

Special Report:

Wealth Protection for Landlords & Real Estate Investors



By Attorney William Bronchick

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We live in a "lawsuit happy" society. Attorneys advertise on billboards with slogans such as "*Have You Been Injured? You May be Entitled to a Cash Award!*" Nobody wants to accept responsibility for their own actions. Everybody is a victim.

It's sad but true... when you build wealth and get rich, you become a target of lawyers, the IRS and everyone that has less than you. It's not what you make, it's what you keep! But how do you keep it in today's lawsuit-crazy world?

Hello, I am William Bronchick, an attorney who has dedicated his life to helping Americans preserve and grow their wealth. You have probably heard of me or seen me on television. I have personally trained thousands of people all over the country to become financially successful. More importantly, I have helped them protect and keep what they have earned. In this Special Report, you will learn my best-kept secrets and strategies for creating, building and protecting your wealth

I became involved in wealth protection around 1990. Many of my clients were real estate investors that were running from creditors after the real estate and stock market crashes in the late 1980s. They came to me for help in holding off the creditors, foreclosures and lawsuits. Unable to recover financially, many of them lost all of their assets and filed for bankruptcy protection.

The clients that made it through the crunch taught me a thing or two about financial survival. They were smart enough to arrange their business affairs in case of a crash. Nobody thinks about bankruptcy, business failure, lawsuits and financial distress when times are good. However, as you will discover in this report, it is the most *important* time to think about it! You must have a plan for your wealth or you will be destined to fail at this game we call "wealth preservation."

A Nationwide Epidemic

Eighty million lawsuits are filed every year, an average of 152 per minute. The chances are greater that you will be sued than be in the hospital in the next year. The United States has 70% of the world's lawyers, and almost fifty-thousand new law school graduates are entering the profession each year! More lawyers means more competition for clients and that leads to new and creative theories of liability.

Here are some more interesting lawsuit facts:

- ✓ Contingency fees by trial lawyers exceed \$10 billion annually.
- ✓ In personal injury litigation alone, over \$96 billion is spent or lost each year in America to deliver \$41 billion in compensation to injured parties and their attorneys.
- ✓ In a personal injury lawsuit, the average cost to defend yourself in a non-automotive case is about \$7,500

(Source: Orange County Citizens Against Lawsuit Abuse - www.occala.org)

Lawsuits are an everyday threat to your financial well-being. Imagine a thug sticking a .357 magnum up to your throat and demanding you turn over your wallet, credit cards, jewelry, and keys to your luxury car. How do you feel? Scared out of your mind? Vulnerable? Violated? You will feel exactly the same way (and maybe worse) when you are hit by a lawsuit and you know you haven't done anything wrong! I will teach you the skills you need protect yourself from being a target for the "bloodsuckers" and "ambulance chasers." With impenetrable walls of protection around you, lawyers and greedy plaintiffs won't be able to touch you or your assets!

Are you a landlord now or do you have plans to own real estate in the future? If you're ever sued, realize juries are made up mostly of tenants. They are jealous that they don't own a house and you have several! The way jury members see it, when a landlord has been sued, it's pay-back time! This is their chance to get even with every landlord who ever hit them with a late rent charge or made them get rid of that pet. And, consider this... most judges earn less than you. How sympathetic could they possibly be? What do think the chances are of getting a fair trial? You might as well just hand over your checkbook and the title to one of your houses—unless you know my protection strategies!

Lawsuit Versus Asset Protection

At this point I shall make a distinction between *lawsuit protection* and *asset protection*. Lawsuit protection is protecting yourself from personal liability. *If* a lawsuit is filed, are *you* liable, or is some corporate entity taking the hit? If the plaintiff does obtain a court judgment against you, *what will they be able to collect?* Asset protection deals with the latter issue, that is, the last line of defense against those who try to take away what you have earned.

Plan Early

So when is the best time to start planning for a lawsuit? Before you get sued, that's when! You cannot wait until you are sued to start moving around your assets. "CYA" does NOT mean "call your attorney." Lawsuit and asset protection is preventative maintenance. Nearly every state has some form of law that prohibits "fraudulent conveyances." A conveyance of property is fraudulent if it is intended to "delay, hinder or defraud" creditors. The law gives creditors the right to ask a judge to put the property back into your name so your creditors can take it away from you. So if you're thinking about transferring title to your house to your spouse when you get threatened with a lawsuit, think again!

You can take some simple steps to reduce your risk of lawsuits and reduce your potential exposure to judgments. I call these steps "the ABC's of Wealth Protection."

"A"- Avoid Lawsuits & Personal Liability

At the risk of insulting the reader's intelligence, the best asset protection strategy is . . .DON'T GET SUED! I know this one is obvious, but some people just don't think about the potential liability they create when operating their affairs. It's called the "Ostrich Syndrome." Some people just stick their head in sand and pretend it won't happen to them. I want to give you a set of tools and a way of thinking that minimizes your risk of liability.

The most obvious way to reduce your risk of liability is to stay home and watch television. That is not a realistic approach to life. However, being an "ostrich" is not a great way to live either. Somewhere in the middle there is a point in which you will be comfortable knowing that you are acting aggressively, yet intelligently.

Even if you cannot avoid lawsuits, you can avoid being hit personally. This topic deals with *lawsuit protection*. If you do business in your own name, then you will get sued personally. If you sign obligations personally, then you are on the hook. Arrange your business affairs so that when things go bad, you are not personally on the hook. Use corporate entities to do business so that you have a layer of protection between you and the liabilities your business creates.

