In all realms of life it takes courage to stretch your limits, express your power, and fulfill your potential. Its no different in the financial realm.

– Suze Orman

Welcome to Our March 2014 Asset Protection Newsletter!

What is a family limited partnership and what role does it play in Asset Protection?

A family limited partnership (FLP) is a limited partnership (LP) owned by family members, or family controlled entities (trusts, etc.). They work the same as any limited partnership. The FLP is commonly used for protection because it can protect a wide range of assets, maximize your creditor protection, minimize your estate taxes, and give you or your family continuing control over your assets.

For many years, the limited partnership has been a staple of Asset Protection planning. Although in many instances the limited liability company (LLC) is now preferable to the LP, limited partnerships are still popular, and are sometimes still the entity of choice, especially for the reduction of estate taxes.

Limited partnerships are a variation of the general partnership. General partnerships (commonly referred to as partnerships) have

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Important Changes in Florida Law

Latest update: In June of 2010, the Florida Supreme Court held in Olmstead existed for thousands of years. They are typically small businesses wherein each partner may manage, act for, and bind the company. Although a general partnership is technically not a distinct artificial entity, as it is not created by the government, each partner usually contributes property to a general pool of partnership assets as necessary for it to conduct business, and it is often treated as a distinct entity. General partnerships are often very basic and informal in their structure, and are thus easy to form and operate, requiring a minimum of associated paperwork aside from filing partnership tax returns.

As commercial law developed, general partnerships gradually began to demonstrate some glaring shortcomings. That brought about the limited partnership. Among these shortcomings is the fact that one partner can make a decision that could financially harm not only the partnership as a whole, but the personal wealth of the other partners. Like a sole proprietorship, general partnerships have no limited liability. Therefore, if one partner obligates the partnership to debts it cannot pay, the personal wealth of all partners is at risk of being forfeited to the partnership, creditors. The same is true with debts arising from lawsuits: if one partner is dishonest or commits a tort while working for the partnership, then a creditor could obtain a judgment against the wrongdoer, the partnership as a whole, as well as each individual partner.

The limited partnership chief difference from the general partnership is that it has two classes of partners: general partners and limited partners. A general partner manages the company. However, the general partner has unlimited personal liability. Consequently, if the company is unable to pay its debts, its creditors can look only to the property of a general partner to satisfy those debts.

Limited partners do not have this same vulnerability. A creditor can only pursue a limited partner assets to the extent those assets have been contributed to the partnership. This makes their liability similar to a corporate stockholder. This idea has been codified in the ULPA and its successors. At the same time, a limited partner is forbidden from managing or otherwise running the company. If a limited partner does manage the company then he will likely lose his limited liability.

Because general partners even in a limited partnership have unlimited liability, an LLC or corporation is often used as the general partner of an LP. This effectively gives the general partner limited liability. Although the LLC or corporation has unlimited liability for the debts of the LP, those debts do not generally extend to the owners or managers of the LLC or corporation. This arrangement is especially useful if multiple individuals manage the partnership. Instead of each person acting

v. Federal Trade Commission (No. SC08-1009) that a charging order is not the exclusive remedy available to a creditor holding a judgment against the sole member of a Florida single-member limited liability company.

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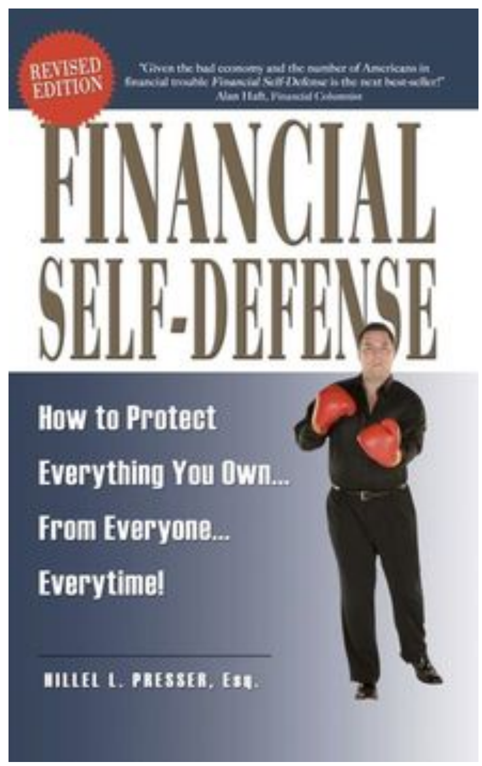

Read Our Latest Best-Selling Book On Asset Protection!

