



MASTERMINDING ASSET PROTECTION

The Six Essential Asset Protection Tools

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A Message from Bill Simon, Sollertis Founder and Chief Counsel



We live in a country that prides itself on hard work and financial success. The people who have achieved this goal are getting larger in number. Those successful enough to earn \$2 million, \$10 million, \$50 million or more should feel financially free, yet too often they aren't. Why is that? Because in today's economic, political and social environment, financially successful people have become targets.

While they have achieved the American dream, instead of feeling financially free, they often feel they have to work just as hard to keep their money as they had to work to make their money.

As a lawyer, I've witnessed this first-hand. The regulatory environment, the litigation landscape, taxes, and wealth transfer limitations leave financially successful people frustrated by all that it takes to protect their wealth, and often times stressed that the government, a class action, or a business liability will take it all way. That doesn't have to be the case.

I started Sollertis® because I wanted to help my clients protect their assets and to quarterback many of their day-to-day business dealings to create True Financial Freedom. Freedom to enjoy their wealth. Freedom to focus on their family. Freedom to work on the aspects of their business from which they derive the most pleasure. And most of all, Freedom from the fear that someone is going to take their wealth away.

Unlike many lawyers, when I talk about asset protection, I'm speaking about it from a holistic vantage point. Asset protection strategy and planning is not a static activity. Rather, it is something that must be planned, implemented, and maintained throughout your life. By rethinking what asset protection really means, you have the opportunity to create what very few have been able to achieve – **True Financial Freedom.**

That is the focus of this white paper, **Masterminding Asset Protection: The Six Essential Asset Protection Tools.** We look at the pros and cons of various asset protection tools and discuss how you can use them to protect your assets and attain True Financial Freedom. I hope you find it valuable.

—Bill

A stylized handwritten signature in black ink, appearing to read 'W. Simon'.

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The Six Essential Asset Protection Tools

By William R. Simon, Jr.
Chief Counsel, Sollertis

INTRODUCTION. Why Asset Protection?

Asset protection is a necessity for anyone who worries about someone taking their wealth away. Asset protection is not estate planning and is not tax evasion. Rather, it involves using the law to protect what's yours and to limit your exposure to risk. It's increasingly important in today's litigious society.

Unfortunately, we live in a world where litigation is a profitable business. Predatory attorneys know how to make money filing lawsuits, and it often feels like there is a never-ending pool of potential plaintiffs, eager to cash in. Cultural norms that once discouraged such conduct have all but disappeared.

The likelihood of becoming a victim of such litigation depends on two factors: the extent of your wealth and your potential for liability. If you don't have any money, you're unlikely to be sued. But if you do have wealth, you are almost certainly at risk.

Consider these common situations:

Government Enforcement Actions

Businesses constantly face the potential of becoming a target of a state or federal agency for deceptive marketing practices, violation of environmental laws, anti-competitive behavior, or other wrongdoings.

Wage & Hour Class Actions

Employees are always a risk, particularly in California where employment laws are pro-employee and wage-and-hour class actions are commonplace. In addition to rest and meal breaks and overtime claims, lawsuits related to disability and pregnancy leave, privacy rights, sexual harassment and discrimination are also plentiful. When you multiply the alleged damages by dozens or hundreds of employees over a period of years, the potential liability for violating labor laws can quickly reach the millions.