“B”- Appear Broke

When I was first out of law school, my colleagues taught me how to carefully draft my documents so that all of my clients’ rights would be protected. I used to love negotiating real estate contracts, because every lawyer had at least a ten-page addendum of items that he or she insisted upon (that’s why real estate brokers call lawyers “deal killers!”).

After a while, reality sank in. The reality is that no matter what the paperwork says, the person who loses his money will sue those who walked away with his money. So after being involved in a lot of litigation over real estate and business disasters, I discovered a universal truth . . .

PEOPLE ONLY SUE OTHER PEOPLE WHO HAVE MONEY!

It’s true, isn’t it? Nobody is going to sue you if they think you have nothing upon which to collect. This fact is especially true if someone retains a lawyer on a “contingent-fee” basis (i.e., the lawyer’s fee is *contingent upon his ability to collect*).

Let me give you a typical scenario of what happens in the lawsuit arena. Peter Plaintiff has a gripe against Donald Defendant. Peter thinks that he should be able to collect. He goes to an attorney and is advised that he has a great case and the lawyer asks Peter for a non-refundable \$5,000 retainer to be applied toward the lawyer’s regular hourly fee of \$200. Like most people, Peter cannot afford the lawyer’s fees, so he leaves the lawyer’s office feeling dejected. Peter continues his search for a more affordable lawyer, and while thumbing through the Yellow Pages, he sees a full page like this one:

Has Someone Injured You?



Car Wreck? Dog Bite?
Mosquito Bite?

Call 1-800-LET’S SUE
We’ll Get You the Money You Deserve!

Peter goes to Larry Lawyer for a free consultation. He tells Larry Lawyer his story. Lawyer knows that Donald Defendant's insurance won't cover the claim, so he needs to find a "deep pocket." After all, what good is a judgment if he can't collect?

Mr. Lawyer begins to ask Peter about Donald Defendant's assets. Peter tells Lawyer about Donald's successful business and stock market holdings that Donald always brags about. Peter also suspects that Donald owns a large apartment building across town. Lawyer jumps on the Internet does a little digging in the public records. Lo and behold, they find that Donald Defendant owns millions in real estate! It looks like Larry Lawyer has a pot of gold waiting at the end of the rainbow, so he takes the case on a contingent-fee basis (i.e., Peter Plaintiff pays nothing up front and Larry Lawyer collects his fee as a percentage of what he collects from Donald Defendant).

What if Peter Plaintiff knew nothing about Donald's assets and a search of the public records came up empty? In that case, Larry Lawyer would probably ask Peter for a \$5,000 retainer or tell him politely to "hit-the-road!" Lawyers don't like taking cases on a contingent-fee basis unless they have a guaranteed way to collect the judgment. Contingent-fee lawyers don't get paid to sue. They get paid to collect! Peter Plaintiff is out of luck.

“C” - Control, But Don't Own

John D. Rockefeller once said, *“Own Nothing, Control Everything.”* If you don't own anything, you have nothing to lose. Do you think Donald Trump has a bank account with several million dollars in cash? I doubt it. Even during the crash of his real estate empire he was clever enough to retain some control over cash flow and retain his flashy lifestyle. All the banks had to renegotiate with Trump. He was too resourceful to let go of all of his holdings.

So what we need are some flunkies to do our dirty work and take the fall. We call those flunkies:

- ✓ Corporations
- ✓ Limited Partnerships
- ✓ Limited Liability Companies

I want to make it clear at this time that I do not advocate that you break the law. In fact, I am advocating the exact opposite . . . I want you to

follow the law in a way that benefits you. The law is on your side if you know how to use it.

I also want to make it clear that this is not a treatise on estate or tax planning. The strategies discussed herein are not necessarily intended to minimize your income tax or estate tax obligations. For example, having your spouse own all of your property may prevent you from losing it all in a lawsuit, but you lose the benefit of passing that property through your estate without paying federal taxes. There is, of course, a tradeoff sometimes between lawsuit protection and tax savings.

I will remark that wealth protection, tax planning and estate planning do go hand-in-hand if you utilize the principles properly. As with any estate or tax plan, you should seek competent, professional legal and tax advice before undertaking any of the ideas suggested in this report.

Owning Real Estate in Your Own Name

You wouldn't walk around with a financial statement taped to your forehead would you? So why would you have your most valuable assets exposed to public scrutiny?

Owning real estate in your own name is like walking around with a giant "kick me" sign taped to your back. In every county in the United States, copies of deeds to real estate are recorded in the public records. Anyone can go down to the county courthouse or recorder's office and look up the owner of any property in the county. Any mortgages on property will be recorded as well. Most recorded mortgages will state the amount of the original principal balance and the date the mortgage payments began. All one has to do is figure out the balance of your mortgage (using a financial calculator) and subtract that amount from the market value of your house. Bingo! Now they know how much equity you have and whether suing you is worthwhile.

Remember the example we discussed earlier about the contingency fee lawyer? The scenario is absolutely accurate. Most contingency-fee lawyers will not take a case unless they think there is something upon which to collect. If you have no real estate in your name, then finding out your ownership interest will not be easy for a typical lawyer. It's not that most lawyers are lazy or dense (you can decide without my opinion), it's simply a matter of allocation of resources. Lawyers focus on cases they can win and collect. If they don't find any real estate in your name (and there is no other apparent "deep pocket"), they probably won't take the case.

