

Nine Ways to Maximize Family Limited Partnership Protection

There are other strategies to bolster the protection from limited partnerships:

- The limited partnership agreement should give the general partners full discretion to withhold distributions of profits for purposes of future investment
- The agreement should also specifically restrict the transfer of a limited partnership interest without the consent of the general partner and/or a majority of the limited partners
- The agreement should further prevent a limited partner from withdrawing capital contributions without partner consent
- The agreement should also carefully specify that a creditor of a limited partner becomes only an assignee of the limited partner's interest and acquires no partnership rights other than the right to distributions. Furthermore, the agreement should allow, in a general partner's sole discretion, a transfer of a limited partner's voting rights, if necessary to ensure that a creditor who obtains a charging order also becomes liable to pay the debtor's share of taxes from partnership profits
- A particularly effective strategy is for a limited partnership agreement to allow the general partner to assess the limited partners for a further contribution and to extend this obligation to any charging order creditor. The agreement could further stipulate that failure to meet such obligations would cause a partner to forfeit his partnership interest, without entitling him to any return of capital he or she had contributed to the partnership
- High-risk family members should own a smaller partnership interest, but one proportional to the asset contributions to avoid gift tax consequences or claims of fraudulent conveyance. The agreement should also give the low-risk family member a disproportionately high share of the profits
- Limited partners may also consider granting an option-to-purchase the partnership interest back to the limited partnership. Issued in advance of a creditor claim, it can be an effective way to divert partnership interests
- Spouses may hold their limited partnership interests as tenants-by-the-entirety in states where this type of tenancy is recognized. This further protects the interest against creditors of any one spouse
- When investing in a large, non-controlled limited partnership, or limited liability company, title ownership in a family limited partnership. This protects the distributions you may not be able to avoid