Understanding
Corporations & Asset Protection

How You Can Protect Your Assets, Save Taxes, and More.

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This Pamphlet entitles holder to a FREE consultation

Asset Protection

Asset Protection works because you build walls between your assets and your creditors or potential creditors. The more walls you rebuild, the more likely your assets will be protected, but also, the more complicated your life becomes and the more expense it takes to maintain. The thing to remember is that after the problem has arisen, your options for protecting your assets have dropped significantly and you could be found to have involved yourself in FRAUDULENT CONVEYANCES.

Below are some common entities or theories used in asset protection:

- C Corporation
- Sub-Chapter S Corporation
- Limited Liability Company (LLC)
- Limited Liability Partnership (LLP)
- Family Limited Partnership (FLP)
- Irrevocable Trust
- Family Living Trust
- Powers of Attorney
- Charitable Remainder Trust
- Foreign or Offshore Trust or Entity
- Gifting
- Separation of Estates
- Etc.

Corporations

"C" Corporations

This is the most flexible corporation allowing the highest number of tax deductions of any business entity, and is used to provide protection from creditors to the officers and Directors of a corporation. These corporations can have a fiscal year, have their own tax brackets (allowing for one to choose where one wants to be taxed), allows one to retain control of the corporation, and gives many other benefits to the user. Usually a corporation will not hood as many benefits for a one man corporation.

Sub Chapter "S" Corporation

An "S" Corporation is a cross between a C Corporation and a Limited Partnership. Taxes are paid similar to a partnership yet this affords protection for Officers and Directors like a C Corporation. This type of corporation is more limited in what it can do, how many shareholders it can have, what type of shareholders it has, what can be claimed as tax deduction, but may be more beneficial that a C Corporation if losses are expected rather that profits, or if the corporation is dissolved, it allows the reclaiming of assets from the corporation more readily as a non- taxable event than a C Corporation.

Out of State Corporations

Several states have very favorable corporate laws in order to try to induce people to incorporate in their state. These favorable laws may include no corporate tax and more protection for corporate information from those trying to find out information about the corporation. There are also several detriments with the use of an out of state corporation including an annual certificate fee needing to be paid to the state of California if you do any business in the state and the need to have a retained attorney in the other state. This is a good tool in some circumstances.

Sole Proprietorships & Partnerships

Sole Proprietorship

A sole proprietorship is the easiest way to state a business; it is a single person or a married couple doing business together under usually a fictitious name. There are no special tax benefits other than business expenses and there is no liability protection.

General Partnerships

A general Partnership is 2 or more persons acting together to accomplish a joint cause. This is another fairly easy business entity to set up and is basically a sole proprietorship involving 2 or more people. This is the most dangerous form of business entity in that one partner can be held totally liable for what another partner does in the furtherance of the partnership. Also, each partner is liable for the act itself. The partnership does not pay taxes, the partners pay taxes on their share of the profits whether they received the profits or not.

Limited Partnership

One of the most productive tools used in asset protection and estate reduction without giving up control of your estate, this type of partnership has 2 classes of partners, the general partners who make all the decisions for the partnership and control all partnership assets the limited partners, on the other hand, receive their portion of profits from distributions and pay their portion of the taxes of the partnership. A creditor coming against the Family Limited Partnership cannot touch any asset of the partnership but rather, their only recourse is to put a “Charging Order” on the limited partners’ interest, thus being able to receive any distribution made to that partner and paying any tax liability the partner incurs. This entity is also used as a gifting mechanism to make annual gifts without losing control of the property. This allows those who have estates that are going to be subject to estate taxes. Many people are also using this entity to spread income for tax savings and to take other tax benefits.

