



Asset Protection Simplified

(When going offshore is the best choice)

In the simplest form, Asset Protection works by *limiting* or even *removing* access to the assets from the legal system, courts and potential creditors. This can be done in two ways:

- 1) The first is to **keep the assets in the United States** and attempt to *limit access* to those assets by putting them inside of a legal structure like an LLC or Limited Partnership and even a Trust. These entities provide a "Corporate Shield" and limit a creditors access to a charging order. While this is a great start and appropriate for many types of liabilities, there are limitations:
 - a. Courts have the discretion to "*pierce the corporate veil*" under several legal theories which undoes the protection offered by a domestic entity.
 - b. Courts may *reverse* a transfer to a domestic entity if the transfer has been made after or in anticipation of a creditor threat under the legal theory of *fraudulent conveyance*.
 - c. Courts may simply disregard an entity as the *alter-ego* of the debtor and deem the assets the property of the debtor and hence reach the assets directly to satisfy a creditor.
- 2) The second is to **move the assets outside of the United States** to a specifically designed Trust which allows the Debtor to use and benefit from the assets while removing the assets from the jurisdiction and discretion and reach of the U.S. Court system.

While the courts may still apply all three of the same limitations as the domestic structure above, the critical difference is that since the assets are outside of the US, the courts would have no jurisdiction to actually retrieve the assets. This leaves the debtor in a much stronger position to negotiate with a creditor and ultimately provides for true protection of the assets.

In 95% of the cases I see, leaving the assets in the United States is the best way to start. The biggest benefit of this approach is that it leaves the U.S. person who owns the assets in direct control of those assets. This also allows for investment in Real Estate, which is an asset class held by most asset protection clients. This works particularly well, when combined with the ability to go offshore at a later date through the use of [The Bridge Trust](#)®.

However, there are cases where going directly offshore is the better choice. The first and most important is when there is an **existing judgement against a client**. The challenged posed by working





with a client that has an existing judgement is that the risk of a transfer being deemed a *fraudulent conveyance* by a court is very high.

If you combine the high probability of a fraudulent conveyance ruling with the fact that the assets are physically located in the United States, then the asset protection value of a domestic only structure becomes highly questionable.

There are mitigating factors which also must be considered such as the size of the judgement and the current amount, location and title to the assets. If the judgement size is small compared to the overall assets, and the assets are already inside of domestic corporate structures, then adding an Asset Protection Trust but keeping the assets in the United States is a realistic option.

If, on the other hand, the size of the judgement is large compared to the overall assets, then keeping the assets in the United States becomes much more problematic. This is true because the fraudulent conveyance, or other remedy, available to a judge in the U.S. can directly impact the safety of the U.S. based assets. In other words, a judge can directly step in and seize the assets. This is particularly true when the assets are U.S. based real estate.

If the latter is the case, then the solution is to create a fully foreign asset protection trust, and move the bulk, or all, of the assets offshore to a jurisdiction which cannot be reached by a U.S. court and creditor. This works exceedingly well for cash and liquid assets. Real estate may also be held by a foreign trust, but because it cannot be physically moved offshore, if a judge ultimately disregard any of the entities, U.S. based real estate may still be at risk. This can be mitigated by being prepared to mortgage, or liquidate the U.S. based real estate once a creditor attack becomes imminent.

Can assets still be held in the U.S., including Real Estate? The answer is yes, at least for some period of time, assets may still be held in the U.S. This is particularly true if the timing on the potential collection of a U.S. judgement may be several years away. The caveat, as mentioned above, is that the debtor should be prepared to move the U.S. based assets offshore if and when the creditor attack eventually comes. To do this, some of the assets should already be offshore to have the channel open and ready to receive the additional assets when the time comes.

The Takeaway

I have witnessed Asset Protection to be one of the most liberating steps my clients can take to increase confidence in their financial future.

For most of my clients, a combination of domestic and foreign planning strikes the right balance between the mitigation of the risks, the costs, the control, the compliance and the ultimate





effectiveness of the planning; however, when justified by the circumstances, the fully foreign asset protection trust can provide the ultimate protection when nothing else can.

Art Matthews is a member of the Asset Protection Council. If you have further questions, about this article or any asset protection related issues, please don't hesitate to contact us at 714-647-7110.

