

# Asset Preservation Strategies

Your Assets Need Not Be Vulnerable



**DURINGER**  **LAW GROUP**  
The Eviction Leader <sup>PLC</sup>

# Asset Preservation

## Strategies To Protect Your Wealth

**California is in the midst of a continuing and increasing 'litigation explosion.'** Many professionals, landlords, and business owners have experienced its impact directly. Not to be confused with conventional estate planning, Asset Preservation addresses the immediate need to protect assets against legal attack during your lifetime, while estate planning involves issues associated with preserving and passing property at death. A comprehensive estate plan coupled with an effective Asset Preservation strategy is becoming more and more common, and necessary, as time passes.

**Legitimate Asset Preservation strategies are not designed to defraud valid creditors, ex-spouses, business partners, or investors.** Legitimate Asset Preservation strategies are not designed to evade taxes. Asset Preservation planning is intended to segregate and to insulate valuable assets from liability to the greatest extent possible. Lowering the asset profile of individuals has long been a goal of Asset Preservation planning. This has primarily been done in the past to discourage frivolous lawsuits; other distinct benefits are emerging. By transferring assets into trust or to legitimate business entities, the assets are no longer held or reported in an individual person's name and thus provide a layer of insulation in respect to underlying assets.

There are a great number of strategies available today; many are effective, but most are not. It is hard to figure out which of these "pitches" are truly "bulletproof," and which are merely slick packaged products being marketed to the uninformed consumer. Can you really "pay no taxes" simply by forming a Nevada corporation? According to some promoters, their 'pet strategy' always works, and all of the other promoters' strategies always fail.



The truth about Asset Preservation is that no one strategy works for all. There is so much variation in circumstances with each and every individual or business, type of obligation, quality of the creditor's attorney, experience of judges, and jurisdictional issues, that no single Asset Preservation strategy can possibly be effective for all situations. Before falling prey to a promoter of the Asset Preservation product or kit du jour, you must investigate the Asset Preservation planning technique. It must be determined if it has been tested in the courts, and possibly proven ineffective. It is also critical to ascertain if the technique has been identified by creditors as a common "red flag" Asset Preservation planning tool.

**The safest strategies are those that have been tested in the courts or addressed by legislation.** This applies not merely in your state court, but in the state court of the entity's domicile, and in federal court if appropriate. If offshore entities are part of the strategy, knowledge of jurisdiction policy, custom and law is essential. The next safest strategies are those in the so-called 'innovative frontier.' These are strategies so novel, that creditors have not yet identified them as an Asset Preservation strategy.

**A properly designed Asset Preservation strategy can accomplish many of your most important objectives:**

- Eliminate probate, as part of an ancillary estate plan
- Reduce estate taxes
- Protect your family's savings and investments from judgments and attachments
- Protect against inadequate or unavailable insurance
- Protect your business assets and accounts receivable
- Insulate your properties to reduce your exposure to claims

This guide is intended to provide general information about many of the most common Asset Preservation vehicles in use today. It is not intended to provide specific legal or tax advice about a particular situation. You must contact an attorney to determine which strategy, if any, fits your particular needs. Your attorney has a relationship to you that is protected by the attorney-client privilege. Other professionals and purveyors are not bound by privilege. Asset planning is highly confidential by nature, and this privilege is essential.

## Asset Preservation Tools

There are many different types of Asset Preservation tools that are currently used to develop a sound Asset Preservation strategy. This guide will focus on nine of the most common tools in use today. These techniques may be used individually, or combined in varying ways to adapt to the needs of the individual. Understanding some basic strategy tools will help you in understanding how your plan should be developed:

- Limited Partnerships (including Family Limited Partnerships)
- Limited Liability Companies (domestic, Series LLC)
- Personal Residence Trusts
- Irrevocable Trusts
- Corporations (domestic)
- Limited Liability Companies (Foreign or Off Shore)
- Trusts (Foreign, Off Shore, IBT)
- Corporations (Foreign, Off Shore, IBC)
- Equity Reduction Plans





### Limited Partnerships (including Family Limited Partnerships)

One of the most aggressively marketed Asset Preservation structures since the early 1990's, the FLP can offer significant Asset Preservation benefits when properly formed, structured, funded, and managed. The problem is, they are almost never properly formed, structured, funded, or managed. A Family Limited Partnership is a specially designed type of limited partnership. A limited partnership consists of one or more general partners and one or more limited partners. The same person can be both a general and a limited partner, as long as there are at least two legal persons in the partnership. The general partner is responsible for the management of the affairs of the partnership and has unlimited personal liability for all debts and obligations.

Limited partners have no personal liability and risk only their contribution to the partnership. A partnership is not a separate taxpaying entity, as is the case with corporations and Limited Liability Companies. Each partner's share of income is passed through from the partnership to the individual. Each partner then reports his share of income on his own return.

A typical FLP is set up with husband and wife, each as general partners, each owning a small fractional interest in the partnership. An LLC or other corporate entity can also be used as the general partner in more complex strategies. The remaining interests are in the form of limited partnership interests.

These interests are often held in a trust. Some Family Limited Partnerships where the patriarch and matriarch of the family are the sole general partners have been successfully attacked; care must be used in managing and documenting these entities.

