

## Why Asset Protection?

Regardless of whether your property is residential or commercial, it is filled to the brim with potential plaintiffs.

Residential properties have a slew of landlord-tenant and renter's rights laws that often favor the tenant, especially as to property maintenance. Add onto that public outrage at "absentee" landlords and a judge voted in by the residents of the community, and you have tenant-favorable courts and plaintiff-friendly judges and juries.

Commercial properties have not only the tenants to worry about, but also their customers or visitors. Everyone who walks into your property could become a potential plaintiff against you for maintenance issues, slips and falls, or being locked inside. And we're based in Buffalo—a lot of people slip here every winter.

## Isn't My Insurance Enough?

The answer depends on how much risk you are comfortable with. Consider these risks:

1. **The insurance company bankrupts.** (One hurricane, not named Katrina, bankrupted 12 insurance companies single-handedly.)
2. **You are sued for something and your insurer tells you it is not covered, or limited.** (More than half of claims wind up this way—uncovered or uninsured.)

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However, asset protection doesn't just help against tenants. It can protect you in a business deal or joint venture gone bad—for example, a co-owner of the property, or a management agency. Asset protection can also in some cases protect against the mortgage or note holder's claims against you or the property. A plan can protect assets from seizure by governmental authorities and law enforcement, who can often summarily seize property used in a crime. It can even help you protect properties in the event of

*"Asset protection provides unlimited coverage for the rest of your life for a one-time fee."*

3. **Your insurer defends you, but the settlement or verdict is more than your coverage limit.** (Remember, the contingent lawyer picks when and if to settle!)

Remember that insurance provides limited coverage for a set time in exchange for paying a deductible and the continued monthly/yearly payment of premiums. Asset protection provides **unlimited** coverage for the **rest of your life** for a **one-time fee**, with recommended check-ups at **your convenience**.

*But before you cancel your policy outright...*

## Insurance and Asset Protection

The perfect amount of insurance once you have an asset protection plan in place is just enough to cover the defense of a lawsuit. The next section explains why.



## How Contingent Lawyers View Asset-Protected Defendants

Contingent lawyers may be a lot of things, but at their core, they are business people. Their business operates on a “contingent basis,” meaning they get a certain amount (often one-third) of any recovery they manage to get for their clients. No recovery, no legal fee for the attorney. In fact, no recovery often means a **bill** for their clients for the court costs anyway. So they don’t invest their time in a case unless they reasonably expect to get a pay-out. It is a gamble made by the contingent lawyer. Is it worth it for them to pull the lever on your slot machine?

Here is how a plan effects a contingent lawyer’s judgment in bringing suit:

1. Before filing suit, the contingent lawyer will do some investigation of you to see whether you have the capacity to pay a judgment. They can find out your assets within minutes, and can investigate to see what you have transferred and to whom.

*“It is a gamble made by the contingent lawyer. Is it worth it for them to pull the lever on your slot machine?”*

2. Your asset protection plan may out valuable assets to reduce your apparent capacity to pay a judgment, may discourage the contingent lawyer sufficiently to kill the lawsuit outright.

However, a potential client can consult multiple contingent lawyers, and may eventually find desperate enough to accept. Then...

3. Your defense attorney, as quickly as possible after identifying the contingent lawyer, contacts them to let them know that an asset protection plan is in place, and that any judgment will be in bankruptcy or take forever to collect.
4. Even if the contingent lawyer continues, solid asset protection plan by just the right amount of insurance induces a contingent lawyer to settle the amount and move on, instead of running up defense costs. They’re reducing their own pay-day.
5. Perhaps—through ignorance, or sheer desperation—the contingent lawyer will push to verdict and get a jury award, even in an eye-popping dollar amount.

*Then, the real fun for them begins...*

## Collecting From an Asset-Protected Defendant

Some contingent lawyers just won't see a good thing on the settlement table and take it. (Ask any defendant.) They might press on all the way through to a verdict, hoping for a massive McDonald's-coffee-lady style amount from the jury.

