87 ANSWERS
To The Most Frequently Asked
QUESTIONS
About
Family Limited Partnerships and Asset Protection

An exclusive copyrighted interview with
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Lawsuit and Asset Protection Questions & Answers

1. ***What are the pros and cons of a limited partnership instead of an S corporation, C corporation, and a limited liability company? Can they be used equally?***

The limited partnership's major significant advantage over the other entities is that it has had a long tradition in courts of upholding and establishing the validity of the charging order. The charging order is the very provision that precludes an individual partner's creditor from seizing or attaching assets within the limited partnership. No such asset protection exists for the S or C corporation. This is why a limited partnership is the only tool that I give the A+ grade to in advanced asset protection.

2. ***Why is joint tenancy not an adequate way to protect your home against lawsuits and judgments?***

Joint tenancy is generally presumed to belong to both husband and wife. Therefore, in the laws of almost every jurisdiction, if a judgment goes against the husband, then typically 100% of the jointly held assets can be seized. The same thing will happen with a judgment against the wife—100% of the home or other assets held in joint tenancy are can be seized. Because of this, joint tenancy is generally considered among the worst forms of asset protection strategies in America today.

3. ***Can I be sued if I am an employee?***

Employees are always subject to lawsuits for the work they do within the course of their employment. Sometimes the lawsuits exceed the scope of the employment and employees are held liable. In addition, the employer himself can also be held liable.

4. ***Are general partners more liable than limited partners when sued?***

A general partner in a limited partnership is always held more liable than the limited partners. That is the gist of limited partnerships and the two kinds of partners associated with limited partnerships. A general partner is generally held to be personally liable in an action against the limited partnership. To provide the greatest protection of their personal assets, many general partners will keep those assets in other limited partnerships. The other approach frequently used is to have the general partner of a limited partnership be a corporation or a limited liability company; this minimizes the liability exposure.

5. ***How do family limited partnerships differ from limited partnerships or limited liability companies?***

Family limited partnerships do not differ substantially from limited partnerships; they differ substantially from limited liability companies.

The family limited partnership is similar limited partnership in that the courts have held that a family limited partnership is held to the same standards, rules, and regulations as regular limited partnerships. In addition, under Internal Revenue Code Section 704, a family limited partnership and a regular limited partnership are considered the same essentially.

Family limited partnerships do differ substantially from limited liability companies. They do not differ in general purpose because their purpose is much the same. They differ in that the limited liability company is of relatively recent origin and has only hit its major usage in America in the mid to late 1990s.

On the other hand, limited partnership has been around since 1916. It has a very extensive series of judicial interpretations of limited partnership statutes that give it greater security and viability than the limited liability company. In contrast, the limited liability company in recent years has been receiving mixed reviews by the courts. There is a recent trend of expanding liability associated with limited liability companies and treating them like corporations for tax purposes.

A careful study will reveal that each has advantages and disadvantages depending on applicable state law. You should fully examine your unique circumstances and to determine which entity will be best suited to your needs.

6. Does a limited partnership in one state protect assets it owns in another state?

A limited partnership insulates assets not only in the state in which a limited partnership is set up, but in all other states as well. It insulates assets in all states because of the full faith and credit clause of the Constitution. This clause requires all other states to give full faith and credit to the laws of the domicile state in which the limited partnership was created.

7. Should I carry liability insurance in addition to my limited partnership for further protection?

At first glance, one would think that liability insurance is not necessary. Nonetheless, as a general rule we recommend that our clients still carry liability insurance. We recommend this for the simple reason that if damages do occur to an individual, a source of remuneration is made available to the injured party.

In most cases, the injured party will be satisfied with the insurance recovery instead of trying to proceed with any other remedies. In the unlikely event that the injured party decides to come after you personally, the assets in your limited partnership are given superior protection!

8. How liquid are limited partnership-owned assets?

Assets inside a limited partnership are just as liquid as they would

be in any other entity. The general partner has full control and management of the assets. The general partner also has access to the income from the partnership assets for distribution to the general partner and limited partners.

9. What are the down sides to a limited partnership?

The down side to a limited partnership is that it must have a restrictive life. According to most attorneys, that life is generally 25 to 50 years, after which time the limited partnership life could then be renegotiated among the partners. Limited partnerships are often extended for another 25 to50 years.

10. Is it more difficult to get loans if all your assets are in a limited partnership?

No, it's not, because banks are now getting very used to loaning to limited partnerships. In fact, many hotel chains have the hotel building itself and the land inside a limited partnership. Some of the largest companies in America are now limited partnerships. They have no trouble in securing loans from knowledgeable banks. Nonetheless, some small, rural banks often are unfamiliar with how limited partnerships and limited liability companies work. As these banks attorneys become educated about these entities, even those small, rural banks now becoming more willing to work with them.

11. Can you get all the income from an investment that is held in a limited partnership?

The income from an investment inside a limited partnership is taxed in proportion to the various partners' ownership interests. The income may be distributed in one of two ways:

1) It can be allocated and distributed specifically to the partners in proportion to their interest
2) The general partner—often mother or father— will take out a salary, wage, management fee, or investment advisory fees. Often, the entire income goes back to mom and dad, giving them maximum flexibility in distribution and allocation of income.

12. Does a family limited partnership protect assets from government?

As a rule, if an asset is inside of a limited partnership, government entities, both federal and state, will not proceed against it. Even the IRS is loathe to try to seize any kind of a percentage ownership inside of a limited partnership and will first go to any other asset. Assets inside limited partnerships provide the greatest protection from any claim of a state or federal agency.

There is, however, that one exception: if the partnership itself is liable because of something it has done or because of an asset held by the partnership—for example, commercial building that is run-down or not well-maintained. Then a creditor could go after that particular partnership, but not after any other assets in other limited partnerships. As a work-around to this potential slight disadvantage, we find that many clients will use multiple limited partnerships. Do this provides maximum protection to the entire estate.

13. Does there need to be a business purpose for a family limited partnership?

Historically, for any entity such as a corporation, limited partnership, or limited liability company, there must be a business purpose. However, in the last 10 years, the majority of statutes have been modified to read "for any legal purpose". This provides a much broader series of purposes for which one may create a limited partnership. Today, for almost any purpose, a limited partnership may now be established.

14. Are there any liabilities to the limited partnership itself when a limited partner is sued independently?

Liabilities associated with the individual partner are not allocated to and are not the responsibility of the limited partnership. These liabilities include:

- A limited partner's independent liabilities
- Any liabilities associated with only the individual partner

The assets of the limited partnership are completely protected even though a creditor may have a personal judgment against a limited partner.

15. Does a limited partnership prevent probate?

No. An ownership interest in a limited partnership never prevents probate by itself. Most expert estate planners use the limited partnership to protect the assets and then convey the partnership interests of the partner into a living trust. For example, if a husband owns 10% of a partnership interest, that interest would typically be held in the "Sam Smith Family Living Trust." This 10% limited partnership interest being held by the trust will now bypass probate and the interest will go to the beneficiaries designated in the trust. Because the assets themselves are inside a limited partnership, the assets are accorded the full protection of the charging order statute; generally, individual creditors cannot reach these assets.