Investments

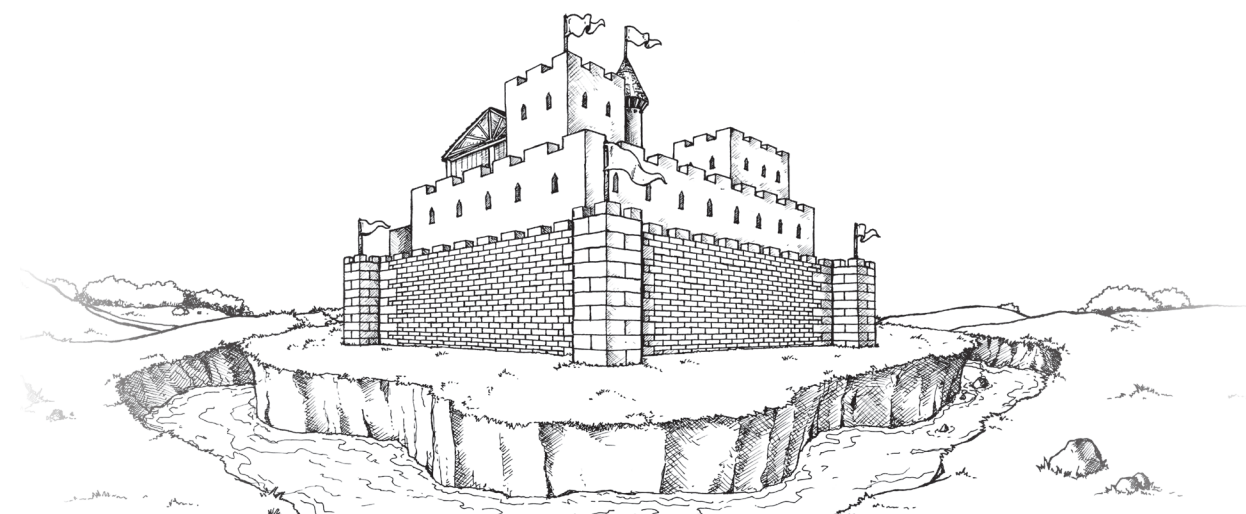
Leveraging other people's money to grow your business is a proven model for success, but if and when an investment goes bad you can expect an investor lawsuit for the total amount of invested capital plus attorney fees and other damages.

Real Estate Risks

Real estate investments can be lucrative, but they also can be a significant liability. Other people are frequently charged with the management and maintenance of your property. Imagine your potential exposure should a fire caused by faulty electrical wire result in the loss of human lives or the destruction of businesses.

Driving

It's not just business risk that leaves you and your family exposed. Driving is just one example of how a mistake can ruin you. If the damage caused results in a judgment that exceeds your insurance coverage, or if your insurance carrier denies coverage due to your use of alcohol or cannabis, your personal assets will be at risk.



Working hard and being successful is a worthwhile goal, but if you're not prepared, it can also open you up to liability. A lawsuit can come from many different angles. Fortunately, you can plan for the unexpected. The right asset protection plan not only safeguards your wealth; it discourages lawsuits in the first place. *The key is to put your asset protection plan in place long before a lawsuit arises.* **You need to build the moat and palisade before you build your castle,** or at least while it is being built.

In this report, we examine the **The Six Essential Asset Protection Tools**: insurance, corporation, limited liability company, limited partnership, children's trust and asset protection trust. Then we put it all together for you with the **Master Asset Protection Plan®**, or what we refer to as a **MAPP®**, a strategic plan that brings the essential tools together to provide you with the greatest amount of protection and flexibility for your wealth.

Essential Asset Protection Tool #1

INSURANCE

Pros

Low cost and many different varieties

Cons

Exclusions; policy limits; and inherent conflict with insurance companies

We use insurance to mitigate your risks. Insurance comes in many shapes and sizes and will be an essential part of your asset protection plan. Not only will your insurance carrier pay for many claims that could be brought against you, they will also pay for a defense of those claims (legal fees and costs). Because the insurance carriers have so much more money and power than you, regulations are in effect to protect you from their predatory practices. However, insurance in and of itself will not afford you the level of protection to achieve True Financial Freedom.

Here's why:

- Insurance policy coverage is very specific.
- Insurance policy limits mean you are still responsible for the largest claims.
- Insurance policies are legal documents written by the insurance companies.

Policy Coverage

Insurance is available for virtually everything under the sun – homeowner policies, motor vehicle policies, business liability, professional liability, employment practices liability, workers' comp, etc. But there is no such thing as a blanket insurance policy, so it is neither cost effective nor possible to cover yourself against every unplanned event. Furthermore, within each specific policy, there are very specific coverages and very specific exclusions.

Few people truly understand what is and is not covered by their insurance policies. You would need to spend thousands of dollars paying an attorney to review the policy and explain this to you. Instead, most people view insurance as an expense and make their decision based upon the amount of the premium, without understanding how much risk the policy actually covers – until it is too late.



For instance, you may have a business liability policy but does it cover a fire caused by your failure to repair an electrical panel that was not up to code? You may have an employment practices liability policy but does it cover a wage and hour class action lawsuit, a harassment lawsuit, or a discrimination lawsuit?