ENTITY COMPARISON CHART					
	Sole Proprietorship	**Partnership**	**Corporation**	**S Corporation**	**LLC**
IRS Pub	**334**	**541**	**542**	**589**	**541**
IRS Form	**Sch. C, Form 1040**	**Form 1065**	**Form 1120**	**Form 1120S**	**Form 1065**
Personal Liability	Sole Proprietor is liable for all business debts and actions	A general partner is personally liable for all partnership debt. A limited partner's liability is usually limited to the partner's investment in the partnership.	Shareholders are not liable for debts incurred by the corporation. Liability is generally limited to the amount invested.	Shareholders have limited liability just as with a C corporation.	The degree of liability protection for LLC members varies from state to state.
Entity Description	One individual who carries on an unincorporated trade or business. (A husband and wife who own a business jointly and contribute to the business as owners must file Form 1065 as a Partnership)	An Association of two or more individuals who make a legal contract to carry on a trade or business. Each partner contributes cash, property, and/or services. A joint undertaking merely to share expenses or share ownership of property does not necessarily constitute a partnership. A partnership has its own legal status.	A business entity that carries its own legal status, separate and distinct from its owners.	A Corporation can elect to be taxed as an S Corporation by filing Form 2553. only domestic corporation with one class of stock are eligible. They're Limited to 75 shareholders, and may not have another corporation's shareholder. (Exception for qualified subchapter S subsidiary.) Other restrictions apply.	A hybrid entity, generally formed under state law, that combines the pass-though attributes of a partnership with the limited liability of a corporation. The LLC can also elect to be taxed as a C corporation. For purposes of this chart, the LLC is assumed to have not made such an election.
Losses	Business losses can offset other income such as interest, capital gains, or a spouse's wages if filing a joint return. Subject to "Hobby Loss" rules under IRC §183	Losses flow through to partners. Recognition of loss by a partner is limited by the partner's basis, at-risk rules, and passive activity rules. Subject to "Hobby Loss" rules under IRC §183	Capitol losses are allowed only to the extent of capital gains. Net operating loss of a corporation may be carried over against corporate income, but is not directly passed through to shareholders.	Losses flow through to shareholders. Recognition of loss is limited by the partner's basis, at-risk rule, and passive activity rules. Subject to "Hobby Loss" rules under IHC §183	Losses flow through to members. Recognition of loss by members is limited by the member's basis, at-risk rules, and passive activity rules. Subject to "Hobby Loss" rules under IHC §183
***Caution: The Courts may disregard the so-called "Corporate Liability Shield" in the case of single shareholder corporation**					

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Taxation	Net profit is computed on Scheduled C and is reported as income on the owner's Form 1040.	Partnership income and expenses flow through to the individual partners. Income is taxed to the partner whether or not it is actually distributed. Pass through items retain the same character in the hands of the partnership.	A C Corporation pays tax on its profits. When the owners (shareholders) take profits from the corporation, the distributions take the form of taxable dividends (Double taxation). "Person Service Corporations" are taxed at a higher rate.	Taxed in the same manner as a partnership. Income and expenses flow through to shareholders. Pass through items retain the same character in the hands of the shareholders as they had in the hands of the corporation.	Taxed as a partnership. Income and expenses flow through to members.
Wages & SE Tax	Owner is subject to self employment tax of 15.3% of net earnings. Self employment tax is computed on Schedule SE and is reported as "Other Taxes" on Form 1040.	A General partner's share of business income (Including guaranteed payments) is subject to self employment tax. A limited partner's share of business income is not subject to self employment tax unless the partner performs services for the partnership. Other items, such as interest and dividends, retain their character and are passed through to the partner's individual income tax return.	Shareholders who perform services for a corporation, including officers, are treated as employees. Wages of corporate employees are subject to payroll tax and withholding wages paid to employee-shareholders must be "Reasonable"	An employee /shareholder of an S Corporation receive wages for services rendered. Wages paid to employees /shareholders must be "Reasonable". Additional profits are passed through to the shareholders and are taxable for income tax purposes. Double taxation of profits is avoided.	Profits are subject to income tax in the same way as a partnership. Member's business income (including guaranteed payments) are subject to self-employment tax.
Fringe Benefits	Only the amount paid on behalf of employees is deductible. Amounts paid on behalf of the sole proprietor are not deductible. Exception: A sole proprietor can deduct medical insurance premiums and medical reimbursement cost under an accident and health plan that covers all employees.	Generally not tax free to partner. Must be included in partners' income.	Owners/ employees are entitled to the same tax-free fringe benefits as other employees (Subject to discrimination rules).	Restricted for employees and shareholders that own more than 2% of the corporation. Must generally be included in wages.	Subject to the same rules as a partnership.
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Advantages & Disadvantages	Advantages: - Minimum Legal restrictions -Easy to discontinue Disadvantages: - Unlimited liability - May not bring in new owners or outside capital contributions - Income tax cannot be deferred by retaining profits.	Advantages: - A partnership can be a good way to combine the skills and/or financial abilities of several different people. Disadvantages: - A partnership is often easier to get into that out of. - General partners are liable for actions of other partners.	Advantages: - Limited Liability - Perpetual life - Ability to raise capital through issuance of stock - Ease of transfer of ownership Disadvantages: - Doubles taxation of profits - Corporate charter restricts types of Business activities. - Subject to various state and federal controls.	Advantages: - Limited Liability - Avoids double taxation of profits - Profits passed through are not subject to SE tax as in a partnership Disadvantages: - Shareholders pay tax on earnings even if undistributed - Less flexibility in choosing a tax year. - Contribution limited to a qualified retirement plan is based on employee/ shareholder's wages not overall profits such as a sole proprietor.	Advantages: - Avoids certain S Corporation restrictions - Avoids double taxation of profits. Disadvantages: - Inconsistent treatment state to state - Must have at least two owners. - Relatively new business entity with little regulatory or case law to follow.
Organization & Administration	Easiest business to organize. Allows complete intermingling of business and personal funds (Although this is not recommended). Partnerships and corporations cannot intermingle business with personal funds. Business return is filed along with the owner's individual income tax return.	Easy to organize. A written partnership agreement is recommended, but not required. The partnership agreement determines how income and losses are allocated to the partners. If a partnership agreement does not exist, partnership items pass through based on the partners' ownership interest.	Difficult and expensive to organize. Must hold periodic board meetings and keep minutes. Must comply with federal and state regulations.	Set up as a regular corporation. Must make election to be treated as an S Corporation. Certain events will cause automatic termination of S status.	An existing partnership can generally recognize LLC status in the state in which it conducts business. Registration is generally less complicated by then forming a corporation.