16. Can you seize assets out of a family limited partnership? Has a family limited partnership ever been broken?

According to two tax attorneys who have done extensive research in this area, there is no appellate case in America where a family limited partnership has ever been broken. There are some lower cases where they have been, but have been re-

versed on appeal. Therefore, as far as we know, there has never been any Supreme Court case or any other appellate case that takes the assets outside of a limited partnership. In fact, one of the inherent statutory advantages of a limited partnership is that a creditor, who has not sued the limited partnership directly, may not seize assets in limited partnerships. The creditor is restricted to the charging order, which means the creditor's only recoverable interest is an attachment of the income distributed from the partnership—not the assets of the partnership.

17. Once you establish a limited partnership, what must you do to make it legal?

Typically, there are about eight things you must do to make a limited partnership legal and valid. It is imperative that the creator of the limited partnership follow the express Secretary of State instructions. Generally, the one step that is frequently overlooked is filing the appropriate papers with a state or county. In most cases, these papers are referred to as a certificate of limited partnership. This certificate of limited partnership must be filed with the county or state. If it is not, then technically, a limited partnership is not created. The courts will consider the partnership nothing more than a mere general partnership with wide-open liability to all members—even those who thought they were limited partners! This underscores the urgent and critical need that you use the services of an expert in limited partnerships when you establish one.

18. What filing fees are associated with a family limited partnership?

A certificate of limited partnership or a state-approved abbreviation of the certificate is typically filed with the state offices, usually the Lieutenant Governor or Secretary of State's office. In some states, an additional copy is also required in the county of record where the limited partnership is created or established. The fees vary from state to state. Some states as low as $50, with some as high as $2,500. Because of these higher fees, creators of limited partnerships do some forum shopping. Often a creator of a limited partnership in a high-priced filing state will file his partnership in a lower-priced filing state.

19. Does a limited partnership have to be filed in the state of the person's residence?

No. Limited partnerships can be filed in any state that one chooses, but if the non-resident state is used, then most attorneys recommend that an asset in that non-resident state shall be held by the limited partnership. For example, if you live in Montana, but decide to set up a limited partnership in Florida, then typically there will be an asset also located in Florida such as a bank account or a piece of real estate that is conveyed to the limited partnership. Then the Montana assets would also be conveyed into the newly created Florida limited partnership.

20. Can one person be both a general partner and a limited partner? Is there any advantage to doing that?

The answer is yes to both questions. There is a technical advantage to being both a limited partner and a general partner. Under the appropriate gifting rules and procedures, it's far preferable and easier to be involved in gifting limited partnership interests to family members than gifting your general partnership interest. For example, if a client of mine owns 30% of a partnership, I will typically give him 1% as a general partner and 29% as a limited partner. For gifting purposes, we will gift from his 29% limited partnership interest, but not from the 1% general partnership interest.

21. Do limited partners have to know they are limited partners?

With the exception of minors, limited partners would know that they are limited partners because in fact, they do sign the documents. Sometimes, I have seen parents who have asked their adult children to sign limited partnership papers without informing them of the ramifications. This seems to be a questionable personal choice on the parents' part. However, as a general rule, limited partners would know what they are signing. Greater "secrecy" can, however, be available by not fully disclosing which assets are conveyed to a limited partnership. Often the general partners possess knowledge of all the assets in a limited partnership, particularly in a family situation.

22. How can a company have a family limited partnership? Is it named after the company?

Any company could establish a limited partnership because a company can itself can be a limited partner of a limited partnership. Then assets that perhaps would have gone into the company such as land or office buildings may now appropriately be held by the limited partnership rather than the company. This would provide advanced asset protection for assets used by the company. A company can also act as general partner, thus providing a shield from personal liability. Any name can be used for the limited partnership. It does not have to be named after the company. It can be any name that you choose such as the XYZ limited partnership as long as that name is not being used by another limited partnership.

23. How does a single person form a family limited partnership when there is no family or close friends?

There are laws in some states that allow one person to be both general and limited partner, and not have any other general or limited partner. However, generally, that is discouraged even if the law does allow it for the reason that over the years we have determined that multiple partners are preferable and provide additional protection. A single person can bring in a brother, a sister, aunt, uncle, or grandparent as a limited partner. Alternatively, a single person can bring in a friend, a neighbor, or even a favorite charity to own a 1% or ½ of 1% interest; the net effect is to have at least two limited partners. Now personally, as an attorney, I would prefer to have a minimum of three people or entities as limited partners even though I could do it with one or two. The only thing better than three is having four or five members of the limited partnership.

24. Does moving mutual funds and stocks into a family limited partnership cause capital gains tax?

This should not cause capital gains tax unless the party with financial responsibility or the accountant makes a mistake in the conveyance. You have to look at who owns the limited partnership versus the ownership of the assets being conveyed. If the ownership interest in the limited partnership and the ownership of the assets is the same, there is no tax event. But a careless or inexperienced advisor can make mistakes that can trigger an imposition of capital gains taxes or income taxes under the theory that the conveyance is nothing more than a mere sale. However, to reiterate, you can easily avoid this with the help of a competent financial advisor.

25. What is the procedure for transferring assets in and out of a family limited partnership?

Across the nation there are two approaches used to transfer assets into a limited partnership. The preferred approach, in my judgment, is to actually transfer the title of the asset into the limited partnership. For example, if rental property is in the name of husband and wife as joint owners, and that is the entity being transferred into a limited partnership, I would prepare a new deed signed by husband and wife conveying the property into the John and Susan Smith limited partnership. The deed would be notarized and recorded, thus completing the transfer of the asset into the limited partnership.

The second approach, considered inferior by many tax advisors, is to list the asset itself, such as the property just described on a Schedule A attached to the limited partnership without actually transferring title to the limited partnership. Nevertheless, an argument can be made that the transfer is incomplete and not hold water under some circumstances.

Now in my judgment, the preferred approach is to use both of these techniques. If you use both then you've done everything the law allows in terms of transferring the asset legally to the limited partnership. (Note: The Schedule "A" is normally attached to the limited partnership agreement itself and lists all assets owned by the limited partnership.)

When one transfers assets out of the limited partnership, the general partners simply sign a document. If it's real estate, they sign a deed from the limited partnership to whom it is transferring the property. If it sells some stocks held in the name of the limited partnership, the general partners simply sign a document authorizing the stocks to be sold. Typically, that is a Stock Power document notifying your stockbroker.