There is simply no possible way to rely on insurance to protect you against every unforeseen claim.

Policy Limits

Even for claims that are covered by your policy, there are limits. A policy limit is the maximum amount the insurance carrier has to pay, and everything above that limit is your responsibility. This means that the largest claims against you will only be covered up to a certain amount and the claimant can go after your assets to collect the rest of their judgment.

Legal Documents

But perhaps the most significant limit of insurance is that covering an expensive claim works against the interest of the insurance company. Once a claim is filed, you want the insurance company to pay as much as is necessary to resolve that claim, but the insurance company wants to pay as little as possible to resolve that claim. Therefore, the interests of the insurance company are now adverse to your interests.

Insurance companies make their money through the collection of premiums. The premiums collected must be significantly more than the amount they pay for claims. Every claim impacts the insurer's bottom line. As such, insurers are incentivized to deny coverage and will look for every reason to do so: exclusions, lapsed coverage, false disclosures at the time of policy creation, etc. In fact, they will frequently involve their

I'M SORRY, BUT WE MUST DENY
YOUR CLAIM. ALTHOUGH YOUR
CAR WAS STOLEN, IT WAS
NOT BURNED. YOU PURCHASED
"FIRE AND THEFT" COVERAGE,
NOT "FIRE OR THEFT."



own counsel to find a way to avoid paying on your claim, and this will frequently result in them sending you a “reservation of rights” letter, which means that while they might be defending you, they are reserving their right to deny coverage and to sue you to get the money back that they spend defending you.

Insurance applications require you to think proactively. False, inaccurate or incomplete disclosures in an application can later form the basis for the insurance company to deny coverage of your claim. This isn't to imply that most people knowingly make false disclosures; such disclosures are inadvertent. For example, many insurance brokers will complete the insurance application on your behalf, checking boxes that are required in order to get coverage. It's only at the time a claim is made that you realize the information was inaccurate, but by then it is too late.

Insurance is an important and often low-cost asset protection tool but it has its limits. Understanding what those limits are and being proactive in protecting your interests at the time you purchase a policy is of utmost importance. Regardless, from an asset protection standpoint, the protection afforded by purchasing insurance is essential, but limited.

Essential Asset Protection Tool #2 CORPORATION

Pros

Will protect your Personal Assets from your business

Cons

Must be properly maintained; and does not protect against Personal Liabilities

To understand Essential Asset Protection Tool #2, and the essential tools to follow, we need to share with you *our* definition of *five key phrases* that we use in this report:

- **Personal Assets:** Assets owned by you
- **Personal Liability:** A claim made against you for something you did wrong
- **Business Assets:** Assets used by your business
- **Business Liability:** A claim made against your business for something it or one of its employees did wrong
- **Investment Assets:** Consist of your illiquid investments, typically real estate and investments in other people's businesses
- **Investment Liability:** A claim made as a result of the ownership of an Investment Asset

Protection of Your Personal Assets from Your Business Liabilities

Without incorporating your business, in the event of a Business Liability, both your business and Personal Assets will be at risk. By incorporating, only your business will be at risk and your Personal Assets will be protected. Therefore, incorporating your business is an essential tool that will protect your Personal Assets from your Business Liabilities.

YOU

- Personal Assets
- Personal Liabilities

CORPORATION

- Business Assets
- Business Liabilities



While an LLC will also protect your Personal Assets, we typically like a corporation which is the most common structure for active businesses whose day-to-day activities result in the delivery of a product or service, particularly when the business has employees. Corporations offer the clearest separation between your business and Personal Assets due to their formalities. Also, while corporations have been around for hundreds of years, LLCs have been around for a much shorter time and the laws that regulate them are not as well settled.

Regardless of which form of entity you use, your Personal Assets *will not* be protected from your Business Liabilities *if* your entity fails to comply with the laws that regulate it and the documents that govern it, *and* your Business Entity will not protect your Business Assets from your Personal Liabilities. So, from an asset protection standpoint, the protection afforded by incorporating your business is essential, but limited.

