



## Execute an Asset Protection Plan

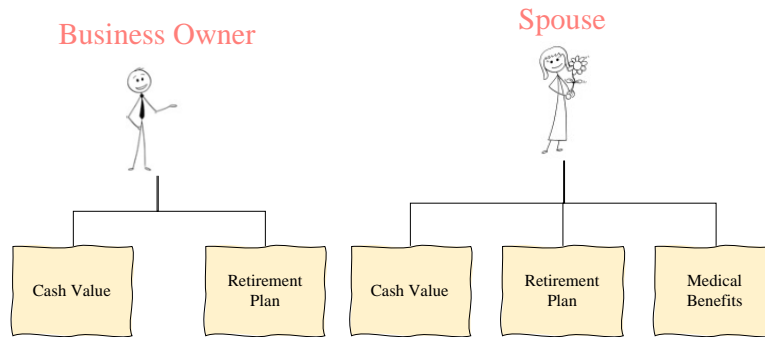
**Business Owner Action Item:** Engage Hibiscus Legal to prepare and execute an asset protection plan.

### *In My Experience:*

- An asset protection plan should be sophisticated and simple.
- An asset protection plan should be integrated with a basic estate plan and tax planning.

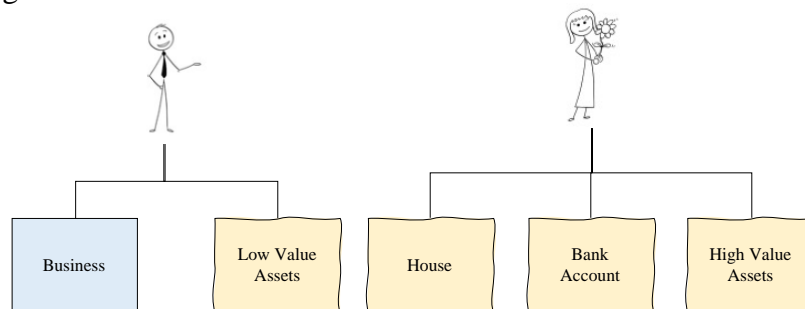
### **Step 1: Maximize Exempt Property**

- Exempt property cannot be seized by a creditor to pay a judgement or debt.
- Utah property exempt from seizure is governed by Utah Code Title 78B, Chapter 5, Part 5, Utah Exemptions Act.
- Most of the exempt property listed in Utah Code Title 78B, Chapter 5, Part 5, Utah Exemptions Act, is not helpful to a Utah business owner, but a Utah business owner should consider maximizing his holdings of the following property:
  - Benefits used for medical, surgical, or hospital care for you and your dependents;
  - Cash value of Life insurance policy; and
  - Pensions, IRA, 401(K) plans and retirement plans.



### **Step 2: Separate Property Between the Business Owner and Spouse**

- Property owned as a spouse's sole and separate property cannot be seized by a creditor to pay a judgement or debt of the business owner.





### **Step 3: Organize a Family Limited Liability Company**

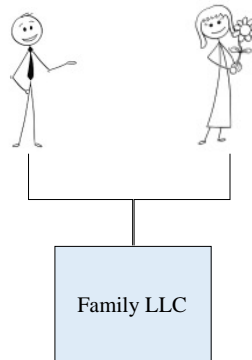
- The Family LLC is owned by the business owner and spouse.
- The Family LLC owns investment assets (e.g., real estate, stocks, private equity investments, etc.).
- The Family LLC provides limited liability and charging order protection to its owners.

#### ***Limited Liability***

- A Family LLC is a separate legal identity from its owners.
  - Owners are not personally subject to the debts and liabilities of the Family LLC.
  - The Family LLC is not subject to the debts and liabilities of its owners.

#### ***Charging Order Protection***

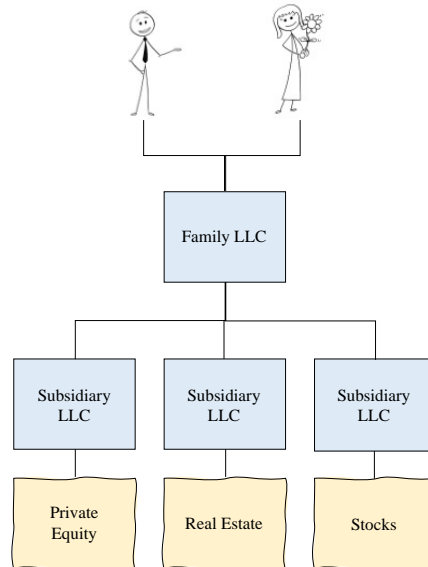
- A creditor of an owner is generally restricted to a “charging order” that entitles the creditor to distributions from the Family LLC made in respect of an owner’s membership interest but does not allow – at least initially – the creditor to take the membership interest in the Family LLC or the Family LLC’s property.
- The creditor has no immediate means of collecting the Family LLC’s property or effecting the management of the Family LLC notwithstanding the creditor holds a judgment against one of the owners.
- Utah Code Section 48-3a-503. Charging order. On application by a judgment creditor of a member or transferee, a court may enter a **charging order** against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment...a charging order constitutes a lien on a judgment debtor's transferable interest and, after the limited liability company has been served with the charging order, requires the limited liability company to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor. Upon a showing that distributions under a charging order will not pay the judgment debt within a **reasonable time**, the court may foreclose the lien and order the sale of the transferable interest.





#### **Step 4: Organize Subsidiary LLCs**

- The Subsidiary LLCs are wholly-owned by the Family LLC.
- Each class of the Family LLC’s investments (e.g., real estate, stocks, private equity investments, etc.) are owned by a separate Subsidiary LLC.
- A single Subsidiary LLC is not subject to the debts and liabilities of the other Subsidiary LLCs.
- A creditor of a single Subsidiary LLC may collect a judgement from that Subsidiary LLC’s property, but generally cannot collect a judgement from the Family LLC or the other Subsidiary LLCs.



#### **Step 5: Organize a Domestic Asset Protection Trust**

- 17 states allow for Domestic Asset Protection Trusts (“DAPT”): Alaska, Delaware, Hawaii, Michigan, Mississippi, Missouri, Nevada, New Hampshire, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Virginia, West Virginia, and Wyoming.
- The business owner should consider transferring his personal residence to a DAPT (if located in a DAPT state) to protect equity above the exempt amount.
- DAPTs should be used in combination with the Family LLC in order to diversify the asset protection plan. For example, if 100% of the business owner’s property is held in the Family LLC, and the Family LLC is pierced, then 100% of the business owner’s property is at risk of loss. If, however, 50% of the business owner’s property is held in the Family LLC and 50% is held in a DAPT, and the DAPT is pierced, then only 50% of the business owner’s property is at risk of loss.

#### **Step 6: Purchase Insurance**

- Purchase insurance policies that cover claims against the business owner and the business owner’s property.
- A reasonable amount of insurance coverage will deter litigation because plaintiffs will generally settle for the policy limits.



### **Step 7: Organize an Irrevocable Trust**

- An irrevocable trust is an arrangement between the settlor, the trustee, and the beneficiaries.
  - Settlor = Business Owner
  - Trustee = Spouse
  - Beneficiaries = Spouse + Children
- Property transferred to an irrevocable trust generally cannot be seized by the settlor's creditors or the beneficiaries' creditors.
- The business owner should not transfer property to an irrevocable trust that he will want to use in the future.
- An irrevocable trust should be used in combination with estate and gift tax planning.