What doesn't make for such interesting newspapers as the verdict amount is the work that contingent lawyers need to do to collect on a judgment. And having an asset protection plan in place before the lawsuit will make that battle so uphill as to be not economically feasible for the contingent lawyer.

Furthermore, although contingent lawyers are good at identifying deep pockets, they aren't necessarily good at getting their hand into the pocket to plumb the depths. After waiting the years until verdict and award, and waiting for a check for the judgment that hasn't come yet, they may have to refer their clients to an attorney focusing on debtor-creditor law or collections law. The new attorney will be between flustered and frustrated at the amount of work that would be required to **even possibly** collect on any judgment.

The reason is layering, and the concept is familiar to anyone who's been in a Buffalo winter. Even if the snow or gusts can get through the coat, it then has to penetrate the sweater, the shirt underneath and the undershirt. Each layer provides more armor, and an effective asset protection plan is built like a tank.

*"Each layer provides more armor, and an effective asset protection plan is built like a tank."*

*The contingent lawyer will need a whole lot of this damn fine coffee to collect from an asset-protected defendant.*



They are limited to a few options to recover from an asset-protected defendant:

1. They can attempt to prove a transfer was fraudulent—if within their jurisdictions' statute of limitation. Generally this is four years from transfer, but in New York it is six.
2. They can attempt to "pierce the corporate veil" if the assets are owned by a company—by doing a lot of work, they may be able to show this if you are misusing your separate and legally distinct corporate entity.
3. If assets or cash is being held overseas and they can demonstrate that you still have personal control over it, they can petition a court to imprison you until you bring back the assets (called "repatriating.")

A famous case involved a person who refused to repatriate, and was imprisoned for several years as a consequence. He could have sprung himself at any time by bringing the money back, but refused to. Effective asset protection planners are aware of this and the first large case about this, and ensure that you cannot be confined to a debtor's prison.

Note that there's one creditor we can't protect you from—the Internal Revenue Service. No asset protection planner can do that by "hiding assets" or "moving them out of the country" without exposing both you and the planner to criminal liability.

## Investment Property Companies—A Risky Investment?

Many investment property owners incorporate using a limited liability company, corporation or limited partnership. Although this is a very good idea to protect yourself from individual liability, the effectiveness of the company as an asset protective tool is often missing or compromised.

Before you think that your company is your impregnable fortress, consider the following:

1. Does your Operating/Partnership Agreement or Buy-Sell Agreement provide protections in the event of bankruptcy to ensure you stay in control?
2. Can you re-apportion taxation on a basis other than ownership share of the business?
3. Have you segregated your investment properties or put them all in one company, like eggs in a single basket?

4. Does your Operating/Partnership or Buy-Sell Agreement limit creditors to a "charging order" or the equivalent? (This limits creditors to intercepting only...)
5. Does it allow for changes in compensation? (Paid salary is safer from creditors.)
6. Does your LLC consist of a single member only? (If so, this impairs the LLC's ability against creditors, and should be if possible.)
7. Does your company have a legitimate business purpose?

A corporate entity that is intended to be an asset protector requires several customizations to be effective. If you use LegalZoom or a budget for this, you just may get what you pay for.

## Why use an Asset Protection Attorney, not a Financial Planner?

Attorneys are the only ones with whom you will receive attorney-client privilege. And in this area, it is important. Compare the following:

Creditor Counsel: "Under penalty of perjury, with whom if anyone did you discuss your plan to put all of these assets into this LLC?"

Debtor: "(My accountant/my financial advisor/my uncle)."

**Creditor Counsel now puts your accountant/your financial advisor/your uncle through a deposition, or calls them to the stand.**

Creditor Counsel: "Please describe all conversations you have had with Debtor regarding the creation, formation, and contribution of assets to this LLC."

Accountant/Financial Advisor/Uncle: "Debtor asked me to help protect assets from your client."

Creditor Counsel: "Under penalty of perjury, with whom if anyone did you discuss your plan to put all of these assets into this LLC?"

Debtor: "My attorney."

