

## Overview of Why Corporations Should Not Shelter Personal Assets

We so far discussed inside-out protection or the personal asset protection that a corporation can provide you from the debts of the company. Now let's return to a corporation to safeguard your personal assets. This is outside-in protection. For a corporation to give you outside-in protection, you must transfer your personal wealth to the corporation. You then no longer personally own your boat, car, paintings and so forth; your corporation does. Your personal creditor cannot directly claim assets owned by the corporation. However, your personal creditors could seize your corporate shares. That's the problem. Your ownership interest in the corporation can be claimed by your creditor. If you own a controlling share, your creditor could control your corporation's assets. That's why you can never safely use the corporation alone to protect your personal assets. You must use the corporation with other asset protection tools, although a corporation might provide temporary shelter for your personal assets.

*To protectively title your corporate shares, you have several options:*

· **Married?** Transfer most or all of the corporate shares to your less vulnerable spouse, who would then control the corporation. One problem, of course, is that you no longer control the corporation. Use this arrangement only if it meets your personal, estate planning and divorce-proofing objectives.

· **Title the shares to a family limited partnership (FLP).** Spouses may become the general partners and control the partnership assets. They may be the limited partners or appoint other beneficiaries – such as children, friends, charities, etc. – as limited partners. As general partners, the spouses control the partnership that owns the corporation, which in turn owns the assets. Indirectly, the spouses control the assets, but do not personally own the assets or the shares of the corporation that owns the assets. The assets now owned by the corporation cannot be claimed by the couples' personal creditors – assuming the asset transfer to the corporation was not fraudulent.

· **Transfer the corporate shares to an irrevocable trust for your children or other beneficiaries.** The husband and wife may become the co-trustees of the trust and manage the trust that controls the corporation. The couple thus indirectly controls the corporate assets without directly owning the corporate shares.

· **Title the shares to an LLC.** As with a limited partnership, an LLC member's personal creditors cannot seize a debtor's membership interest in the LLC. Beware of the fraudulent transfer laws if you have creditors.

· **Title the shares to an offshore trust or foreign LLC.** Both offshore trusts and a foreign LLC can protect corporate shares. Combine offshore trusts with limited partnerships as the corporate shareholder substantially strengthens the arrangement. Titling shares of a U.S.-based corporation to an offshore entity also privatizes its ownership. However, a U.S. judge can force you to

surrender shares fraudulently transferred offshore. Therefore, we do not recommend this when you have existing creditors.

· **Title your shares as tenants-by-the-entirety.** If you co-own your shares with your spouse in a state whose tenancy-by-the-entirety laws protect stock ownership, it may give adequate protection when only one spouse has creditors.

Each strategy is more fully explained in our website, but for the moment, understand that for a corporation to protect your personal assets, you cannot directly own the corporate shares. You must layer your protection with trusts, limited partnerships or other protective entities to own the corporate shares.

When outside-in protection is your goal, you need a passive personal corporation. Corporations that engage in business incur liabilities. You would then risk losing personal assets owned by the corporation to the businesses creditors. Another danger is that corporations used primarily to hold personal assets can create serious holding corporation tax problems. C corporations are subject to double taxation. While S corporations are singly taxed, they cannot be owned by a trust, partnership or other protective entity. Still, another problem with a corporation to hold personal assets is that if you contribute personal assets to a corporation and later wish to re-claim the asset, you may have to pay taxes on the returned capital. Redistributing partnership or LLC assets (where the LLC has not elected corporate tax treatment), however, does not usually trigger a tax. So, there are tax traps. Before you use a corporation for outside-in protection, review it carefully with your accountant for the tax consequences. Avoid these tax problems. Use limited partnerships, limited liability companies and other entities. They can better protect your personal assets.