26. How do you move assets from a living trust to a limited partnership?

Since the 1960s, living trusts have been a very popular way to avoid probate; so, millions of people in the United States have transferred assets into a living trust. Assets held inside the living trust may be removed from the trust and transferred into the limited partnership in precisely the same manner that the assets were originally transferred into the trust. This means that if the assets are real estate, the trustee of the trust signs a new deed conveying the real estate from the living trust to the limited partnership. If the trust-owned asset happens to be a bank account, the bank is notified either in person or preferably by a letter in writing from the trustee requesting that the bank transfer the account into the newly created limited partnership. Typically, a new bank signature card is then signed by the general partners.

27. How do I transfer assets from a corporation to a family limited partnership?

Assets in a corporation may be transferred in much the same manner as transferring assets from a living trust into a limited partnership—with one major caveat. The accountant and financial advisor must be extremely cognizant that when the assets inside of a corporation are transferred to any other entity, be it trust or limited partnership, the transfer may create a taxable event under corporation tax rules 333, 336, and 337 of the Internal Revenue Code. The tax advisor must be very knowledgeable about these sections and use them carefully to avoid the possibility of income taxes being levied on assets now removed from the corporation.

One of the greatest tax quicksands in American tax law is individuals who pull assets outside of a corporation in an improper manner. Tragically, too many people in America fail to realize that assets going out of a corporation can be taxable—this is true both of the S and of the C corporation, but it's especially true of the C corporation.

28. Can you transfer property from a land trust into a family limited partnership? What is a land trust versus a family limited partnership?

Land trusts have been around since 1857. They were first created

in Canada and then found their way throughout the United States. We have some eight states now that use land trusts. Land trusts whether it be the Illinois' Land Trust or other states' land trusts, do provide a measure of protection through the privacy aspect. They are very private documents, even more private than a limited partnership.

Unfortunately, privacy does not transfer into protection. When the lawsuit spotlight targets a land trust, the assets inside that land trust are easily seized by a creditor, as are the beneficial interests of the various beneficial owners of the land trust. I give the land trust a "D" grade in asset protection versus the "A" grade of the limited partnership.

Once you determine the precariousness of your position of having a land trust and the potential danger of seizure by a creditor, you can transfer those assets directly from the land trust which trust is treated like a 671 Grantor Trust for income tax purposes. Those assets may now be transferred directly without tax consequence to a limited partnership. Sometimes for title clarification purposes the land trust assets are conveyed back to the original grantors, typically mother and father. Once the assets are reconveyed to mom and dad individually, mom and dad reconvey those assets formally in the land trust directly into the limited partnership. In my judgment that is the superior way to make this transfer.

29. If you put securities into a limited partnership, how do you name the securities in your brokerage accounts?

Securities held in a brokerage account should be held in the name of the limited partnership. Therefore, if the limited partnership is known as the Joe North family limited partnership, then the securities dealer such as Merrill Lynch would be notified that the name on the brokerage account should be changed to the Joe North family limited partnership. The Federal Tax I.D. number of the Joe North family limited partnership should then be given to the broker they can maintain tax records for that particular account.

30. Will a bank or a mortgage company object to the transfer of assets that were formally in someone's personal name to a limited partnership?

No, as long as the mortgage company and its bank are familiar with the Garn St. Germain Act passed in 1981, effective January 1, 1982. It's been my tragic observation that most banks and others are unfamiliar with this law. When their attorneys are referred to and become aware of that law, they realize that under federal laws by virtue of that act, assets on which there is an existing mortgage may be safely and easily conveyed to another entity substantially owned or controlled by the grantee, which is often typically mother and dad. Therefore, a quick reference to that law would save misinformed financial institutions from many headaches.

31. Should checking and savings accounts also be transferred into a family limited partnership?

I've found over the years that it's usually advisable for a husband and wife or a widow or widower to maintain a separate bank account as part of their living trust— independent of their limited partnership. This is for the month-to-month bills, the normal working account that people have. I also recommend that a bank account be maintained in the name of the limited partnership where the significant liquid assets are maintained; doing so provides superior protection to the assets.

32. Can an IRA be placed in a family limited partnership?

The answer is yes, but then the immediate question is —should it be? The answer is: be very cautious. Sometimes with clients, we will insist that they terminate the IRA and put the assets in the limited partnership for the superior protection. However, the tax rules consider that a taxable distribution. So, even though you may be gaining the superior lawsuit and asset protection, this can have tax consequences. Now having said that, I had a client in our office a while ago with 1.3 million dollars in his IRA. That's his ...tate. He has no other major

cash, no other securities, no other real estate. His whole life, literally, has been IRAs. We then insisted that he pull $700,000 outside of the IRA and he paid the tax on that. We put the entire amount left after tax into a limited partnership, so no matter what happened to him in the future, that asset was still available for him. The other $600,000 remains in the IRA. However, he realized that even though he had the good income tax advantage of the IRA, if a judgment struck, the $600,00 may be seized by a creditor and that is the risk that he is worth running. Nonetheless, it's interesting to note how we balance both the income and the lawsuit risks.

33. Can I be sued for my pension?

When the ERISA Act was passed in 1974, pensions, IRAs, Keoghs and others were not accorded substantial protection, particularly the IRAs and Keoghs. However, after the passage of the act, many states, starting with Texas and Florida, passed laws that provided a certain degree of protection to the pension plans, IRAs, and other pension benefits. Over the years, the courts have been all over the waters on this particular issue. On June 13, 1993, the United States Supreme Court, in the Patterson Case had an opportunity to review this issue. It was hoped at the time that an affirmative edict would go forth that pensions were once and for all protected. This did not happen. The best I can say today is that even though there are

some federal laws and some state laws ostensibly providing protection of pensions and IRAs and Keoghs, there is no such thing as 100% protection of assets. That is why now many people will supplement their pension plan by using legal instruments that are tried and proven in terms of protection such as the limited partnership.

34. Can pension assets be placed in a limited partnership? How do you protect 401Ks, IRAs, etc.? Can they offer lawsuit protection?

Generally, yes. Many times, a limited partnership holding securities, stocks, bonds, even real estate or the interest in the limited partnership can appropriately be conveyed into a pension plan. In this way, added protection is afforded the pension assets by virtue of the charging order protection under the limited partnership law. Now, is this frequently done? The answer is no, it is not. It seems to have not caught on in the United States by many pension advisors.

35. Can future Social Security payments be seized?

There are federal laws protecting Social Security payments. However, there are cases of record where individuals place their Social Security money in their own personal accounts, where it is intertwined with other assets and can then be seized by a creditor. So at first glance, one would seem to think that Social Security benefits do have some protection. But once those assets become part of one's estate and are subsequently invested in bank accounts, stocks, bonds, mutual funds, then those assets (even though acquired with Social Security funds) may be attachable by a creditor. This underscores the need to place assets into limited partnerships to provide the greater degree of protection.

36. Can spouses in family limited partnerships have non-equal control as general partners?

No, the laws in most states require that a partnership be under the control and management of the general partners. Even though as limited partners, spouses and children can have unequal interest; as general partners, the voting is presumed to be equal. Now there is often a way around this that is done by many attorneys.