Essential Asset Protection Tool #3

LIMITED LIABILITY COMPANY

Pros

Will protect your Business Assets from your business; and will protect your Personal Assets from your Investment Liabilities

Cons

Must be properly maintained; and does not protect against Personal Liabilities

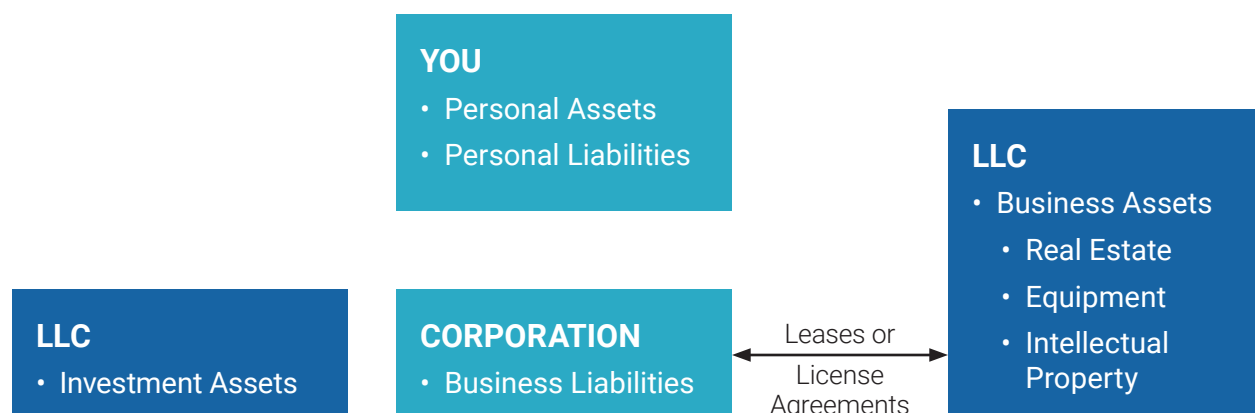
Protection of your Business Assets from your Business Liabilities

By incorporating your business, we have protected your Personal Assets from your Business Liabilities. We can now protect your Business Assets from your Business Liabilities by separating them from your business. We like to do this by holding your most valuable Business Assets such as real estate, equipment and intellectual property in a limited liability company ("LLC") and then leasing or licensing those assets to your business (your corporation). In the event of a Business Liability, your Business Assets will now be protected.

In addition to holding your most valuable Business Assets in your LLC, we also like to use LLCs to hold your Investment Assets.

An LLC is an entity that combines the tax benefits of a partnership with the limited liability benefits of a corporation thus, like a corporation, your Personal Assets will be protected from liabilities arising from activity within your LLC.

Like corporations, an LLC does not provide protection from your Personal Liabilities. So again, from an asset protection standpoint, the protection afforded by an LLC is essential, but limited.



