



Partnerships as Asset Protection

An important goal of estate planning is to protect income and assets from creditors' claims and tax collection. While some individuals think asset protection involves dishonest techniques, there are many legitimate ways to protect personal property, real estate and other assets. In addition to federal and state laws that exempt certain types of property from creditors' claims, numerous estate planning tools are able to shield assets from future creditors and reduce or eliminate estate or income taxation. One such tool is the family limited partnership ("FLP").

Family Limited Partnerships and Asset Protection.

An FLP is a valuable asset protection strategy for a family whose members want to preserve their assets while retaining a certain element of control over them. An FLP is a specially designed limited partnership, consisting of one or more general partners who are responsible for managing partnership affairs. The other partners are called limited partners who are not permitted to participate in any management decisions and generally have no vote.

After an FLP is formed, assets can be contributed to be held by that entity. In return for this contribution, the maker of the entity would receive a general partnership interest, as well as limited partnership interests. Once asset transfers have been completed, the limited partnership remains under the control of the general partner, who could be a separate corporate entity. The general partner is oftentimes required to distribute the net income of the FLP. However, the general partner may withhold any amount in order to make additional investments in the FLP. As a result, the FLP can accumulate substantial family wealth without the need for distributing it to one's family (or irrevocable trusts for their benefit) who may be tempted to use the funds for undesirable purposes.

Taxable income of a FLP is attributable to each of the partners pro rata. Therefore, subject to the so-called "kiddie tax" rules, if one's family members are in a lower tax bracket, transferring income to them will result in reducing aggregate income tax on the profits of the FLP.

Annual Gift Tax Exclusion and Gift Tax Exemption.

Once the FLP has been established, limited partnership interests may be given to one's family by means of an annual program taking advantage of the \$13,000 annual gift tax exclusion. Transfers of a larger block of limited partnership interests, taking advantage of the gift tax exemption, may also be made. This exemption permits gifts in a cumulative amount of \$1,000,000 to anyone without incurring gift tax.

Valuation Discounts.

In making gifts of limited partnership interests, taxpayers have traditionally sought discounts described below in valuing these gifts, with the expectation of potentially removing the property from their estates at a lower value. This area has been the subject of IRS attack, with the IRS having some success in limiting the amounts of such discounts taken by taxpayers. Therefore, one should thoroughly consider the advantages and disadvantages of seeking such discounts in light of the recent IRS victories in this area. In addition, taxpayers typically make gifts of limited partnership interests during lifetime



in an effort to remove the future appreciation in the value of these limited partnership interests from their estates for estate tax purposes. Over time, a series of gifts of partnership interests made in this manner could result in significant tax savings.

A noteworthy benefit to utilizing a FLP for wealth transfer is the potential availability of discounts for lack of control. The partnership agreement generally contains real and enforceable restrictions on partnership operations and on transfers of partnership interests. For example, the general partners control the partnership. Limited partners have no vote, and accordingly, no control over partnership matters. Additionally, partnership interests are frequently not freely transferable, but are subject to the restrictions upon transferability set forth in an agreement. Based on these (and other) restrictions, valuation experts typically discount the value of a transferred limited partnership interest.

Shielding Assets from Creditors.

A Florida FLP provides a substantial measure of protection against creditors. By using such an entity, the family assets will be titled away from one's family, although they are given ownership in those assets. Without the partnership, a transfer to a child could involve giving title to the child, exposing the asset to creditors, spouses, and taxing authorities. The transfer of limited partnership interests passes no control, and any claims by creditors, spouses, or taxing authorities against a child may only be asserted against the limited partnership interests without the ability to reach the property itself.

Absent a fraudulent conveyance, a Florida judgment creditor cannot reach the assets inside the partnership and cannot attach the partnership interest. A creditor is limited to obtaining a charging lien. This means that the creditor would be entitled to distributions only when the FLP actually declares distributions. If no distributions were made, then the creditor would receive nothing. Furthermore, the IRS has ruled that a creditor with a charging lien on a partnership interest must recognize a pro rata share of the partnership's income, whether or not it is distributed. As a result, creditors rarely assert charging liens against partnership interests or will settle their claims at a substantial discount.

Conclusion.

FLPs can serve as worthwhile vehicles for many individuals who wish to protect assets from future claims of creditors and to create a tax-efficient strategy for family wealth preservation. To learn more about the application of FLPs in your estate plan, please contact our office.



Joshua T. Keleske, P.L. serves families in the Tampa Bay area with their estate planning, estate and trust administration, and business planning needs. If you have questions regarding how we can be of assistance to you and your family, please contact us at anytime at 813-254-0044. We are happy to answer your questions and arrange for an appointment to speak with you.

Please also visit www.trustedcounselors.com to learn more about Joshua T. Keleske, P.L.



Serving Families in the Bay Area

Joshua T. Keleske, P.L. • Attorney & Counselor at Law

3333 W. Kennedy Blvd. • Suite 204 • Tampa, Florida 33609

Questions or comments?

Please email us at: jkeleske@trustedcounselors.com

or call (813) 254-0044 • *Visit us at:* www.trustedcounselors.com