They place three partners in the limited partnership as general partners. That means if husband and partner number three agree, then they make the decision. If wife and partner three, agree, then the two of them make the decisions. This is analogous to having a trustee-type relationship. If there is s third party who is acceptable to both husband and wife, that may be a way of bring ing about the intended outcome.

37. How do you as a general partn... with 10% interest get 100% of t... income from a family limited pa... nership?

Before distributions of any money or income to the partners, the general partner is first accorded the rights to take out a reasonable salary, management fees, marketing fees, and perhaps even investment advisory fees. Often the income that is taken out ranges from 10% to literally 100% of the available distributable income. In that manner, general partners will often take out much, all, or a portion of the income before the remaining balance is divided among all partners in proportion to their percentage interest.

38. Should your living trust be a limited partner in your family limited partnership?

Generally, tax planners and attorneys, in the absence of a Supreme Court ruling which today does not exist, prefer that an individual himself or herself be the limited partner as opposed to the trust being the partner. The trust, often under laws of some states, is not interpreted to be an artificial person that has standing to be a limited partner (even though many state statutes say that a trust may be considered an entity that is capable of being a limited partner). Even though I have seen many attorneys put a living trust as the partner in a limited partnership, judicial authority prefers listing the individual, mother, father, son or daughter in their individual capacity as limited partners. I very carefully place the interest that person has in the partnership on a Schedule A that is attached to the trust, thereby providing the probate avoidance of the living trust to the partnership interest held by that individual.

39. How can I use income distribution in a limited partnership to reduce income taxes?

If you have small children or even family members who are in a lower tax bracket than the general partner, it may be advisable for income tax reduction purposes to allocate a large percent interest to the lower brackets of the children if they are minors or adult children (ages 14 and up). Hence, the income is taxable in the lower brackets the minor beneficiaries who are 14 years and older and the adult beneficiaries.

40. Can a family limited partnership income be distributed disproportionately to a percentage of ownership interest?

The general rule in the United States is that the income must be distributed in a limited partnership in precise proportion to the ownership of the respective partners. Now there are some who have used extremely complex alterations of tax codes to try to bring about a disproportionate distribution; this has often met with disaster in appellate courts. There is a preferred method to get a disproportionate allocation to one or more of the limited partners. It is possible to transfer,

sometimes even temporarily, the ownership interest in a limited partnership in a greater amount to one party. Hence, that party receives a greater income distribution with an option retained by another limited partner that he or she may reacquire that conveyed interest at some future date. This way, you can technically get around the prohibitions against disproportionate allocations of income.

41. How do you change distribution percentages within the family limited partnership?

There are many ways that you can change income percentage allocations. One of the frequent methods is for parents to retain sufficient limited partnership interest themselves so they can reallocate and gift those percentages to different heirs over a period of time. The more complex way is to maximize the gifting now to the limited partners with mom and dad retaining minimal interest with the understanding and cooperation among the limited partners that they would be willing to join in subsequent gifts of their interest to new siblings or to other heirs at the behest of the parents. This procedure, of course, carries some potential risk that some family members may not cooperate.

42. What are the tax filing requirements of a family limited partnership compared to personal income tax?

Even though the limited partnership itself pays no taxes, it must file an informational return, Form #1065, with the IRS. K-1 statements should also be provided to the limited partners. The individual limited partner's tax preparer then includes that pro-rata share of income on the K-1 into that individual's tax return. Seldom will the income taxes of the family increase. This is because more taxpayers absorb a certain amount of income and that almost always reduces the taxes of the overall family.

43. Is the IRS trying to reduce the effectiveness of a family limited partnership?

No. For more than 20 years, the IRS has objected to and gone after tax promoters who use the limited partnership or even the trust form as an illegal tax shelter. This is an improper method of using a promotion designed to illegally evade income taxes.

You must always remember tha a limited partnership can legall avoid taxes. It is not the tool itself tha should be blackened by this. It is th improper use of the good tool th blackens its name. Limited partne ships have been around since 19 and will continue to be here forev In fact, with the passage of the new tate tax law, a consortium of attorn went on national TV to annou that the American public must c tinue, without fail, to use limi partnerships in their estate plann needs to avoid future estate taxes.

44. When giving children a percentage of the family limited partnership or transferring assets to a family limited partnership, does the gift tax limit apply and how do you avoid it?

Gift tax laws are applicable to assets conveyed to a limited partnership; however, with proper planning, you can easily and legally supersede gift taxes. For example, let's say the husband and wife transfer 10 million dollars into the limited partnership. The husband and wife are limited partners, so there are no tax consequences.

On the other hand, if mom and dad transfer 10 million dollars into a limited partnership and they own 1% and the kids own 99%, a gift has occurred. Therefore, the estate planner will (1) have the assets appraised to determine their fair market value, and then (2) the assets are conveyed into a limited partnership. Once those assets are inside the limited partnership, then the percentage to be allocated to a child or to children may be determined by using gift tax rules. At this point, the most critical thing the attorney or tax advisor should understand is the many discounts that are available to limited partnerships. These discounts can expand the percent that may be given to a beneficiary. For example, lack of marketability rules, minority interest rules, valuation discounts that are available often will create an additional discount of 20% to sometimes as high as 77% to the transfers, thereby increasing the interest of the child beyond the normal abilities to gift.

45. Please explain the discounts available to the family limited partnership. How are discounts for family limited partnership calculated?

Discounts for limited partnerships are basically managed similarly to the discounts of a closely held stock. If a small family company is worth $100,000 and there are 100 shares of stock, then each share of stock is worth, theoretically, $1,000. Nonetheless, the government says because of the lack of marketability of the 1% of the company stock, a discount is allowed. These discounts have ranged from 20% to as high as 77%. In like manner, when you transfer assets into a limited partnership, there is a similar series of discounts now applicable to the limited partnership assets themselves.

46. Would I still be able to deduct mortgage interest paid if my home is owned by a family limited partnership?

This is an area in which there can be no unanimity of opinion. A substantial number of tax attorneys and tax advisors hold the opinion because there is no U.S. Supreme Court decision on this issue, it is appropriate to continue to take the deduction if, in fact, they own all or substantially all of the interest in a limited partnership. A grayer area develops, however, if mom and dad only own 10% of the partnership, after giving 90% to the children. Now, the question legitimately can arise as to whether or not they are

entitled to the full deduction. This is an issue that must be solved by the client and their individual tax authority. In summary, let me say I have seen this handled in about as many different ways as there are people who have addressed the issue over the years.

47. What tax advantages are there for having a family limited partnership?

The number one tax advantage of a limited partnership has to do with one of the two major concepts in tax law. With income tax law, there are two ways to reduce taxes: (1) increase your deductions and (2) spread income, which simply means to shift income to people in lower tax brackets. The limited partnership has the advantage with income spreading because this allows an individual to bring, let's say, 10 people in a limited partnership instead of just one. Hence, the major tax advantages lie in the ability to have the income from the partnership assets taxed in the lower tax brackets of multiple family members or multiple individuals, thereby reducing the overall tax rate.