Essential Asset Protection Tool #4

LIMITED PARTNERSHIP

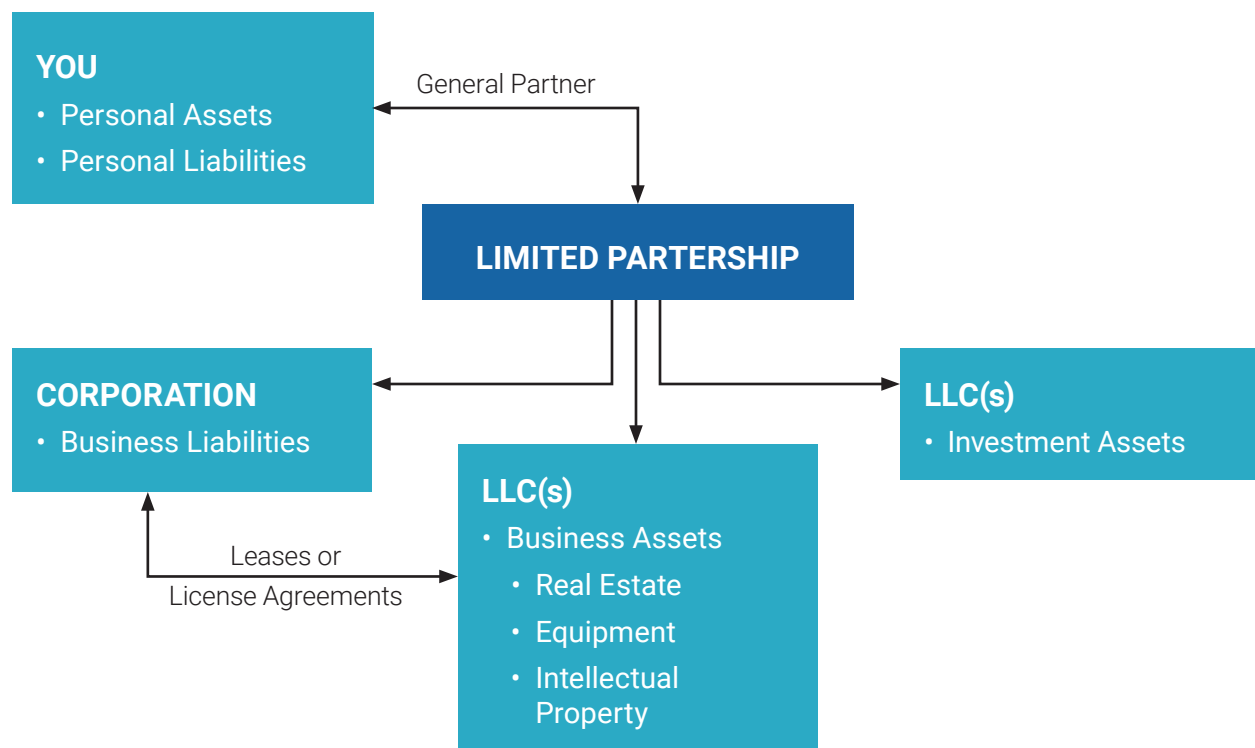
Pros

Will protect Personal Assets, Business Assets and Investment Assets from Personal Liabilities

Cons

Your distributions from the partnership are not protected

Now that you have protected your Personal Assets, Business Assets, and Investment Assets from your business, we need to protect these assets and your business from your Personal Liabilities. Limited partnerships offer a method to accomplish this objective. You create a limited partnership and transfer ownership of your corporation and LLCs to your partnership. The partnership, rather than you personally, now owns these entities and you, as the general partner, have control of both your partnership and your entities. Further, because the only assets your partnership owns are your entities, there is very little risk to you as the general partner.





Another benefit of a partnership, if filed in a partnership-friendly state, is that your partnership and your entities will be protected from your Personal Liabilities. Your creditors will only be able to obtain a “charging order” which is an order charging the partnership with the obligation to pay to your creditor any distributions it would otherwise make to you. If the income of the partnership is retained inside the partnership and no distributions are made, then your creditor does not receive any money but still has to declare your share of the income on his tax return and pay taxes on that income that he has not even received.

The protection that a charging order affords a partner is only applicable if there are other partners in the partnership. Also, while the charging order is in place you will not be able to get money out of your partnership and there are some Personal Assets that cannot go into the partnership. So again, from an asset protection standpoint, the protection afforded by a limited partnership is essential, but limited.

Essential Asset Protection Tool #5

CHILDREN'S TRUST

Pros

Will substantially strengthen the protection of your limited partnership; and ensure that what you give to your children, both during your life and upon your death, is protected for the duration of their lives

