

Asset Protection Planning

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**Estate Planning Council
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Why Do Asset Protection?

- More lawsuits and bad economic conditions
- Not being at fault is not a defense these days
- Expensive and difficult to insure a lot of risks
- Just good business practice

Goals

- Maintain control as long as possible
- Maintain financial independence and cash flow
- Protect assets
- Minimize taxes
- Have structures in place to settle disputes for less money
- Leverage wealth in next generation

Types of Creditors

Present

Potential

Unknown

Strategies That Provide No Protection

- Joint Ownership (except Tenancy by the Entirety)
- General Partnership
- Revocable Trust

Asset Protection Basics

- Avoid Bankruptcy – Different Set of Rules
- Transfer Assets to Others
- Corporations vs. LLCs
 - Consider converting corporations to obtain changing order protection
- Sales vs. Gifts

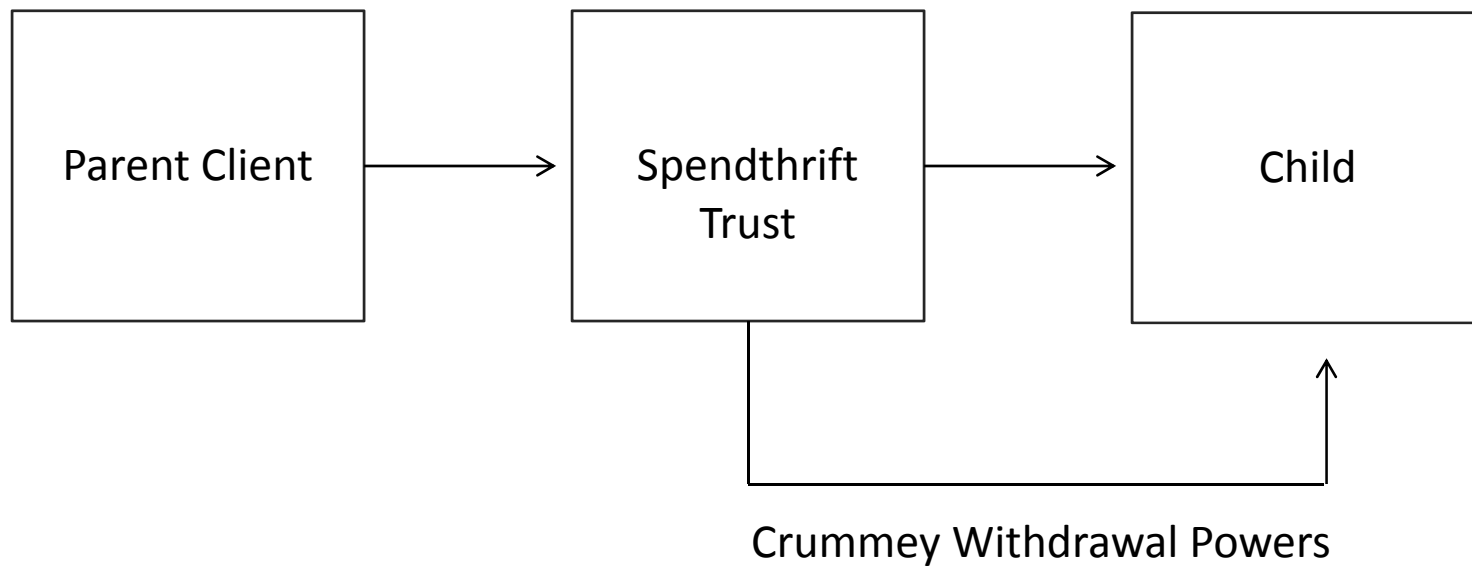
Exempt Assets

- Generally not reachable by creditors
- Homes are exempt in some states (but not Alabama)
- Qualified pension, profit sharing and 401(K) plans are exempt
- IRAs are exempt in most states (including Alabama)
- Life insurance policies are typically exempt if owned by the insured. Annuities are typically not exempt

Spendthrift Trust Protection

- ❑ Must be created for the benefit of one or more persons other than Settlor
- ❑ Creditors can only reach funds actually received by beneficiaries or required to be paid to beneficiaries unless there are exceptions
- ❑ Alabama Uniform Trust Code provides exceptions for child support and alimony; judgment creditors who provide services to protect the interests of beneficiaries in the trusts; and claims of the United States and Alabama
- ❑ Discretionary spendthrift trusts can not be forced by creditors to make discretionary distributions (even where beneficiaries are co-trustees or sole trustees), including distributions subject to ascertainable standards, except where a court has found abuse and orders a distribution for the support of the beneficiary's child, spouse or former spouse