There is another problem with owning real estate in your own name. If a judgment or IRS lien is obtained against you and filed in the county in which you own real estate, all real estate in that county will have a lien attached to it. You cannot sell or refinance any property in that county, since no title insurance company will issue a clean title. Without title insurance, no bank will approve a loan. No bank, no buyer. You're stuck until you pay off the lien.

Here is what happens next. If you live in a state that does not have a homestead exemption (only a handful have unlimited homestead exemptions), they can put your property up for sale at a sheriff's auction to the highest bidder. You can bet your bottom dollar that the amount your house will sell for will be less than market value.

Now that I've given you that wake-up call, I'll give you a few solutions. First, don't hold title in your name. If you have rental property, you should title land in anything but your own name, such as a corporation, trust or limited liability company. Of course there are practical considerations. If you have a mortgage on the property, any transfer of property could trigger the "due on sale" clause of the mortgage. In that case the lender could call the full amount of the loan due. However, Federal law provides an exemption for transferring title into an intervivos trust, such as an "Illinois-type" land trust.

A land trust, if properly setup and implemented, will hide your name from the public records. No one will know who owns the property but you, your attorney and the trustee. If a judgment is entered against you, the lien will not automatically attach to the property, since the title is not in your name.

Use Land Trusts to Hide Your Real Estate

A land trust is an arrangement by which title to land is conveyed to a trustee to hold for the benefit of another (the beneficiary). The creator of the trust is called the "settlor" (in some states, "grantor" or "trustor"). The settlor usually remains the beneficiary for his life, then his interest under the trust passes to another upon his death. The beneficiary of a land trust has the absolute right to direct and control the trustee and receive all income from the trust. As far as the world is concerned, the trustee is the owner of the property, with the complete power to lease, mortgage or sell the property. His power, however is restricted by the trust agreement with the beneficiary. A land trust also known as a "title holding" or "nominee" trust, since the trustee is really just a appointed person holding

title to the property for the beneficiary. The trustee has no function other than to do what the beneficiary directs him.

A land trust is revocable, that is, it can be changed, modified or terminated while the settlor is still alive. If the trustee become uncooperative, the beneficiary can terminate him and appoint a new trustee. The trust property is being held by the trustee as a fiduciary, so the trustee has no personally liability for being on title. Furthermore, the trustee does not own the property for himself, so he cannot lose it to a creditor of his own..

A land trust is not a new or novel idea. The history of land trusts can be traced back four hundred years to the times of Feudal England. During the reign of King Henry VIII, owning realty as a citizen was considered somewhat of a liability. If you owned land in your name, you had two major obligations: (1) Pay handsome taxes to the King, and (2) Serve in the King's army. Of course, wherever there are burdensome laws, there are creative lawyers.

The people of that time saw the opportunity in hiding or masking ownership of property. People began transferring title to relatives and friends to remove their names from the public records. They titled real estate in the name of a relative or trusted friend in "trust" for the real owner. The former owner retained all the benefits of ownership without having title in his name. The "trustee" dealt with the public as if he were the true owner. Only the titled owner ("trustee") and the true owner ("beneficiary") knew of the arrangement.

The Mechanics of a Land Trust

As we discovered earlier, the land trust arrangement requires two legal documents:

- (1) A deed from the settlor to the trustee; and
- (2) A trust agreement between the settlor and the trustee which explains the details of the rights, powers, duties and obligations of the parties.

The trustee should be someone who is knowledgeable in real estate and financial matters. The trustee will remain in his position even upon your death, so choose your trustee wisely!

The trust arrangement requires transferring title to your property to the trustee. A new deed will be recorded in the name of the trustee. All

title to real estate will be removed from your name. A search of the real estate records will reveal that you own nothing. However, even if an attorney suspected that you had some interest in the trust, the public records would not reveal this information. The trust agreement is not recorded, only the deed. The trust agreement is a private arrangement between the beneficiary and the trustee. The identity of the beneficiary is not permitted to be revealed by the trustee. Generally, the assets of the parties to a lawsuit are not discoverable before a judgment is rendered. Before a lawsuit is commenced, it is near impossible for an attorney to find who is the beneficiary of the trust.

At this point, the attorney will have to decide for himself whether it is worth the risk of taking on the case, only to find out later that the trust may not be connected with you. Even if the attorney gets a judgment and discovers you are the beneficiary of the trust, he still has to take the additional steps of going to court and asking the judge to set aside the trust. Every “hoop” you make a creditor and his attorney jump through costs them time and money.

Many people with whom I discuss land trusts fail to set up this device because their attorney, Realtor® or accountant never heard of such a thing. Where I come from, you can't sneak little kids into the drive-in movie by hiding them in the trunk of your car because everybody knows that trick! In some parts of the country, you can pull that stunt every day of the week. Likewise, if attorneys where you live don't know about land trusts, they also don't know how to get through them!

A Comparison of Business Entities

As we discussed earlier, the best way to keep what you have is not to have anything in your name. You cannot lose what you do not own. In this section, we will discuss the different entities available to limit your exposure and spread out your ownership. We will start with a review of the different entities available.