Once established, certain assets, for example, bank and brokerage accounts are transferred into the FLP. Business interests and passive investment properties are generally segregated into a separate FLP or other entity. As general partners, husband and wife have complete management and control over the affairs of the partnership and can buy or sell any asset they wish. They have the right to retain funds from the sale of any partnership asset or they can distribute these proceeds out to the partners. A more sophisticated approach is to use another entity as general partner. The Asset Preservation is afforded by the non-distribution of income in response to a charging order, thus creating a taxable event to a creditor with no income to pay the tax.

### Limited Liability Companies (Domestic, Series LLC)

Limited Liability Companies are legal entities created by statute and permitted in all fifty states. LLC's allow individuals the ability to conduct their financial and business affairs in an efficient and convenient manner, while avoiding personal liability for business risks. LLC's combine the best features of corporations and partnerships, and eliminate many of the problems and complexities of each. Series LLCs offer extraordinary flexibility and allow assets to be segregated in their own separate 'series' within one LLC. Note that there are limitations regarding single interest holders. Often, if not structured and managed properly, having only one interest holder can result in the LLC being treated as an alter ego and disregarded entirely.

### Personal Residence Trusts

Personal Residence Trusts come in different iterations. Some are used to segregate this asset from others to help avoid "putting it into the pot," and others are designed to protect the asset from creditors while keeping the asset in the family and preserving certain tax benefits.

## Irrevocable Trusts

Irrevocable trusts are designed to place assets in the hands of others, typically family members, while maintaining life estates and distribution rights in the Grantors. Charitable Remainder Trusts are a type of irrevocable trust. There is, in many cases, an unacceptable loss of control on the part of the grantors.

## Domestic Corporations

Corporations are the oldest, most established and most conventional personal Asset Preservation entity. They afford a shield against personal liability for business operations, and since they are separate entities for tax purposes, can have advantages in planning income. They also afford deductibility of medical insurance premiums and unreimbursed medical expense. However, corporate formalities must be observed, or the corporate veil can be pierced. Furthermore, assets held by the corporation are exposed to corporate liabilities.

## Limited Liability Companies (Foreign and Off Shore)

Foreign Limited Liability Companies (FLLC) are companies created by statute in various foreign jurisdictions. They generally have the attributes of domestic LLC's, creating a double shield against personal liability for business operations. They are most frequently used as a component of a plan, rather than the sole protection device.



## Trusts (Foreign, Off Shore, IBT)

Foreign trusts are trusts formed according to the laws of foreign jurisdictions. Although objectives may be similar, most foreign trusts are dissimilar to domestic trusts. The situs of these trusts, and the trustees, are both located outside of the United States.

Foreign trusts are effective Asset Preservation and estate planning tools, particularly as components of a structured plan. Their use has been abused by some aggressive practitioners, and as with all Asset Preservation elements, they must be carefully crafted and organized.

## Foreign Corporations

Foreign corporations are corporations created under the laws of a foreign country. They generally have similar attributes to domestic corporations, but formation and corporate governance vary widely. They have an important role in Asset Preservation planning strategies, as they are separate entities (legal persons), and can be organized so as to be virtually opaque. Foreign corporations, of course, routinely conduct business throughout the world, and that is so common as to not necessarily draw attention to them as Asset Preservation vehicles. Foreign LLC's frequently serve the same purpose strategically. There are specific and complex rules as to taxation of foreign corporations, and they are not recommended to directly conduct operations or hold real estate in the United States.

## Equity Reduction Plans

Equity Reduction Plans utilize various strategies to make assets less attractive to creditors.





## Summary

The foregoing overview is simplified, and is not at all inclusive of all of the strategies available. Moreover, it is the combination of these and other protection components that make for an effective plan.

Asset Preservation is complex. Contrary to what one may glean from some web sites and advertised books and seminars, one size does not fit all. Virtually all entities that are part of an Asset Preservation strategy have tax ramifications, and in combination with other entities in strategic planning, have other tax effects based on the combination. The use of foreign trusts and business entities involves a sound knowledge of U.S. tax law, as well as creditor collection techniques and legal strategies. Utilization of foreign entities requires good professional contacts in the foreign jurisdiction, as well as extensive knowledge of the policies, customs, and laws affecting creditor claims.

Each client's situation and needs are different, and an effective Asset Preservation plan requires individual analysis and coordination with conventional estate planning. The assessment of the client's overall risk is an important element in the lawyer's recommendation.

The Duringer Law Group is one of the country's largest and most experienced landlord tenant law firms. The firm is a recognized leader in creditor collection and judgment enforcement. The firm is regularly retained by other law firms and attorneys to collect their most difficult cases. Their vast experience in enforcement techniques provides invaluable insight into the development of "cutting edge" Asset Preservation strategies.

The Duringer Law Group provides Asset Preservation planning in association with law firms, lawyers, barristers and counselors both here and abroad.

**181 S. Old Springs Road, 2nd Floor**

**Mailing address: PO Box 28270**

**Anaheim Hills, CA 92809**

714.279.1100 phone

714.279.1109 fax

800.829.6994 Toll free

**28059 Lakes Edge Road**

**Mailing address: PO Box 2489**

**Lake Arrowhead, CA 92352-2489**

909.336.1160 phone

909.336.1189 fax

877.387.4643 Toll free

*Other Offices:*

**Los Angeles, CA**

**San Diego, CA**

**Sacramento, CA**

**Wilmington, DE**

[www.DuringerLaw.com](http://www.DuringerLaw.com)

©2002-2016 Duringer Law Group, PLC

