate planning issues.

Asset Protection. Receive guidance on protecting your legacy.

Retirement Planning. Ensure that your tax-deferred accounts are properly structured to give your family the greatest tax advantages possible.

Long-Term Health Care. Make sure you have properly outlined necessary health care instructions.

Creditor Protection. Find out how you can protect your estate and your heirs from judgment creditors.

Structured Buy-Out Plans. The plan you create for your children to sell or distribute land and assets.

Trust Administration. Distributing your estate after the first and second spouses pass away according to the terms of your Trust.

Advanced Planning. Get assistance with matters such as Family Limited Partnerships, Irrevocable Life Insurance Trusts, Charitable Remainder Trusts and Business Succession Planning.

Probate Assistance. Get the assistance you need when someone with or without a Will passes away.

Updating Documents. Ensure that your affairs are in order with regular estate reviews. Amend or restate your existing estate plan to ensure its effectiveness.

Tax Planning. Preserve your wealth and reduce taxes with proper planning.

ABOUT THE ACADEMY

This report reflects the opinion of the American Academy of Estate Planning Attorneys. It is based on our understanding of national trends and procedures, and is intended only as a simple overview of the basic estate planning issues. We

recommend you do not base your own estate planning on the contents of this Academy Report alone. Review your estate planning goals with a qualified estate planning attorney.



The Academy is a national organization dedicated to promoting excellence in estate planning by providing its exclusive Membership of attorneys with up-to-date research on estate and tax planning, educational materials, and other important resources to empower them to provide superior estate planning services.

The Academy expects Members to have at least 36 hours of legal education each year specifically in estate, tax, probate and/or elder law subjects. To ensure this goal is met, the Academy provides over 40 hours of continuing legal education each year. The Academy has also been recognized as a consumer legal source by *Money Magazine*, *Consumer Reports Money Adviser* and Suze Orman in her book, *9 Steps to Financial Freedom*.

ADDITIONAL REPORTS

Request any reports of interest to you or your family. Simply call our office at **(503) 241-1215** or visit our website at **www.rbsllc.com**.

- A Child With Special Needs, Needs Special Planning
- Aid & Attendance: Special Care Pensions Wartime Veterans
- Are Your Bank Accounts Safe? FDIC Insurance Can Cover You – With the Right Planning
- Asset Protection: Reducing Risk, Promoting Peace of Mind
- Beware of Living Trust Scare Tactics
- Charity Begins at Home: The Charitable Remainder Trust
- Creating a Lasting Legacy: The Best Things in Life Aren't Things
- Dangers of Do-It-Yourself Wills and Living Trusts
- Estate Planning Basics For Families with Young Children
- Estate Planning with Individual Retirement Accounts (IRAs)
- Family Farm: The Next Generation
- Family Wealth Trust: Calculating the Benefits
- Fifteen Common Reasons to Do Estate Planning
- Finding the Right Estate Planning Firm
- Funeral Planning: Options for You and Your Family
- Getting the Most Out of Your Life Insurance: The Irrevocable Life Insurance Trust
- Grandparents' Guide to Second Generation Planning
- Keeping Up With the Ever Changing Estate Tax
- Living Trusts: Calculating the Benefits
- Paying for Nursing Home care: A Guide to Medicaid Planning
- Peace Of Mind: Planning For All Of Life's Contingencies
- Planning It Right The Second Time Around
- Probate: A Process, Not a Problem
- Probate: An Executor's Role and Responsibilities
- Protecting Your Assets with the Family Limited Partnership
- Protecting Your Assets with the Limited Liability Company
- Set the Stage for Medicaid Eligibility
- Should You Trust Your Estate Plan – Estate Plan Reviews Ensure Protection for Your Family and Assets
- Special Valuation Benefits for Farms and Other Business Real Property
- The Impact of Divorce on Your Estate Plan
- The Nightmare of Living Probate
- The Trouble with Joint Tenancy
- To My Dog Lucky I Leave \$10,000
- Trust Administration: Prior Planning Prevents Problems
- What Every Senior Should Know About Probate
- Where There's a Will, There's Probate
- Your Life, Your Final Say