BUSINESS INSURANCE: The "limited liability" Characteristics of certain business entities should not be considered a substitute for proper insurance coverage. The business owner should consider coverage to protect against: Fire and theft; Business interruption: Errors and omissions; Employment practices; Employee benefit plans; Employee dishonesty. General liability coverage, including "umbrella" policies for personal injury and property damage, should also be considered. See information about worker's Compensation insurance on Page M.

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Transfer of Ownership	A sole proprietorship is not a separate entity from its owner. “Sale” of sole proprietorship is actually a sale of assets.	The partnership agreement may restrict the sale of a partnership interest, and may control the terms of the sale.	Ownership is easily transferred by selling shareholders of stock. The corporate charter may place certain restriction on the sale of stock by shareholders.	Ownership is transferred by sale of stock. The corporate charter may place certain restrictions on the sale of stock by shareholders.	The operating agreement may restrict transfer of ownership interest.
Owner Control & Flexibility	Owner is free to make all business decisions.	Control of the business operations is divided among partners.	Shareholders have control over the corporation to the extent that they own voting stock.	Shareholders have control over the corporation to the extent that they own voting stock.	Control is divided among members.
Bookkeeping & Accounting	Fewer requirements on what type of bookkeeping system or accounting method is used. The system must be consistent; clearly show income and expenses; and allow the taxpayer to file an accurate return. The sole proprietorship must follow the same tax year as the owner.	Depending on income and assets, the partnership may be required to include a balance sheet with its income tax return. Therefore, the partnership should use the double entry method for bookkeeping purposes. If a partner exchanges property other than cash in an exchange for an interest in a partnership, special accounting rules must be applied.	The balance sheet on the corporation’s tax return must agree with the corporate books. The corporation must use a double entry bookkeeping system. The corporation must file all necessary employment tax returns.	Must use double entry bookkeeping. Must file all required payroll tax and reporting forms.	Same as partnership.
BUSINESS INSURANCE: The “limited liability” Characteristics of certain business entities should not be considered a substitute for proper insurance coverage. The business owner should consider coverage to protect against: Fire and theft; Business interruption: Errors and omissions; Employment practices; Employee benefit plans; Employee dishonesty. General liability coverage, including “umbrella” policies for personal injury and property damage, should also be considered. See information about worker’s Compensation insurance on Page M.					
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Wills & Trusts

Will

A will is an instrument, a set of instructions you could say, by which one may set forth 1: Who will receive an inheritance from one's estate, 2: Who will be considered an heir of the estate, 3: Who will not be considered an heir of the estate, 4: Who will raise minor children, and 5: If any tax planning will be done.