Contact our law firm today to schedule a complimentary (free) Preliminary Consultation with Attorney Mr. Presser and receive a complimentary copy of Financial Self Defense (Revised Edition) as a general partner where their actions could expose the other general partners to liability, they can each be a manager of a single LLC, a corporate officer, or board member of a single corporation. This would limit their exposure to the wrongful acts of the other managers, and allow everyone to participate in managing the LP.

Besides the distinction between limited and general partners, a limited partnership essentially operates like a general partnership. Consequently, LPs (before LLCs became popular) were often the entity of choice for small businesses. The reasons for this are threefold: Simple management structure, lack of a requirement to follow corporate formalities, and partnership tax (pass-through) treatment.

How does the Family Limited Partnership protect assets?

The short answer is that a limited partnership interest cannot be claimed by the debtor-partner creditors. The creditor can only obtain a charging order which entitles the creditor only to whatever profit distributions are made to the debtor-partner. But this is usually an empty remedy since few FLPs make profit distributions when one partner has a charging order creditor and the FLP is managed by the debtor-partner or her family members.

Though we have discussed several benefits of the LP, we have not yet discussed its biggest benefit from an Asset Protection perspective. This benefit is the charging order. To say the charging order is a benefit is actually a bit of a misnomer, because in actuality the charging order is a remedy available to creditors. However, the remedy is so limited that it is often ineffective. That is why, amongst the over 20,000 entities we have created for clients (most of which were susceptible to a creditor charging order), very few clients have been subject to a charging order. Furthermore, if the LP is created and operated correctly, a creditor has no other way to reach LP assets other than the charging order.

So what is the charging order? The charging order is a statutory provision of law under the UPA, ULPA, RULPA, and Revised Uniform Limited Liability Company Act (RULLCA) which provides a creditor of a company partner or owner may attach company distributions made to that individual. However, this is generally the only remedy available to the creditor. This is so because it would be unfair to the other partner's or to the partnership itself if a creditor were able to disrupt partnership business. This would harm the other partners who are not parties to the debt. Consequently, the charging order does not allow the creditor to control the entity, attach the entity assets, or become a partner or owner of the entity. Of critical importance is the fact that, since a charging order holder cannot control the entity, they

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The Presser Law Firm, P.A.
Asset Protection Attorneys

800 Fairway Drive
Suite 340
Deerfield Beach, FL 33441

Info@AssetProtectionAttorneys.com
www.AssetProtectionAttorneys.com

cannot control its profit distributions. In other words, if the entity never makes a distribution to the debtor-partner, then the creditor never receives a distribution. Their charging order then is essentially worthless. But a note of caution here: It is not a good idea to make distributions to all partners except the partner whose interest has been assigned to a creditor via a charging order. A judge might see this as an overt attempt to thwart the creditor from receiving his due. In such an instance, it is conceivable that a judge could view such circumstances as being akin to a fraudulent transfer which might then lead the court to force a distribution from the entity. If someone wishes to have distributions made to the other partners or owners while keeping his distribution out of the hands of his creditors, then before the creditor threat arises, the partner should place his partnership interest in another entity that is also protected by the charging order. The distributions will then be made to the second entity and not to the individual directly.

What is a Health Care Surrogate ?

Your health care surrogate is the person you name to make medical decisions for you if you cannot make such decisions on your own. This person must be on the same page with you as to how you would handle your own medical care. Therefore, you should choose someone who can make decisions from a practical and logical standpoint, even when they are under the stress of other family members. Most people choose family as their health care surrogates, but it is not uncommon to choose family friends who are doctors as well.

The Presser Law Firm, P.A. - Asset Protection Attorneys

The Presser Law Firm, P.A. represents individuals and businesses in connection with the establishment of comprehensive Asset Protection plans that incorporate both domestic and international components.

We help our clients protect themselves from lawyers, malpractice claimscreditors, foreclosure deficiencies, former or current spouses, children, relatives, and greedy lawsuit-obsessed citizens. While many people can make money, few know how to protect it.

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Best Wishes,

The Presser Law Firm, P.A.
Asset Protection Attorneys

The Presser Law Firm, P.A.
Asset Protection Attorneys

THE PRESSER LAW FIRM, P.A.
ASSET PROTECTION ATTORNEYS

561-953-1050 (w)

Website Twitter LinkedIn Facebook YouTube

800 Fairway Drive, Suite 340, Deerfield Beach, FL 33441, United States