48. What are the tax implications of transferring title of real estate into a family limited partnership when the real estate is mortgaged?

When transferring assets that have a mortgage into a limited partnership, there is a technical requirement that can create a tax problem for the unknowing and the inexperienced. The partnership then receives title to a piece of real estate that has a mortgage; this is often treated as a taxable event to the individual who conveyed the asset. If this is done incorrectly, the IRS looks at this as a conveyance of a tax benefit to the individual mortgage holder or the mortgagee. This is because the mortgagee is treated now as though he has been relieved of the right to pay the mortgage and that the mortgage has been assumed by the new limited partnership. Therefore, that creates an income tax for the grantor of the deed. This legal trap can be avoided if on the deed itself there is a statement something to the effect that the grantor retains the responsibility and liability to pay all mortgages on the property conveyed herewith. A simple statement like that can cure the problem.

49. Who establishes discount assets for family limited partnerships?

The initial discount attributable to assets conveyed to a partnership, and hence, the discount applicable to the partnership interest, is determined by the originators and creators of the limited partnership. This usually means that it is the accountant or the attorney who is assisting in the creation of the limited partnership. Sometimes independent appraisers are also hired in order to buttress the discounted value being assigned to the partnership interest.

50. How can the family limited partnerships reduce the value of the estate with three discounts?

The easiest way to look at it is, for example, a husband and wife have $100,000 of a valued piece of real estate. That piece of real estate, if it remains in the name of husband and wife, is still taxed at $100,000 because that is its the fair market value. On the other hand, if that $100,000 piece of real estate is conveyed into a limited partnership, the nature of that asset is changed. It has changed from a real estate asset to a personal property asset, i.e.: a limited partnership percentage ownership. Hence, it has been transformed into a different asset. What was before a real estate asset is now a personal property asset and has much greater lack of marketability. It has a significantly reduced value in the eyes of a prospective purchaser of the interest in the partnership. Therefore, the courts have been fairly uniform throughout the country by allowing a lack of marketability discount being assessed to this partnership interest. Historically, those discounts have ranged from 20% to 77% as mentioned previously. In addition, there are other discounts that are sometimes merged with the lack of marketability such as the minority interest discount and others. Instead of three separate discounts, some courts typically look at look at it as a unified discount that is applicable to the limited partnership interest.

51. Can you set up a family limited partnership if you expect that an IRS lien will be put on your property?

Many financial advisors use that as their last attempt to secure protection of an asset. However, there are mixed reviews. There are many law firms who claim to have had unusually high success with it, while others question it. Nonetheless, when an emergency presents itself, often it is wise to consider all alternatives, including this one. It has proved to be successful in certain circumstances in which the assets are conveyed into a limited partnership and then other individuals are also brought in as limited partners. In other words, instead of conveying the asset into a limited partnership 100% owned by the husband and wife, it may wise to transfer it into a limited partnership owned 50% by the husband and wife, 50% by children and grandkids. Then additional assets are also conveyed into the limited partnership, which means assets in addition to that which the husband and wife are transferring in. This seems to be the approach that has been the most significant in terms of being upheld on appellate decisions.

52. When an asset on which tax losses have been taken is placed into a family limited partnership, how are those treated?

Generally, when an asset is conveyed to someone else or transferred into a limited partnership, the basis in the hands of the grantor is transferred to the grantee. Hence, all tax aspects are accounted for passed to the new grantee, which is the limited partnership and the ancillary owners of the partnership interests.

53. How can limited partnership interest eliminate the estate tax?

Limited partnership interests eliminate estate taxes when sizable amounts of assets are conveyed to a limited partnership. This allows the grantors, typically husband and wife, to convey interest among their children or grandchildren. This reduces the percentage ownership that mother and dad have, but mother and dad still remain as general partners with 100% control of the assets while giving away substantial portions (sometimes 60% to 70%) of the partnership to others. Thus, the limited partnership is one of the most highly touted estate tax reduction systems in America today.

54. How do you prevent a transfer tax on real estate when putting it in a family limited partnership?

Transfer taxes are taxes imposed by varying states and counties on assets conveyed to an entity. These transfer taxes can be levied against corporations, trusts, and even against limited or general partnerships. To avoid these taxes, most states have provided that a transfer of assets into an entity such as a limited partnership, in which the husband and wife substantially own or control all of the interest, is generally excluded from any kind of transfer taxes or only minimal taxes being levied. There are other counties and states that have said that all transfers among the family shall be subject to a certain automatic exclusion (such as a $1,000,000). Throughout the country, there are few times that this really becomes a matter of great urgency.

55. Are there any proposed laws that will affect a family limited partnership? Will it be changed or eliminated?

Limited partnerships are a creation of state law. The Uniform Limited Partnership Act has been adopted by most states; this provides uniformity of results. Because most states stand united on this matter and the fact that this is state law, the federal authorities have no authority to change the changing of the limited partnership. Limited partnerships are governed by the Constitution and are under the provisions of property rights. These property rights are retained by the states, not the federal government. There is no movement to eliminate limited partnerships. In fact, the movement seems to be just to the contrary, which is to increase the veracity, utility, and validity of limited partnerships.

56. Is the limited liability company more desirable than a family limited partnership?

To analyze whether the limited partnership is inferior to or potentially inferior to the limited liability company, you must understand that limited partnerships have been around for 80 years longer than limited liability companies. Limited partnerships have been scrutinized intently by state supreme courts since 1916. This is why most experts believe the limited partnership is here to stay.

The limited partnership is the one that provides the protection that is literally guaranteed, not just by state law, but also by hundreds of judicial interpretations. Now on the other hand, limited liability companies are being mixed reviews in the court systems. We are finding a treatment by many courts to increase the liability of those who are "Owners" of limited liability company interests who referred to as members. In certain cases, the liability of members themselves has exceeded the liability of a limited partner in a traditional limited partnership. Bottom line, the clear weight of authority is supporting the limited partnership as the preferable tool. The limited liability company is becoming the tool of greater vulnerability and should be used with extreme caution.

57. Does a family limited partnership lock in an exemption amount; what if the exemption goes up?

Limited partnership does not lock in an exemption amount, nor does a limited liability company or a living trust. That is simply an operation of the federal statutes. The real question is can you use an entity that will preserve that exemption? The answer is yes. The limited partnership is used extensively by attorneys to assist in grand fathering that exemption by giving interest in the partnership away to family members. That creates the look of grand fathering and in essence accomplishes it. But, strictly speaking, that is not what has happened. The bottom line is that you have used the exemption equivalents right now, which allow that amount to be passed on to the family through the current conveyance of limited partnership interest.

58. Is there any protection with a family limited partnership against the EPA?

Yes, limited partnerships and the charging order protection are available against all creditors, whether they are state creditors, individual creditors, or even federal creditors.