Sole Proprietorship

A sole proprietorship is just “you doing business.” There is no filing requirement and no formal paperwork, except if you do business under a fictitious or trade name. In that case, you must usually file a “d/b/a” (doing business as) with the secretary of state in which you do business.

As a sole proprietor, you report your income on schedule “C” of your federal income tax return. Your liability is unlimited because you and your business are one and the same. If your business is sued, your personal assets, your residence and your money are at risk. If your business is bankrupt, you must file personal bankruptcy to avoid the business debts.

General Partnership

A general partnership is formed when two or more individuals or entities agree to carry on business together for a profit. No written partnership agreement is required, although it can be done that way. A general partnership can be created even if you did not intend it (i.e., a judge will let you know when you are sued for something someone else did on your behalf - this is sometimes known as “partnership by estoppel”).

The partnership itself does not pay taxes; it files an informational tax return with the IRS. This return (IRS form 1065) simply summarizes the income, expenses, profits and losses of the partnership business. The bottom line profit or loss “flows through” to the partners who report their share of income or loss on schedule “E” of their personal income tax returns (the partnership will send each of the partners an IRS form K-1 which states the partner’s share of profit or loss).

A general partnership affords no liability protection for its partners. Partners are jointly and severally liable for each other’s tortious (wrongful) acts. “Jointly” means that if one partner causes the partnership to be sued, all partners are liable; “severally” means that all partners are liable for 100% of the judgment. This means that if you are the “silent” partner who puts up and has the most money, you have the most to lose.

Corporation

A corporation is an entity that exists separate and apart from its shareholders. It requires the filing of a certificate with your secretary of state, called an “articles of incorporation.” The corporation issues stock to its owners, called the “shareholders.” The shareholders elect a board of directors. The board of directors in turn appoints officers, such as president, secretary and treasurer.

The major policy decisions of a corporation are made by the board of directors in the form of a “resolution.” The day-to-day functions of the

corporation are performed by the officers of the company. The shareholders own the corporation, but cannot directly run the corporation's business.

In most states, one individual can be the shareholder, director and serve as all of the officers (in a few states, the offices of President and Secretary cannot be held by the same person - check your state law). Thus, a "one-man" corporation is perfectly legal, but the individual must be careful to disclose the capacity in which he is acting (President, Chairman of the Board, etc.).

"S" versus "C" Corporation

There are basically two types of corporations for tax purposes, "C" corporations and "S" corporations. A corporation is a "C" corporation by default; the "S" status must be elected.

All large, publicly-traded corporations (e.g., I.B.M.) are "C" corporations. A "C" corporation files its own tax return (IRS form 1120) and pays taxes on its income. The good news is, the tax rates for regular corporations are usually lower than personal tax rates up to about \$100,000. The bad news is that when profits are distributed, they are taxed again on the shareholders' personal income tax return. This is what we commonly call "double taxation." However, "C" corporations can permit employees to take certain "*fringe benefits*," such as health plans, medical reimbursements and life insurance. None of these benefits are taxable to the employee, and the expense is deductible to the corporation. As you can see, a "C" corporation can be a great tax savings vehicle for small, family businesses.

An "S" corporation is a "flow through" entity. It files an informational return (IRS form 1120-S) and the profits and losses flow through to the shareholders. An "S" corporation, like a partnership, sends each of its shareholders an IRS form K-1 which states the shareholder's share of profit or loss. This profit is not normally subject to self-employment tax. Unlike a "C" corporation, the "S" corporation does not have the same "fringe benefits," but it still has tax advantages over a sole proprietorship.

Trusts

We discussed the land trust earlier as an asset protection device. In reality, the land trust is more of an asset "hiding" device. If a creditor knew that you were the beneficiary of a land trust, the creditor could

attach your beneficial interest. This is because a land trust is a revocable, living trust and such trusts do not protect the beneficiary's interest from the claims of his creditors (the theory is that since the beneficiary has unlimited access to the trust assets while he is still alive, so should his creditors).

Irrevocable Trust

An irrevocable trust can provide very good asset protection. With proper planning, an irrevocable trust can insulate your assets from claims of outside parties. The operating principle is that the trust, a separate entity from you, now owns the assets. If the trust contains a "spendthrift" provision, the trustee has authority to withhold distributions of income and principal. To the extent the trustee can withhold income from you, he can also withhold it from your creditors. Revocable trusts allow you to have complete access to your assets, which is why creditors can also go after the same assets.

In most states, you cannot be the trustee or beneficiary of the trust if you want to completely protect the trust assets from the claims of creditors. A sibling or in-law is a good choice, because they are beyond your legal control, but (hopefully) looking out for your best interests.

Keep in mind that these types of trusts are irrevocable, that is, once you place the assets into trust you cannot get them back. Typically, these types of trusts are created primarily for estate planning, so you may wish to forego using them if you are under the age of 40. Even beyond that age, you may choose to use an irrevocable trust for select items of property, such as your residence (known as a "qualified personal residence trust") or your life insurance policy (known as an "irrevocable life insurance trust"). If you do choose to create an irrevocable trust, make certain that you use an attorney and/or CPA who is well-versed in estate planning, gift and income tax law.

Abusive Trusts

A rash of scam artists have been promoting what is called a "*Pure Trust*," "*Pure Equity Trust*," "*Common Law Trust*," and "*Constitutional Trust*." The claim being made by the promoters of these trusts is that you can legally reduce your income and FICA tax by using these trusts. They cite United States Supreme Court cases for their legal position and actually appear to know what they are talking about.