Cons

Requires an irrevocable gift of an interest in your limited partnership

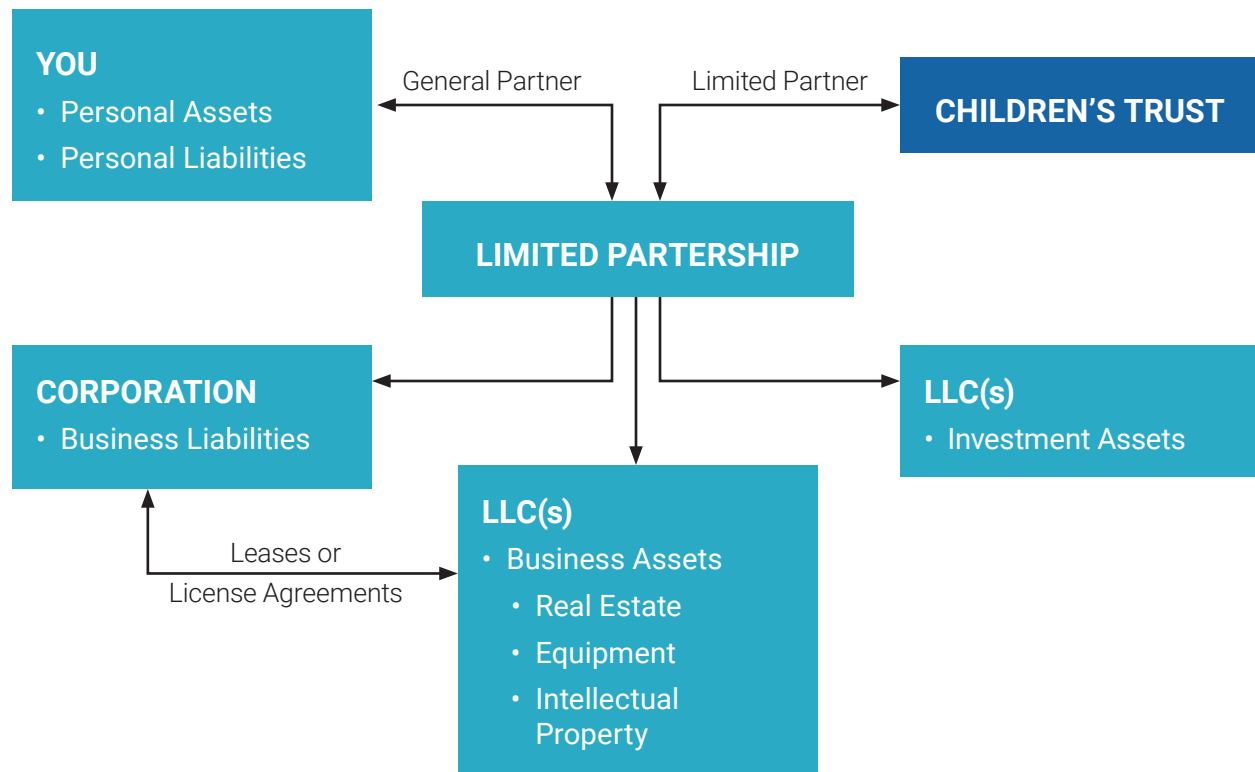
As mentioned in the previous section, Essential Asset Protection Tool #4, Limited Partnerships, to form a partnership you need two partners. We solve that problem with Essential Asset Protection Tool #5, the Children's Trust.

Your Children's Trust will be for the benefit of your children and will be a limited partner of your limited partnership (and if you do not have children, you can settle a similar trust for someone else). You decide how much of an interest you want to give to your children, and the interest will be held in your Children's Trust, which is an irrevocable transfer by you to that trust. Your Children's Trust will also be an asset protection trust, so it will protect your limited partnership and your entities from your children's creditors. Also, since you are making an irrevocable transfer of an interest in your limited partnership to your Children's Trust, that interest will also be protected from your Personal Liabilities.

When your limited partnership makes a distribution to its partners, it will have to give your Children's Trust its fair share. For instance, if your limited partnership is going to distribute \$100,000 to its partners, and if your Children's Trust owns 1%, then it will have to distribute \$1,000 to your Children's Trust and the balance, \$99,000, to you. The good news is that your Children's Trust can use these funds to pay for expenses related to your children that you would have paid for anyway. For this reason, it may make sense for you to give your Children's Trust a much larger interest as this increases the level of protection. For instance, if you have \$50,000 of annual expenses for your children, you could give your Children's Trust an interest large enough to result in this amount being distributed to it from your limited partnership.



A Children's Trust will not increase your taxes but instead, may reduce your taxes and may minimize your estate taxes. It also may be required to file its own tax return and there will be some additional accounting involved. The gift is also irrevocable so you cannot get it back. Despite these limitations, the Children's Trust is one of the most essential of The Six Essential Tools.



Essential Asset Protection Tool #6

ASSET PROTECTION TRUSTS

Pros

Will protect distributions from your limited partnership from your Personal Liabilities; and will protect Personal Assets that you cannot put in your limited partnership from your Personal Liabilities

Cons

Unless you go offshore, trustees and assets will be subject to U.S. courts

All of the previous essential tools work together to protect your assets, but how do you get the money out of your partnership if a creditor is lurking in the background with a charging order? This is where an asset protection trust comes into play.