59. What happens when the general partners of a family limited partnership dies? How are assets distributed?

The general rule is that at the death of a general partner of a limited partnership, the limited partnership is dissolved unless the attorneys and the draftsmen have provided for that in advance. The draftsmen would have inserted a provision

that says on the death of a general partner, then by majority vote the remaining partners and interest may now appoint a new general partner and the limited partnership continues.

60. How is a family limited partnership administered or operated?

A limited partnership is administered or run by one, two, or three general partners who, by majority vote, control the direction of the assets, the direction of the management, the direction of the investments to be taken by the limited partnerships. They are held accountable and have the responsibility to move forward and handle all aspects of the limited partnership's business.

61. Is there any limit as to how much you can pay yourself to manage a family limited partnership?

The general rule nationwide is that a general partner is entitled to what is known as reasonable compensation for services rendered. That is, of course, subject to different courts and multiple interpretations. But as a general rule the law is that the general partner may receive management services fees that are normal and customary for other people rendering similar kinds of services. These are based not only on the hourly or monthly rate, but also on considerations such as the amount of time devoted by the general partner to the operation of the limited partnership.

62. In a family limited partnership, can one general partner designate his successor to be a general partner?

Generally, the rule is no. The successor to a general partner upon death, or bankruptcy, or resignation, is then an issue that is determined by a vote of the remaining partners. Generally, a majority in interest is sufficient to accomplish that unless a higher percentage vote is required under the terms of the limited partnership agreement itself.

63. How complex are annual reports?

The annual reports are very simple. The annual report to the state is often nothing more than a mere one-page form that is filled out and provides the name of the partnership and the registered agent and the address of the partnership and the county in which it will be operating. Generally, the accountant will automatically fill it out each year for you when they are also doing the tax returns for the partnerships.

64. What happens to the limited partnership when a spouse dies?

The limited partnership continues on regardless of what happens to a spouse. If the spouse is a limited partner, the partnership interest flows into and is part of the estate of the limited partner. So, if a limited partner passes away, his or her interest percentage ownership in the partnership, like stock, bonds, or other assets, would then flow down to the heirs of the deceased in accordance with their estate plan (usually their will or their living trust). But a technical issue arises then as to whether that interest being conveyed also confers upon the successor the right to be either a general or a limited partner. The general rule is that it does not unless it is authorized by the partnership agreement itself. Normally, the successor to an interest in a limited partnership is treated as an assignee of interest, without becoming a substituted limited partner. An assignee of interest means that that successor receives the income rights as though he or she were a partner, but in fact, the successor is not elevated to the status of a general partner or a limited partner. This basically allows the income to pass on to the successor without granting rights of management or vote to that assignee of interest.

65. *When do I know that I need more than one limited partnership?*

That's one of the most delicate issues in advanced tax planning. It's an area for which there is not a lot of training for estate planners. But the general rule is this: we have found over the years that it's highly advantageous for a family to have two or three limited partnerships. There are other occasions where one might need five. There are some occasions when 10, maybe even 20 are needed. The factor that determines the multiplicity of limited partnerships is the potential danger of the respective assets going into the limited partnership. The limited partnership does not protect assets if the asset within the limited partnership itself is dangerous. For example, a limited partnership owns an airplane. If that airplane crashes due to negligence of the general partner or the partnership itself, then all assets within that limited partnership are potentially at risk because of the negligent accident attributable to the one limited partnership. Therefore, it would be extremely unwise to place an airplane in a limited partnership with a million dollars cash and your home because one negligent act associated with the airplane could result in the liability and the potential loss of all other assets within the limited partnership.

Hence, there is a decided movement now to utilize multiple limited partnerships. In one limited partnership, you could place safe assets or the assets that generally do not generate lawsuit exposure, such as cash, stocks, bonds, and mutual funds. If you have an apartment building with 40 apartments in it, you might consider putting that apartment building by itself into a second limited partnership. Then, if you have three little rental homes with $30,000 to 40,000 in each one, you may want to put all of the rental homes into a separate and distinct limited partnership that holds title just to those assets. In advanced real estate planning, there is a rapidly

developing trend throughout the nation in designing multiple limited partnerships for estates. We go into this in greater detail in our seminars and conventions that we teach nationwide.

66. *Define "safe" and "dangerous" assets.*

A dangerous asset is any kind of an asset that common sense tells you have a potential of generating liability simply by owning it. The asset itself is dangerous; an airplane, a boat that is rented to the public, a large truck. Even an automobile itself could be potentially dangerous if it gets involved in an accident. So dangerous assets generally are grouped together in advanced estate planning because they have the highest probability of generating lawsuits. Then one also, simultaneously, bunches other assets together that are not inherently dangerous; this would be cash, stocks, bonds, mutual funds, real estate investment trust interest, tax lien certificates, and other assets that one might have are often bunched into one limited partnership because they, in and of themselves, do not spawn or trigger lawsuits. They are inactive, passive and literally safe assets. One principle of law is that you never place dangerous assets and safe assets into the same limited partnership. That seems to be a rule that is rapidly developing in America among experts in limited partnership structuring and formations.

67. *If a family limited partnership is so safe, why is it necessary to separate your safe and dangerous assets?*

If you put safe assets and dangerous assets together in a limited partnership, and the dangerous asset inside of a limited partnership creates a liability, all assets within the limited partnership then become subject to potential loss. Hence, the one danger of limited partnerships and of any entity in the world is that no matter what entity you have, whether it is a business trust, a land trust, revocable trust, a corporation, a limited liability company, or a limited partnership, the rule is the same nationwide: if any one of those entities has a dangerous asset such as the runaway dump truck, the law in America is that the other assets within the entity may now be reachable, seizable, and literally are accountable for the accident. Hence, that is one risk for every American associated with every entity no matter how good the entity. The great thing about the limited partnership is that you can isolate that liability to the runaway dump truck. If the only thing in the limited partnership is the runaway dump truck, there are no other assets that are reachable or that would share in the loss associated with the runaway dump truck. This is the rational behind the increasing usage nationwide of multiple limited partnerships. For example: the dump truck goes in a different limited partnership because of its potential liability; or if it's an airplane, it goes into a separate limited partnership; or if it is a ship that a person owns, that goes into a separate limited partnership. Then the bank accounts, stocks bonds, and other safe assets go into a separate limited partnership, so they will not be subject to liability that may be created by the runaway dump truck, airplane, or ship. That is how it's done with multiple assets.

68. What is the difference between a pure trust and limited partnerships?

Pure trusts have been under assault by the IRS for more than 25 years. They are trusts that are theoretically based in constitutional law and are not supposed to be subject to the normal rules of land and tax laws, seeking to obtain a higher exemption. They supposedly allow individuals to pass on their estates without paying estate taxes and without being subject to gift tax. It's as though it's a law unto itself. Year after year, we've seen the promoters of pure equity trusts go to prison. Yet, they charge outlandish fees of $10,000 and often $25,000 and more to set up a pure trust. The interesting thing is that in my entire legal career I've never found one tax attorney in America who is on the board or who is an owner of such potentially fraudulent kinds of structuring. The legal entities that we talk about have no comparison because they are legal—they are in the white area of the law. Comparing a limited partnership, with a pure trust is like comparing and an apple with a lemon—a very dangerous lemon.