The reality is, these trusts are a scam. The IRS Criminal Investigation Division has created a special task force to prosecute the promoters of these trusts. In addition, the IRS has labeled certain types of trusts as being “abusive” and automatically suspect. These trusts do *not* include land trusts and personal property trusts as described above, which are *not* used for avoiding income taxes.

Limited Partnership

A limited partnership has at least one limited partner and one general partner. Most states require the filing of a certificate with the state in order to be recognized as a limited partnership.

The limited partners generally have no liability beyond their contribution to the partnership. If the limited partnership business fails, the creditor cannot go after the limited partners for debts (there are a few minor exceptions to this rule that are not difficult to avoid). Furthermore, limited partners are not personally liable for wrongful acts committed by the other partners. In exchange for this limited liability, the limited partners give up their right to participate in the control and management of the partnership.

The general partners run the management of the partnership. The general partners control the cash distributions to the partners. The general partners also have unlimited liability, as in a general partnership. Creditors of the partnership can look to the general partners’ personal assets if the limited partnership’s assets are insufficient. Furthermore, the general partners are liable to third parties for wrongful conduct within the partnership business (*e.g.*, a “*slip and fall lawsuit*”). Thus, a corporation is usually better for pure liability protection for its owners.

The limited partnership does not pay federal income taxes. It files a partnership return of income (IRS form 1065) and issues a form K-1 to the partners. The partners report the partnership income or loss on their personal tax returns. The partners must pay income tax on all gains whether or not the profit is distributed.

Creditors of individual partners cannot take a partner’s place in the partnership. A creditor may garnish the partner’s share of income (called a “*charging order*”), but has no right to participate in the management or utilize partnership property. The creditor is only entitled to attach the income that the partner is current receiving. Thus, if a limited partner’s income is “charged” by a creditor, the general partner can frustrate the

creditor by not distributing income to the partners. Obviously, the general partner should be someone under the limited partner's control.

A SURPRISE FOR THE CREDITOR FROM THE IRS!

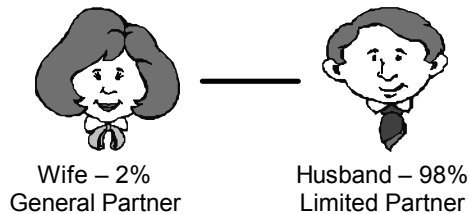
According to IRS Revenue Ruling 77-137, a creditor that charges the interest of a limited partner is the "owner" of such interest and *"must report the distributive share of partnership items of income, gain or loss, deduction, and credit attributable to the assigned interest... in the same manner and the same amounts that would be required if [the assignee] was a substitute limited partner"*. Thus, the creditor would be responsible for income tax liability on the partner's undistributed income!

Family Limited Partnership

Let's look at a variation known as a "family" limited partnership. The term "family" comes from a provision of the Internal Revenue Code that deals with the treatment of income shifted between family members. Generally speaking, a family limited partnership ("FLP") is a limited partnership formed between family members.

Suppose that you and your spouse create a limited partnership to hold your family's liquid investment assets. Your limited partnership contributions are all of your stocks, cash, CD's and mutual funds totaling \$300,000. Your partnership agreement could state that your spouse will act as general partner with a 2% share (the size of the general partnership share does not affect the general partner's power to manage the partnership's affairs). You agree in writing that your contributions constitute a 98% limited partnership interest.

"Family" Limited Partnership



The partnership agreement could state further that the limited partnership shall have the right to buy out the general partner for his share of the partnership and appoint a new general partner to replace her (the "you" in this example is the husband; we are making the wife general partner because we assume that the husband's risk of getting sued is higher; if the opposite were true, then we would arrange the partnership accordingly).

Let's suppose that you are sued and a creditor obtains a \$50,000 judgment against your name. The creditor can attach your limited partnership interest but only to the extent of your income as a limited partner (called a "charging order"). The creditor who attaches a limited partnership interest cannot participate in the management of the partnership, and thus cannot force the general partner, your spouse, to distribute income. As general partner, your spouse stops paying the limited partners' distributions, because in her discretion the limited partnership would be better served to reinvest the capital.

One year later, the creditor still has a \$50,000 unsatisfied judgment. Just to top it off, the partnership sends the creditor an IRS form "K-1" for the creditor's share of your "phantom" income (In our example, the partnership assets are worth \$300,000. At a 10% annual return, your share of income would be approximately \$30,000 - the creditor would have to pay income taxes in the ballpark of \$10,000! If the creditor does not pay the tax due on your undistributed share of income, the IRS will come after the creditor). You will be in a strong position to force your creditor to settle his claim for a fraction of its value.

Let's suppose a creditor sues your spouse and tries to attack your spouse's general partnership interest. At that point, the partnership exercises its power under the partnership agreement to buy out her general partnership interest in the amount of \$2,000 or 2%. The partnership then finds a new general partner. With proper planning, this may not be considered a "fraudulent" conveyance because the general partner received full compensation for her partnership share. As you can see, the limited partnership is one of the few entities which affords control over your money, yet still provides you with asset protection.

Limited Liability Company

Limited liability companies or "LLC's" are the newest breed of limited liability entities. LLC's are a creation of state law and are now recognized in all states. The LLC, like a corporation or limited partnership, requires filing an "articles of organization" with your Secretary of State in order to be valid.