Beneficiary-Taxed Irrevocable Trust

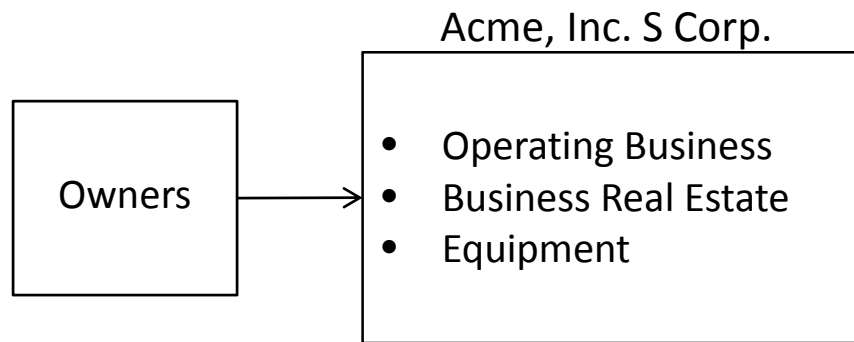


Inheritance Trust

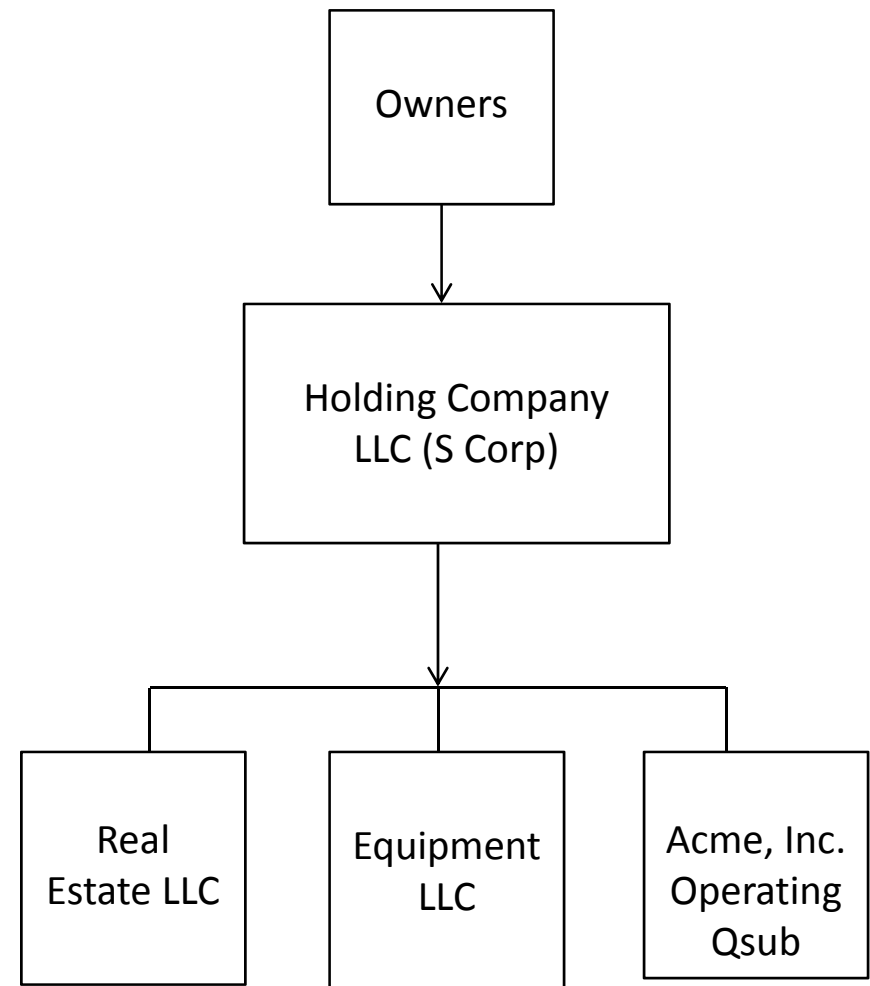
- Created to hold child's inheritance after last death of mom and dad
- Child can be sole or co-trustee
- Income and principal typically available subject to ascertainable standards of health, education, maintenance and support
- Child can choose beneficiaries at child's death by way of testamentary special power of appointment
- Creditor proof as a spendthrift trust.
- Assuming proper allocation of GST exemption, can avoid estate tax for rule against perpetuities period (currently 360 years in Alabama).

