

Asset Protection Report Card

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Subject

Family Limited Partnerships

A+

PRO: Excellent asset protection for assets held in properly drafted and maintained limited partnership. “Charging order” often an effective protection from and deterrent to lawsuits. Almost 90 years of substantiating case law.

CON: May lose mortgage interest deduction on home if not drafted properly. Increased accounting and tax filing considerations. May lose IRC § 121 exclusion from capital gains taxes upon sale of principal residence if not coordinated properly.

Children’s Trust

A

PRO: Separates assets from business operations. Protect assets from lawsuits and builds equity for children. Shifts income to lower tax-brackets beneficiaries.

CON: Not practical for titling some assets such as home. Requires “independent” trustee. Beneficiaries only entitled to principal at age 21. Income cannot be used for “support” items.

Irrevocable Trust

A

PRO: Assets titled inside this trust are almost impossible to seize.

CON: Very inflexible provisions. Loss of control and unfavorable tax consequences makes this a rare and unpopular trust.

Foreign and Offshore Trusts

A-

PRO: Most countries will not recognize civil judgments made in U.S. courts. Greatly complicates and discourages lawsuits.

CON: Complicated. Often very high cost to establish and maintain. Some offshore trusts ruled illegal by IRS for tax evasion. Some firms now specialize in seizing offshore trusts.

LLC

A-C

PRO: Can be comparable to Family Limited Partnership in strength of legal protection. No manager or member has personal liability exposures.

CON: Must check strength of state’s “charging order” statute. No “charging order” protection in California. This is a new legal entity with limited case law. May lose mortgage interest deduction and § 121 benefits on home.

Tenants by the Entirety

B+

PRO: Available in 23 states. Simple and inexpensive to execute. Good asset protection.

CON: Must be married. Must have consent of spouse to sell property. If both spouses are included in the same lawsuit, property made vulnerable. Recent Supreme Court case casts doubt on future protection of this method.

Homestead Exemption Laws

B+

PRO: Simple, inexpensive way to gain asset protection. No tax forms required.

CON: No divorce protection. Filing requirements in some states. Federal law can still bypass state laws. Liens against property still applicable.

S or C Corporation

C-

PRO: Good legal protection from lawsuits if all corporate formalities are observed.

CON: Need business purpose to maintain legitimacy. Almost never good for appreciating assets such as real estate. Stock often must be protected. State law may require multiple officers/directors. Potential for double taxation "C" on property.

Charitable Remainder Trusts (CRT)

B-

PRO: Assets tiled in a CRT have some lawsuit protection.

CON: CRT's cannot be used to own a home. Owning "encumbered" real estate in a CRT is problem. Use of principal is restricted. Eventually, principal must be given to qualifying charitable beneficiary.

Titling Assets to Spouse or Family Member

C

PRO: No attorney necessary. Simple to understand and execute.

CON: Greatly Complicates divorce proceedings. Can be ruled fraudulent if done as a reaction to a lawsuit. May lose property and estate tax benefits in certain states.

Family Living Trust

D

PRO: Avoids probate and estate taxes (if properly funded). Provides some privacy. Great estate planning benefits.

CON: Very limited protection from lawsuits. Widespread misconception on protective powers of living trusts.

Joint Tenancy (or Joint Ownership)

F

PRO: Most simple and popular way to hold property in U.S. Avoids probate of family assets at death of first joint tenant.

CON: Absolutely no lawsuit protection. Invalidates prenuptial agreements, invalidates Last Will and Testaments, no protection from estate.