The LLC is owned by partners, which are called "members." As with a corporation, the members are not liable beyond their contributions to the company. Unlike a limited partnership, all members can participate in the management of the company without personal liability for company debts or lawsuits against the company.

The LLC can be run by its members or by a “manager,” which can be a corporation or individual who may or may not be a member. When an LLC is “manager-managed” (as opposed to “member-managed”), it is similar in operation to a limited partnership. The manager makes all the day to day decisions, signs for appropriate obligations, etc. However, the manager is not personally liable for company debts or lawsuits against the company (a general partner of a limited partnership has personal liability for obligations of the limited partnership). The members who are not also managers are simply passive investors, akin to limited partners of a limited partnership.

When an LLC is “member-managed,” all of the members can participate in the management and control of the company. A member-managed LLC is thus very similar in operation to a general partnership, with one notable exception - the members are not liability for the debts or liabilities of the company.

By default an LLC with two or more members is taxed as a partnership. The LLC files a partnership tax return (IRS form 1065), and each member will receive an IRS form K-1. Like a partnership, members can receive income and deductions in proportions that may or may not be equal to their ownership shares. Thus, the LLC is the only entity that offers the flexibility of a partnership with the protection of a corporation.

In many states, an LLC can be formed with just one member (called a “single-member” LLC). In this case, the company is disregarded for federal income tax purposes. For example, if a business is run as a sole proprietor then changed to an LLC, the individual would have liability protection under state law, but would continue to report on Schedule “C” of his federal income tax return.

In most states, a member’s interest in an LLC cannot be attached by a creditor. Like a limited partnership interest, the creditor’s remedy is generally limited to a charging order. Although the LLC may appear to be an excellent tool for asset protection, it has not been tested in court as extensively as corporations. The few court cases that have dealt with the issue thus far have applied the same tests for “piercing” that have been applied to corporations.

IMPORTANT NOTE ON USING FLPs & LLCs

If you use a limited partnership or LLC to hold assets, you must have a valid business purpose for the liability protection to be enforceable. Thus, a limited partnership with your personal residence as its sole asset is not a valid business entity, unless you pay rent to the partnership.

Summary of Legal and Tax Issues

There are four issues you'll want to consider when choosing your business structure:

- ✓ How easy it is to create, run and dissolve the organization
- ✓ Tax savings and reporting requirements
- ✓ The burden of yearly paperwork
- ✓ Liability & asset protection

Formation Issues

As we discussed in chapter two, a sole proprietorship is just “you doing business.” There is no filing requirement and no formal paperwork, except if you do business under a fictitious or trade name. Thus, a sole proprietorship is the easiest form of business to start and run.

As we discussed above, a general partnership is formed when two or more individuals or business entities agree to carry on business together for a profit. No formal written partnership agreement is required; a partnership can be made on a handshake.

A corporation, limited partnership and limited liability company all require the filing of a certificate with your secretary of state.

Tax Implications

As a sole proprietor, you report income, expenses, profits and losses on schedule “C” of your federal income tax return. Your profit is subject to personal income taxes rates of 15% to 35%, whether or not the money is siphoned out or reinvested in the business. Your schedule “C” income is also subject to “self-employment” tax of 12.4% percent up to the taxable limit of Social Security (about \$94,000) and 2.9% Medicare tax on all income earned (the good news, however, is that you receive a deduction on your federal income tax return for one-half of the self-employment tax).

A partnership (general or limited) itself does not pay taxes; it files an informational tax return with the IRS. This return (IRS form 1065) simply summarizes the income, expenses, profits and losses of the partnership business. The bottom line profit or loss “flows through” to the partners who report their share of income or loss on schedule “E” of their personal income tax returns (the partnership will send each of the partners an IRS form K-1 which states the partner’s share of profit or loss). This profit is subject to personal income taxes rates of 15% to

35%, whether or not the money is distributed or reinvested. This income is generally subject to self-employment tax.

A partnership may, in certain circumstances, permit its owners to allocate profits and losses in a manner inconsistent with their share of ownership. For example, a partner who puts up a significant amount of cash may insist on taking a greater share of the profit.

The IRS has elected to treat the LLC for tax purposes the same as a partnership, so long as there are at least two members. A “single-member” LLC is treated “disregarded” for income tax purposes (the members of the LLC report the income and loss on their personal returns).

An S corporation is treated similar to a partnership, in that it has pass-through treatment of profits and losses. Also, shareholder distributions are not generally subject to self-employment tax. A C corporation can be a tax nightmare or a bonus, depending on how it is used. If you want to retain profits inside the C corporation for later investment, you can reduce your overall income tax liability. In addition, if you pay for your own health insurance and medical costs with after-tax dollars, the C corporation can allow you 100% deduction for these items. There is no “one-size-fits-all,” so review your personal situation with your tax advisor.

Besides liability protection, the corporation will provide audit protection. Statistically speaking, your chances of being audited as a sole proprietor are about three times greater than your chances of being audited as a corporation. This, of course, only applies for small businesses reporting less than \$100,000 of income. The IRS knows that corporations have very little assets at this level of income and that the shareholders are probably siphoning off the income every year. Thus, an audit of the corporation will not yield the IRS any assets to seize.