Living Trust

A Living Revocable Trust is an entity which is set up during the life to own or be beneficiary of your assets so that when you are gone your assets are owned by the Trust and continue to exist in this entity where quick and efficient distribution of your estate can take place without the need of probate. Trusts can also be used to help reduce or eliminate Estate Tax, and can be used for other tax purposes. The proper use of this tool can double your savings on Estate Taxes and is the most popular tool today for estate planning for single people or couples.

Testamentary Trust

A Testamentary Trust is an entity set up at the time of your death to continue to manage your assets or property after your death, usually used in cases where there are minor children or scholarships or gifting to take place in the future from the trust estate, this type of trust is governed by the probate court.

Irrevocable Life Insurance Trust

This trust is specifically used to take out of your estate any life insurance proceeds so that the value of your estate will be less, thus saving estate taxes. Generally this trust will own your life insurance policies and must work under what are commonly referred to as “Crummy Powers”.

Charitable Remainder Trust

This is also a irrevocable trust which can take an asset out of your estate, allows you (actually the trust) to sell highly appreciated property without having to pay capitol gains tax, gives you a lifetime stream of income of at east 5% of the value of the asset in the trust per year, and in the end gives the asset, or proceeds from the sale of the asset, to charity.

Asset Protection Trust

This is an irrevocable trust which can shelter your assets from creditors or estate taxes. This trust must have an “Adverse Trustee” or a trustee over which you can have no control in order for it to work. This trust is highly used in inappropriate manners by “trust salesmen” today and is highly scrutinized by the IRS. This type of trust includes foreign trust.

Other Business Entities

Limited Liability Company

This is a business entity used by 2 or more companies or individuals who are working on a joint tenant venture together. This type of entity gives its members protection like a corporation but is usually taxed like a partnership. There are two types of Limited Liability Companies. First, is the Member managed company where each member has a say in how the company where each member has a say in how the company is managed. Second, there is the manager managed where one person is put in charge similar to President of a Corporation. This type of entity in California has only been approved for a little over 2 years and there are still some things being worked out in the code. At this time, many licensed businesses cannot use this type of entity. Also, this type of entity is unavailable to any professional company as set forth in the Business and Professionals Code of California and the corporate Code of California.