69. Can you do a family limited partnership without having a revocable living trust?

Yes, an individual can do it and many attorneys will set up limited partnerships. That means that you can reduce or even eliminate the estate taxes. It means that you can spread the income among the family. However, the one thing a limited partnership cannot do, and it cannot be done by anyone, is to pass the interest directly on to the family without probate. Hence, many estate planners now have learned the advantage of using both a limited partnership and living trust. When you add a living trust to this legal tool arsenal, then the living trust avoids the probate on the partnership interest. So, the preferable approach in my judgment is for people to use both. You use the limited partnership for the income spreading and the estate tax avoidance; you use the living trust to avoid probate on the partnership interest itself. So, using both tools is superior to using only one.

70. Are assets in an irrevocable trust vulnerable to lawsuits?

The assets inside of an irrevocable trust are vulnerable to lawsuits if the lawsuit pertains to an asset within the irrevocable trust. For example, if there is a dump truck

that is held inside an irrevocable trust, an accident associated with the dump truck can jeopardize and cause a loss of every single asset within the irrevocable trust. Now, on the other hand, a more appropriate question would be: if an individual is sued, can the assets in an irrevocable trust that is providing income to this individual be attachable? Generally, the answer generally is no if there have been safeguards built in to the irrevocable trust. Those safeguards have to do with who the trustee is. The courts look often to be sure that there is an independent trustee, which means someone other than the grantor or some of the grantor's lineal line. Then the courts look at the control to which a potential beneficiary may have on the trust. The bottom line is that a well-drafted irrevocable trust can also provide a substantial degree of protection against creditors of a beneficiary of the trust if the trust is drafted correctly.

71. If a certificate of shares in a family limited partnership were placed in a living trust, could a judgment against a living trust seize the certificate?

The answer is no if the asset is inside of a limited partnership, because the charging order is the only remedy available to the creditor. The charging order means that it is the income interest only that is potentially attachable by the creditor, not the partnership interest itself. Hence, the involvement of living trusts only avoids the probate and does not materially affect the outcome of a lawsuit against an individual for which they seek to attach the interest inside the living trust.

72. Can a disgruntled family member who was purposefully left out as a beneficiary contest a living trust or family limited partnership?

Those are two very different questions. Can a disgruntled family member who was not given membership in a limited partnership go after the family? Generally, no. A disgruntled family member, even one who has been intentionally disinherited, has no rights to go after the partnership, unwind the partnership, or achieve any interest in the limited partnership. Even if the family member has a separate cause of action against parents granted on a number of theories, he or she has no rights against the limited partnership.

Can a disgruntled family member who is intentionally disinherited and or left out of one's will or living trust go against the estate, against mom or dad, or against the trust? Generally, no. Most attorneys have had many years of experience with artfully drafting provisions known as the disinheritance provisions. When those provisions, which are uniform from state to state, are followed, a potentially disgruntled person can be forever barred from access to any interest in the estate. Now, even though the traditional provision is placed inside the trust or the will to the effect that "I, John James, hereby effectively and totally disinherit my son Johnny for whatever reason. He shall have no interest in my trust or in my will." That generally is presumed to be sufficient. Nonetheless, many attorneys add an additional sentence now showing they have given adequate consideration to the individual to forestall and preclude any later lawsuit by that disgruntled child. To accomplish that they basically say, "I John Jones and Helen Jones, husband and wife, father and mother, hereby give to our son Billy Jr. $1.00 as his total and complete share of our estate. No other assets of any kind are to be distributed to him." This is how this issue is handled through the trust.

73. How can a limited partnership be used to protect assets in a divorce?

Many individuals will transfer their assets. For example, in a second marriage, husband and wife often already have children from a previous marriage, and they'll have separate assets from their previous marriage. Therefore, it is a very common and highly recommended approach for the wife to transfer her assets into limited partnerships with her children and the husband to transfer his assets into limited partnerships with his children. This way, when they come into this second marriage, they each have planned their estate and have taken care of their respective children by establishing their own limited partnerships. When the wife dies, her assets flow to her children as she would want, and when the husband dies, his assets flow to his children.

Assets that are later acquired in the second marriage may then be divided any way that is chosen between the husband and wife. For example, they can hold property in joint ownership so it goes to the survivor. Sometimes they'll place newly acquired assets in the wife's trust or in the husband's trust, which would then ultimately go down to their respective children.

Now when it comes to a first marriage, some individuals come in with sizable assets. Let's say the husband comes into a first marriage with 10 million dollars and the wife comes in with nothing. The husband will often convey all or substantially all of his assets into limited partnerships, which he then shares with brothers, sisters, parents, and others. He effectively gains superior control of those assets in the event a divorce occurs because the husband now is the sole general partner and has full control over the assets. Even a few years later, divorce courts are effectively prohibited from unwinding the limited partnership and giving any of the assets to the new wife who now becomes the ex-wife. Should a divorce occur, the limited partnership becomes a very effective means of protecting assets.

74. Must you wait until a divorce is final to form a limited partnership?

No, the preferred approach is to set it up at the beginning. The earlier it is set up, the better. That's why attorneys who get involved in these things will set it up, sometimes before the first marriage occurs.

Does that mean people don't do it after divorce has been filed? No. Many times over the years where the attorney for one of the spouses encourages both spouses to set up limited partnerships and transfer the assets into the limited partnerships, sometimes just a short while before one of the spouses files for divorce. This can be a very effective means of securing control of the assets once the divorce is granted. For example: in one case we were involved in a while ago, the husband came to us indicating that he planned to divorce his wife within the next year. We then transferred most of the family assets into limited partnerships. The husband became the sole general partner. He retained only 40% partnership interest. His wife was given 60% interest. She was happy. Her attorney was happy. She got a greater interest than did her husband. When the divorce occurred, the assets before the court were not assets in limited partnership. The assets before the court were simply the personal property ownership interests in the partnerships. Therefore, the courts allowed the wife to keep her 60% ownership, and the husband to keep his 40% ownership. Because he was general partner, he controlled the entire estate during the life of the partnership. Therefore, it became a very effective means of pre-divorce planning.