Annual Paperwork

All of the entities discussed above require federal income tax filings. The corporation (C or S) requires the most amount of annual paperwork in the form of shareholder and director meetings. The paperwork is not cumbersome compared to the benefits a corporation can offer.

Liability Issues

Your liability as a sole proprietor is unlimited because you and your

business are one and the same. If your business is sued, your personal assets, your residence and your money are at risk. If your business goes bust, you must file for personal bankruptcy protection to avoid the business debts.

A general partnership affords no liability protection for its partners. Partners are jointly and severally liable for each other's tortious acts, e.g., auto accident, "slip and fall," etc. "Jointly" means that if one partner causes the partnership to be sued, all partners are liable; "severally" means that all partners are liable for 100% of the judgment. This means that if you are the "silent" partner who puts up and has the most money, you have the most to lose. Even if you are a 5% partner and did nothing wrong, they can still hold you 100% accountable for acts of your partners. While a general partnership is a simple and popular form of doing business, it can be hazardous to your financial health.

A limited partnership affords liability protection for the limited partners only. The general partners have unlimited liability. In most cases, a corporation should be used as a general partner for a limited partnership.

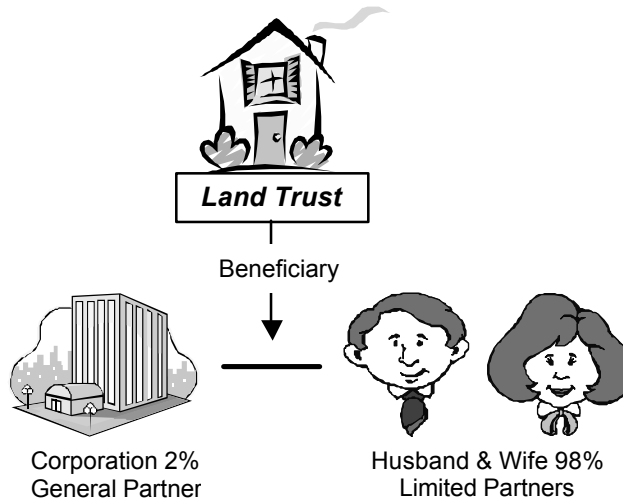
Both the corporation and LLC offer complete liability protection for the owners of the company. Thus, the use of an LLC versus a corporation becomes more of a tax issue than a liability issue. From an asset protection standpoint, the LLC is more effective for accumulating assets, since a creditor's remedy is limited to a charging order. The ownership of stock in a corporation is not similarly protected from creditor attachment.

Combine the Entities for Virtually "Bulletproof" Protection of Your Real Estate

An excellent way to insure lawsuit protection of your real estate is to combine a land trust with a limited partnership and a corporation. As we discussed earlier, the limited partner's interest in a limited partnership is virtually "untouchable." A general partner, while in control of the partnership, is subjected to personal liability. What we need is a general partner under our control to "stand in" and take the hit.

The solution for virtually "bulletproof" protection is to have a corporation be the general partner of a limited partnership. The corporation only needs to have a small interest for the purposes of control. If the limited partnership was sued, the general partner, not the limited partners, would be liable. If the corporation had little or no assets, the

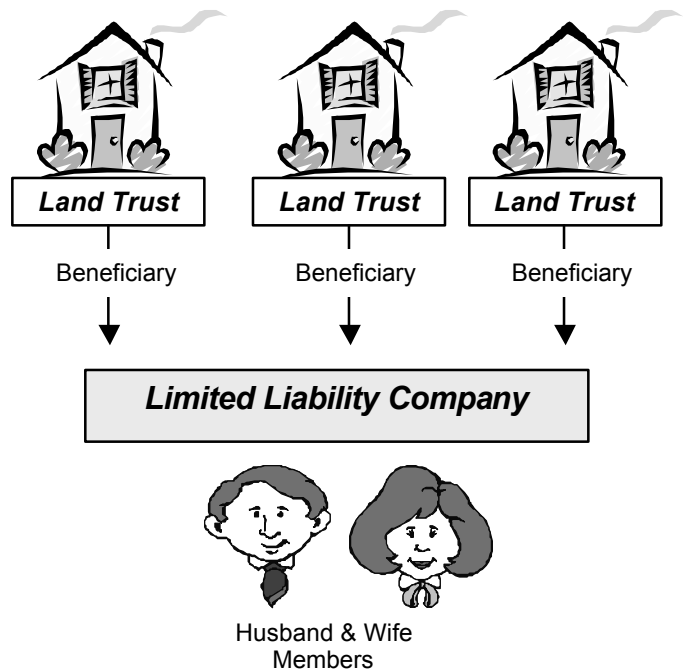
limited partners could “cut it loose” by buying out its share for a token amount. The limited partners would then have a new corporation be the general partner.



Now let’s add one more layer of protection for holding real estate. The real estate will be titled in a land trust. The beneficiary of the land trust would be the limited partnership, with a corporation as 2% general partner. The corporation, of course, should be under ownership or control of the limited partners (i.e., the limited partners could also be the stockholders of the corporation).

Variation: The Limited Liability Company

In the above scenario, you may consider an LLC instead of a corporation/limited partnership combination. It involves less paperwork than using two entities. Some states, such as CA and TX, impose a high annual franchise tax on the use of LLCs, which makes using multiple limited partnerships more cost effective. In these high franchise tax states (e.g., CA, TX), it is cheaper to use multiple limited partnerships than multiple LLCs.