Stated simply, an asset protection trust can hold the majority (or even all) of your partnership interest, thereby protecting your interest in your partnership from your Personal Liabilities. For example, suppose you own 99% of your partnership and your Children's Trust owns 1%. If you were to make a distribution of profits from your partnership, and if you have a creditor with a charging order against your partnership interest, then 99% of any distributions will go to your creditor (until your liability is paid in full). But if you create an asset protection trust and transfer all but 1% of your partnership interest to that trust, then you would own 1% of your partnership, your Children's Trust would own 1% and your asset protection trust would own 98%. Now you can make a distribution of profits and your creditor with the charging order would only get 1% of the distribution.

Your asset protection trust can also hold some Personal Assets such as stock in a "S" corporation or your personal residence in certain circumstances, which may not be suitable to put in your partnership. It is also a good place to hold cash and liquid investment accounts.

There are three types of asset protection trusts to consider: domestic asset protection trusts ("DAPT"), international asset protection trusts ("offshore"), and a Bridge Trust® which is a DAPT that goes offshore when you need it to.

Domestic Asset Protection Trusts

About one-third of the U.S. states have enacted legislation that allows a person to form an asset protection trust to protect against creditors. Alaska, Delaware, Wyoming, and Nevada are among the states that have such legislation. While these trusts are relatively

inexpensive, a trustee of a domestic asset protection trust is still subject to state and federal laws and within the reach of the courts. Further, there is no guarantee that your assets will be protected, especially if you and all of your assets are not entirely within the state in which your domestic asset protection trust was formed. For this reason, we rarely recommend a DAPT to our clients.

International Asset Protection Trusts

The greatest level of asset protection available is an International Asset Protection Trust. Like a domestic asset protection trust, they are irrevocable. But, because they are formed in a foreign jurisdiction, managed by a trustee in a foreign jurisdiction, and subject to the laws of a foreign jurisdiction, they are outside the reach of the U.S. courts.

From an asset protection perspective, there is no safer place for your assets. But offshore trusts are also expensive and complicated and for this reason, we use them only in limited situations where our client's assets are subject to enhanced or imminent risk.

Bridge Trust®

Given that DAPTs may not fully protect your assets and that offshore trusts are expensive and complicated, you may be best served by a Bridge Trust which gives you the best of both worlds.

A Bridge Trust is a DAPT that goes offshore when you need it to. So, it is less expensive and less complicated, but in the event of an attack on your assets, it goes offshore for more protection. This means that the jurisdiction of the trust will move to a foreign jurisdiction, the trustee of the trust will change to a trustee located in a foreign jurisdiction, and the laws that govern the trust will change to those of a foreign jurisdiction. This brings the trust outside the jurisdiction of the U.S. courts and as an additional maneuver, you have the option of moving some or all of the assets within the trust to a foreign jurisdiction.

Put another way, the Bridge Trust provides you with the comfort of knowing your assets are onshore when times are good and the confidence of knowing that should something happen, your assets will be safely moved to an offshore jurisdiction.



The Master Asset Protection Plan® MAPP®

Pros

Provides the greatest amount of asset protection and flexibility

Cons

Must be maintained and updated as your business and wealth develop

Master Asset Protection Plan®

As this report demonstrates, there is no one-tool-fits-all strategy to asset protection. Insurance, Corporations, LLCs, limited partnerships, Children's Trust, and an asset protection trust, whether international or a Bridge Trust, can be effective, but they must be used in synchronization with each other to obtain the level of protection and flexibility you desire.

A Master Asset Protection Plan ("MAPP") is the strategic blueprint that will put The Six Essential Asset Protection Tools together to protect your assets. Based on an analysis of your assets and risks, each MAPP is customized to provide you with the True Financial Freedom you can only get by knowing your assets are protected.

Once a MAPP is designed and implemented, you have a plan in place to protect your assets and to guide business, personal, and investment decisions going forward. But please remember, protection is just that: protection. It does not guarantee that your wealth will not take a loss, but it does substantially reduce the risk and the gravity of a loss. President Reagan had protection but still took a shot to the arm. But without the protection of the Secret Service, his situation may have ended like President Kennedy's. You should think of asset protection from this perspective. Also, your protection will need to be maintained and as conditions change, your protection needs to change. In your world this means that as you develop your business and increase your wealth, you will need to increase your protection. Rest assured, with protection you will sleep much better.