Use of F Reorg

CHANGE FROM:



CHANGE TO:



Offshore Limited Liability Company

- ❑ Typically created by U.S. citizens with offshore managers
- ❑ Best jurisdictions are Nevis and the Cook Islands
- ❑ Offshore LLC is often owned by an OAPT, a DAPT or a spendthrift trust
- ❑ Good tool for international investing

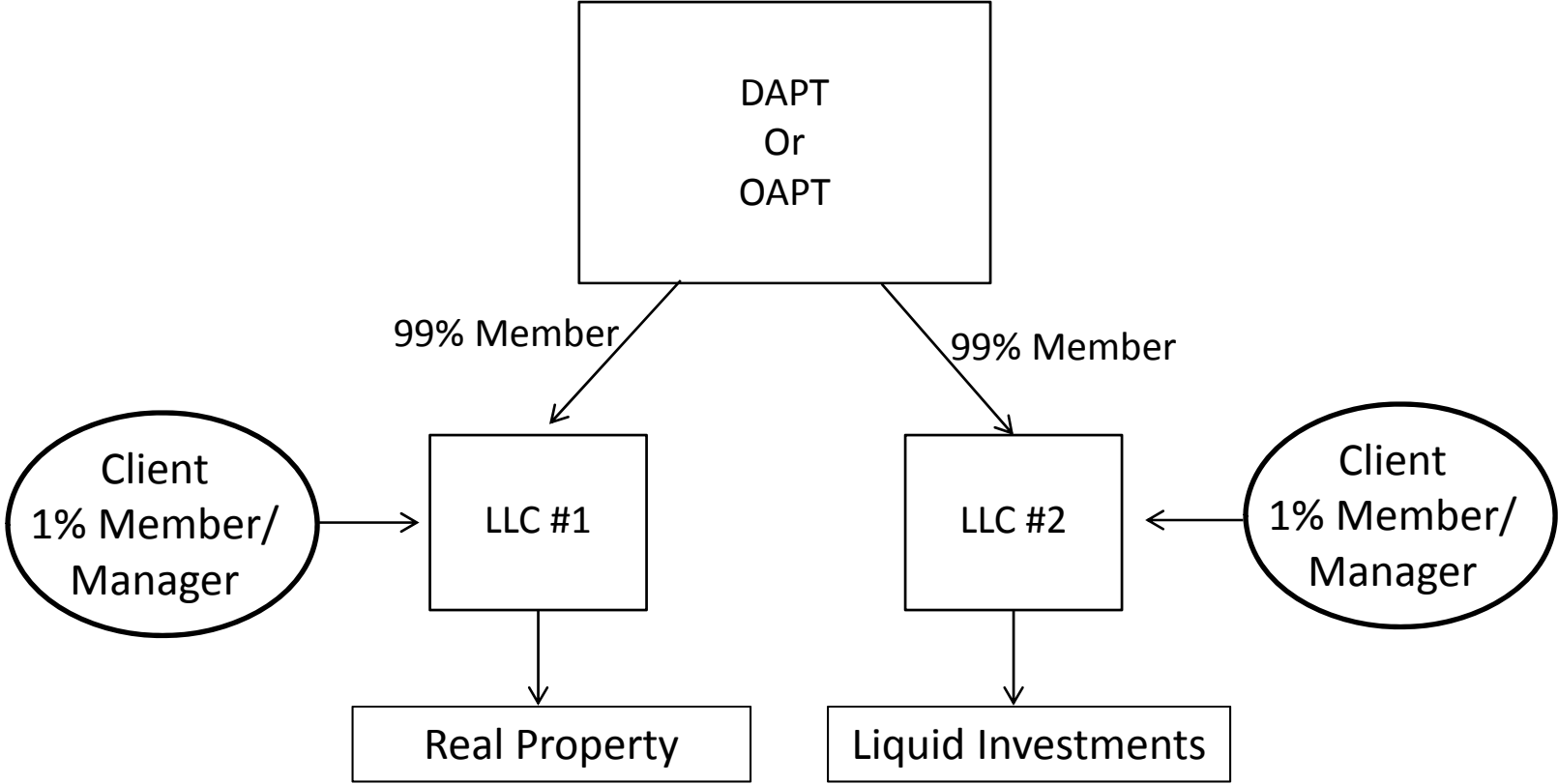
Domestic Asset Protection Trusts

- Self-settled Trust is permitted
- Rule against perpetuities generally abolished
- Requires trust company located in state or individual resident of state to serve as a trustee
- Typically custody of some of the trust property has to be maintained in the state
- Often include in each DAPT trust protector provisions
- Still subject to jurisdiction of U.S. federal and state courts
- Opportunity for a completed gift for gift tax purposes

Offshore Asset Protection Trusts

- ❑ Almost always self-settled
- ❑ No recognition of foreign judgments. Suit must be brought in jurisdiction where trust is located and contingency legal fees are not allowed
- ❑ Shorter statute of limitations for fraudulent transfers

The Modular Structure for Protection



INTEGRATED PLANNING STRUCTURES