Here Comes the Lawsuit . . .

Continuing with the above scenario, let's suppose a tenant decides to sue the owner of the property. The first layer of protection is the land trust. Even if the tenant or his attorney knew what a land trust was, they would have to figure out who the beneficiary was. The attorney would then have to ask a court to set aside the land trust.

Even if the attorney was able to get that far, he would come across a limited partnership (or LLC). He could try to sue the general partner, only to find that it was a corporation. If he obtained a judgment against the corporation, its only asset is a 2% share of the limited partnership. The limited partners then decide to cut the general partner loose by buying it out for 2%. The attorney could then try to attach the limited partner's interest, but we know that attempt would be futile. In his last desperate attempt, he tries to persuade the court that the corporate general partner is a sham and should be pierced. The court agrees and a judgment is entered against your name. By the time this whole process is complete, the rest of your cash safe in other LLCs and trusts.

The more roadblocks you put in front of your potential creditors, the less likely they will sue you. If they insist on suing you anyway, you will be able to stall their collection efforts for years and force them to settle their claim for a fraction of its value.

What to Do Next

Your next move is to educate yourself as much as possible, then action. I would like to extend to you Lawyers who understand these concepts (and believe me, friend, there are only a few), charge their clients in the TENS OF THOUSANDS OF DOLLARS for the kind of protection I reveal in this Wealth Protection Home Study Package. When you order now, you will save thousands of dollars in legal fees and get all the strategies and techniques you need to plan and protect your financial future.

Here's a partial topic list of what you will learn from my Wealth Protection Home Study Package, the knowledge you will gain of each subject **can pay you back many times the cost of the package:**

- How to setup and use corporate entities to **slash your taxes by thousands**
- How to use trusts for asset protection and enjoy **MASSIVE tax savings**

- How to use tax laws and legal loopholes to **maximize your wealth building**
- How to avoid real estate "dealer" status... falling into this trap can cost you thousands in IRS penalties
- How to create tax-free medical and dental plans and **save thousands** each year
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- How to **save hundreds of thousand dollars in estate taxes** (you earned it, why give it away to the government?)
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In addition... you'll also be discovering:

- How to incorporate in any state without a lawyer, saving time and money
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- How to choose between "S" or "C" corporations -- you will finally learn the key differences in a simple and understandable format
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- How to avoid the "fraudulent conveyance" trap -- violate this one and you could end up in jail!
- How to legitimately deduct "non-deductible" living and vacation expenses
- How to **get more cash** out of your corporation with the smallest tax bite
- Five ways to prevent your corporation from being "pierced" in a lawsuit
- How to create a positive and professional image for a "one-man" corporation
- How to convert your existing business to a protected corporate entity
- How to create and use Limited Liability Companies to legally keep your assets away from abusive creditors, an ex-spouse, or the IRS
- How to use Family Limited Partnerships for maximum asset protection and to transfer wealth with minimum estate tax
- How to use multiple LLCs to **protect your real estate holdings** without the burden of additional tax reporting

- How to keep your name off public records when buying and selling real estate to **avoid looking like a "deep pocket"**
- How to use personal property trusts to keep bank accounts, automobiles and other personal property invisible to prying eyes
- How to **"bulletproof" your wealth** and avoid getting sued in all areas of your business and personal life

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-T.J. Marrs, Asset2100 Investments

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This one-of-a-kind course will show you STEP-BY-STEP how to form and use land trusts to keep your ownership of property, mortgages & options private and free from public intrusion. Learn the secrets of protection title from liens, assuming "non assumable" loans, avoiding probate of property and much more! Also covers "personal property" trusts for keeping notes, cars, boats, bank accounts and other property secret. Contains references to the laws to all 50 states (sorry, not valid in Tennessee & Louisiana), "quick-start" audio CD, state-specific legal forms CD-ROM and video DVD.

VOLUME FOUR: LTD LIABILITY CO'S & FAM LTD PARTNERSHIPS. \$297.00

This course will show you STEP-BY-STEP how to form and maintain a limited liability company or family limited partnership to protect and legally "judgment-proof" your assets. Contains detailed explanations of keeping records, maintaining formalities and the latest tax and liability issues concerning LLCs. This course will save you THOUSANDS in attorney's fees and give you dozens of practical tips for starting and running an LLC or family limited partnership. Comes complete with "quick-start" audio CD, legal forms CD-ROM with filing forms for all 50 states and 30 min DVD.

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"After reviewing your materials, my brother and I purchased a property in trust. Through other business activities my brother had a former disgruntled associate. This associate has filed a lawsuit, attempting to attach his assets. The legal paper work identified all his properties except the property we recently purchased in trust. It's nowhere to be found! The lawsuit will be resolved, as it's frivolous. But we're tremendously excited to learn, first hand, about the effectiveness of using trusts to make an asset drop off the radar. This is huge!!! Thank you."
- **Phil, Real Estate Investor (last name withheld to due obvious privacy reasons!)**

"Get the courses ... my wife and I used it to help us set up our C corp. It was so easy. Later, had an attorney say he would only charge us \$2500 to set up a corp. We laughed!" - **Alan Paine, Houston, TX**

"I was quoted as high as \$10,000 by attorneys to prepare a Family Limited Partnership Agreement - Your course laid it out so simply I decided to do it myself." - **Harry M., Los Angeles, CA**



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