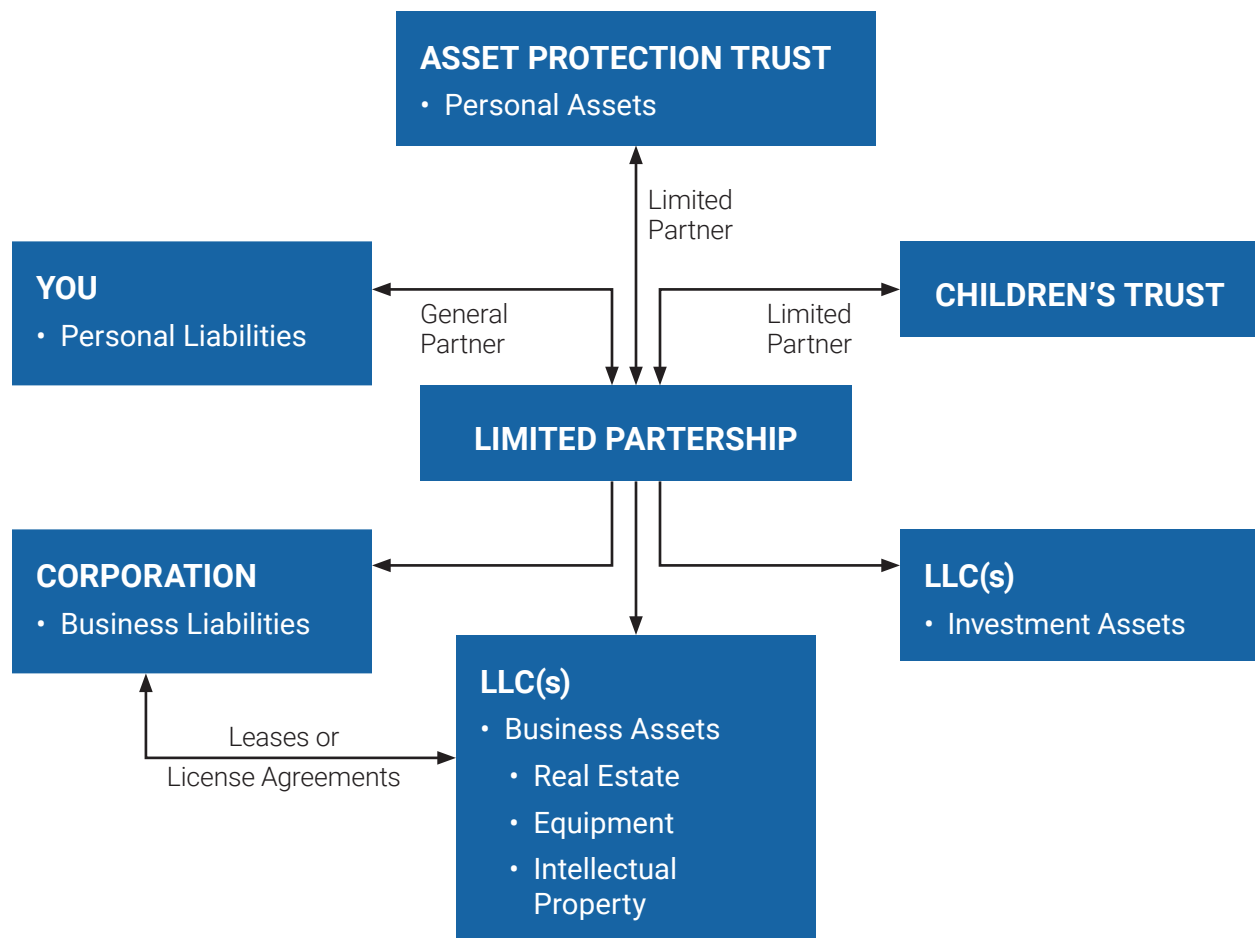
Sollertis is focused on helping you achieve True Financial Freedom through asset protection strategies that protect your wealth and simplify the management of your related legal affairs. We combine business acumen with legal insight to



help you accomplish your goals while minimizing your exposure to risks that could threaten the wealth you've worked to obtain.

Although many attorneys work in the field of asset protection, very few have the level of experience and direct relationships with international trustees and banks necessary to provide clients with the confidence that their trust will be done right and withstand legal scrutiny.

MASTER ASSET PROTECTION PLAN (MAPP)[®]





SOLLERTIS

For more information about how to protect your assets,
please contact Sollertis at (858) 771-0081
or visit our website, Sollertis.com.

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