Limited Liability Partnership

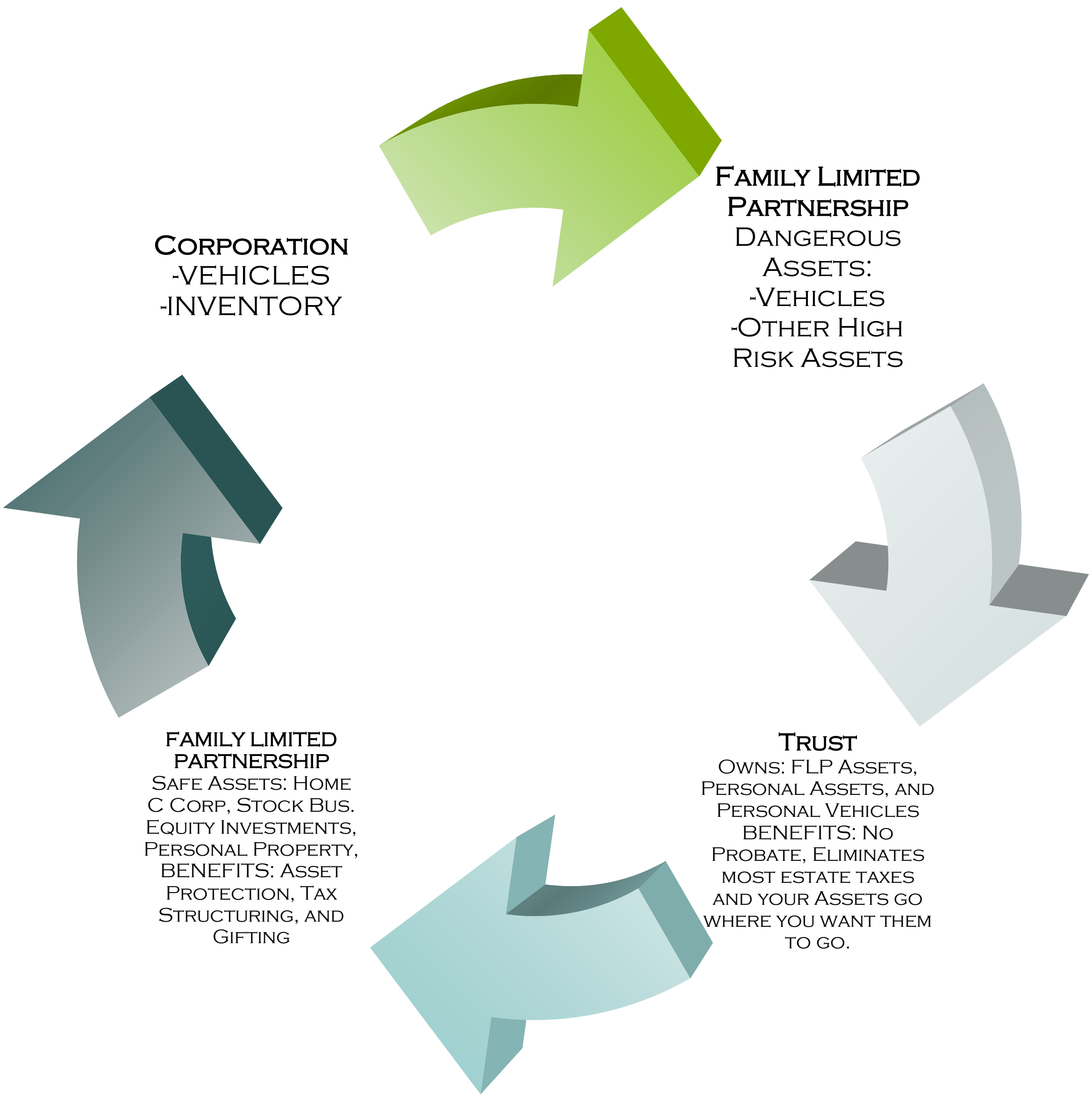
This is a business entity used by two or more officers or accountancy offices or lawyers or accountants who are working in a partnership. There are two types of Limited Liability Partnerships only. First is the Legal Limited Liability Partnership and second is the Accountancy Limited Liability Partnership. This type of entity in

California has only been approved for a few years and is governed by the California State bar and the Board of Accountancy Examiners. At this time no other type of business can use this type of entity pursuant to Business and Professions Code of California and the Corporate Code of California.

WARNING

This packet must not be construed as legal advice by the reader. This information is only a brief outline of how a Family Limited Partnership can be an important part in some people's business structuring and estate planning plans. Actual business structuring and estate planning can only be recommended after analyzing your type of business, present material status, family structure, age, general health, present wealth and asset ownership, type of major assets owned, abilities, present tax levels, present structuring or estate planning already in effect, employee status, personal income needs and other important and vital information. Speak to your attorney before attempting to anything mentioned in this packet. Remember, there may be some tax consequences from the use of a Limited Partnership and there can never be any guarantee as to results with any entity.

Asset Protection Structures
(an Example)



HOMESTEAD
Benefits:
$75,000 –
$100,000
Home Protection

Insurance Prudence Gifting

Charitable Remainder Trust

Irrevocable Trust-
Life Insurances

Biography of
GREGORY R. BEYER, Esq.

Gregory R. Beyer is a Practicing California Attorney and for over 20 years has had as the emphasis of his personal practice of law issues primarily revolving around Estate Planning, Elder Law, Medi-Cal Planning, Asset Protection Planning, and Business Structuring. Mr. Beyer was the Salutatorian, Parliamentarian, and Honor Graduate of his class, and is authorized to practice law before the courts of the State of California and Federal District Courts. He is a Certified Estate Planner in Legal Concepts (CEP-L) and one of a very few select Certified Senior Advisor Attorneys (CSA) in the United States. He has been listed in Who's Who and was President of the California Estate Planning Council for 2 terms. He is a member of the J. Reuben Clark Law Society and is a member of the National Association of Elder Law Attorneys. Mr. Beyer enjoys speaking on Elder Law and Estate Planning principles to small groups as well as a speaker for national legal seminar providers. The Law Offices of Beyer Pongratz, and Rosen has been a member of the Lincoln Chamber of Commerce, the Rancho Cordova Chamber of Commerce and the United State Chamber of Commerce.