75. What protection, if any, does a limited partnership offer in case of bankruptcy?

In the event of a bankruptcy, the assets inside of a limited partnership are controlled by the limited partnership document itself. Let's say the partnership interest of the one who is applying for bankruptcy or is about to be bankrupt is 10%. His 10% partnership ownership now is an asset that can be turned over to the bank trustee. The bank trustee then can exercise the rights that are associated with that, which incidentally are minimal. Even the bankruptcy trustee in the charging order is prohibited from being a general partner. In fact, the trustee cannot be a limited partner and cannot be what is known as a substituted limited partner. The bankruptcy trustee can only be presumed to be an assignee of potential income. Hence, the power of the bankruptcy trustee is literally almost nothing. The partnership itself continues to exist. The other 90% partners continue the partnership with someone else, perhaps the mother or child as the general partner. The 10% that belonged to the bankrupt father is of minimal value. Nobody wants it and it is has almost no negative impact on the operation of the partnership. Bottom line, if a family is anticipating a bankruptcy situation for one of its members; a limited partnership is one of the greatest tools on the planet to survive even a bankruptcy.

76. How do we protect our assets once a suit commences?

Once a lawsuit has commenced, we get involved in various state laws that are called fraudulent conveyances acts and fraudulent transfers act. The courts are against someone who anticipates a lawsuit or bankruptcy to quickly transfer assets into some other entity. Notwithstanding that, there has developed an approach called the proportionality rule, which is illustrated by the following example. Let's assume the husband puts a million dollars into a limited partnership, then the wife places a million dollars in and the children place a million dollars into the same limited partnership, which is now worth $3,000,000. The husband contributed a million, so he owns one-third of the partnership. Even though the husband goes into bankruptcy, the general rule is that because the assets are conveyed into the partnership appropriately and in proportion to the interest of each of the individuals, then a bankruptcy does not allow the unwinding of, or the removal of, the million dollars placed in by the now bankrupt partner. The bankruptcy court then, at most, receives the one-third interest in the partnership for purposes of allocation.

77. Can you form a limited partnership after the judgment? Can you file a limited partnership today and avoid liability for a suit filed yesterday?

I've seen people set a limited partnership up to the point of judgment, even to the day of judgment, so filing of the lawsuit is a long way removed from the point of judgment. Attorneys have done that and have done them very effectively over the years, but again they must be very cognizant of that proportionality rule (See Question No. 76). However, I have seen courts unwind the limited partnership in the example where the husband, after being named as a party to a lawsuit puts a million dollars in, the wife puts a million dollars in and then the husband gives away 99% ownership to the wife and keeps only 1%. It would be an entirely different issue if the husband were to retain 50% and give the wife 50% interest. So be careful.

Limited partnerships are not going to protect you from a lawsuit. You and I can be sued for anything. It is important to properly transfer assets into a limited partnership when you are not even anticipating and being threatened, with a lawsuit; hence, the statutes then do not anticipate that. Then it would not be considered a fraudulent conveyance and the assets would then be protected just as they would be in all situations of limited partnerships.

78. If you have a limited partnership, do you need a long-term care protection policy?

Absolutely! I think long-term care and limited partnerships are separate and distinct issues. Long-term care is associated with health providers and insurance companies, and you should consider it for serious illness or major medical occurrences. Nonetheless, it is important to have that limited partnership where you have assets under your control to which you can have recourse, either for the assets themselves or for the income generated from the assets. This becomes a beautiful supplementary plan for you, particularly in a health care situation.

79. Will a family limited partnership protect assets from nursing home costs and do assets count towards Medicaid?

The way in which it has been frequently used is for the assets of the potential invalid to be placed into a limited partnership with that individual becoming the general partner and then giving away 99% of the ownership interest to family members. That is a strategy that has proved highly successful and is used frequently throughout the United States for this kind of situation. It works quite well. Then the only assets that would count toward Medicaid would be the 1% ownership, which, because of the discounted value, often is of minimal importance. The assets should be placed into the limited partnership well before entering the nursing home.

80. What are the pros and cons of offshore trusts compared to a limited partnership?

The off-shore trust laws are entirely different because now you're getting into full faith and credit clause of the Constitution, and you're getting into the treaties that range between the various countries and the United States and the ambiguities that are associated them. There is little comparison and protection. Because a limited partnership is on shore, it is regulated by federal law and by our state laws. If I'm looking for asset protection for a client, I'm going to be on shore where we know precisely what the laws of the United States are as compared to the ambiguities, vagueness, and varieties of an offshore trust or off-shore company. Whenever one deals offshore, it can be extremely dangerous. In fact, one major law firm in America now has announced publicly that they specialize in unwinding assets and seizing any offshore trust in any country in the world. No such movement has ever occurred for limited partnerships because those are governed by the laws of the United States.

81. How do you reduce the value of assets in a limited partnership?

For cash, stocks, and bonds inside of a limited partnership, the question often is raised, can you reduce the value of those assets for estate tax purposes? In other words, if you put a million dollars in cash, stocks, and bonds in a limited partnership, is the limited partnership still in total worth a million dollars or something less? Normally, the IRS and others will look at the composition of the assets in the limited partnership for determining the appropriate discount that is allowed. For example, valuation discounts vary drastically and increase if the assets are non-marketable securities. However, when you're dealing with cash and other marketable items, typically you will not get as large an IRS-approved discount. Instead of what may have been a 35% discount, you may only get 10% or 15%. Yet, something is better than nothing and it still is a preferable way to hold title to safe assets.

82. By following your program, can I be protected from malpractice claims?

The best plan for malpractice protection is (1) for a person to maintain a reasonable amount of malpractice insurance to help an individual who may have been a patient or client, and who might have been injured; and (2) for the professional then to have transferred most of his assets into multiple limited partnerships, thereby gaining the lawsuit protection of the charging order that is available to protect the assets for the family. To me this is the ultimate one-two approach. Often people will ask, "Why don't I eliminate step one?" And I answer, "If you injure someone, it seems morally and ethically appropriate that you should provide some recompense to the individual that has been ignorantly ...damaged or hurt. Yet, all of the assets that you have been accumulating during a lifetime can still remain protected for yourself, your spouse, your children and your grandchildren.

83. Does Schedule A supersede joint ownership deeds?

Joint ownership normally supersedes all other forms of ownership in America, even a Schedule A attached to a trust. However, there are exceptions even in that scenario. If the Schedule A itself is signed and notarized, then it can supersede even joint ownership.

84. Can a Schedule A in lieu of a deed, be recorded with the county to protect privacy?

Yes, people will often do that. People will often record the Schedule A and sometimes a few pages of the limited partnership or of the trust, thereby gaining greater privacy than is available via recording the deed.

85. Do you have to recreate the family limited partnership every year to get the increase in the estate tax credits?

No. You do not have to recreate it. However, to maximize your uses of the exemptions available each year, you must review on a yearly basis whether you should make additional gifts of interest in the limited partnership to other family members.

86. If all of your assets are in a family limited partnership or a corporate retirement plan, do you still need a living trust to avoid probate?

Yes. A living trust is always necessary, because a living trust is the instrument that avoids probate. Neither the limited partnership nor the pension plan can do that.

87. Does the family limited partnership supersede all wills previously written?

Wills are superseded by a living trust or by joint ownership. Wills are not superseded by a limited partnership. A limited partnership on its own does not pass assets at a death whereas joint tenancy does, a will does, and a living trust does. They are completely different tools.