**Creditor Counsel now puts your attorney through a deposition, or calls them to the stand.**

Creditor Counsel: "Please describe all conversations you have had with Debtor regarding the creation, formation, and contribution of assets to this LLC."

**Your counsel either objects to this and is sustained, or...**

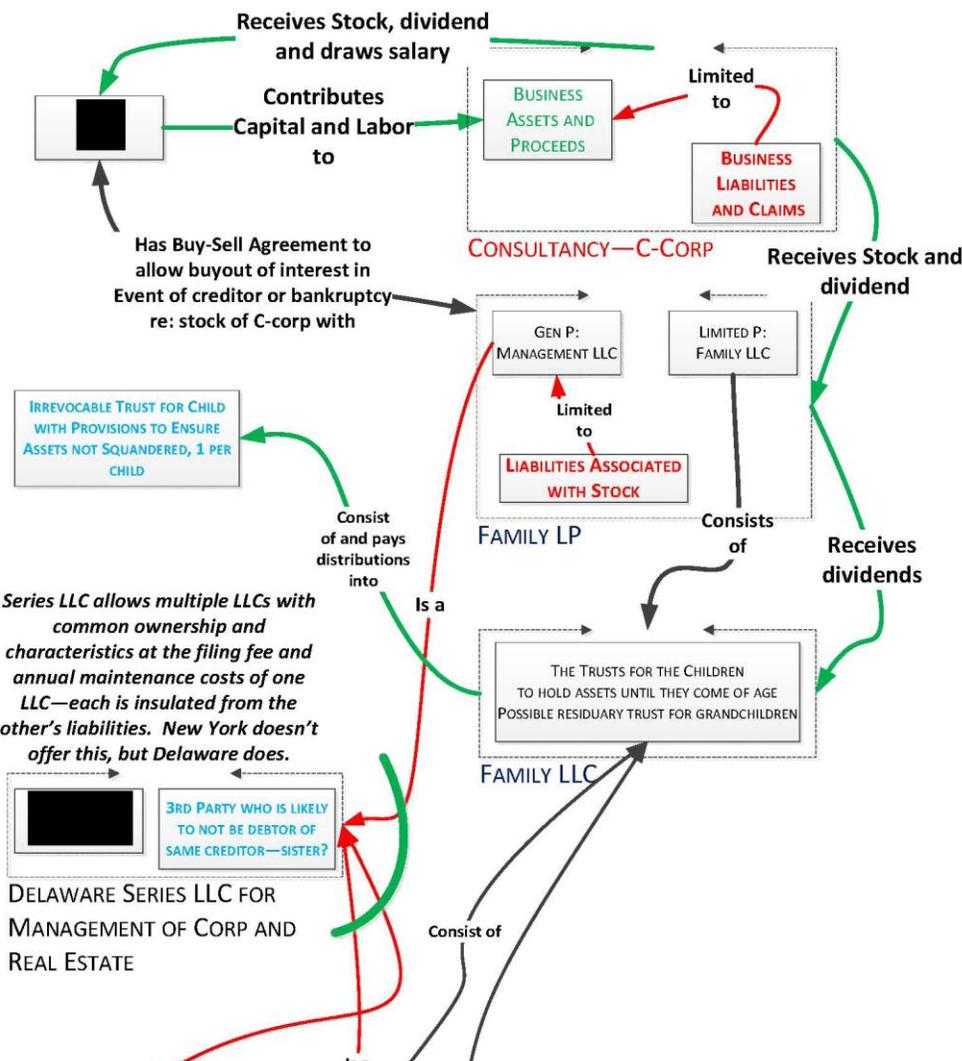
Attorney: "I refuse. All of the above is covered by attorney-client privilege."

Although asset protection planning is entirely legal, if it becomes manifestly clear (as it will when your advisor is forced to disclose all conversations between you and them) that your intent is to defraud creditors, all of the protection planning in the country will be unable to save you. You'll have to either pack your bags permanently or expect a trip to the cleaners or federal prison, depending on the creditor.

# A Comprehensive Asset Protection Plan

This is a partial example of a comprehensive asset protection plan. Our office uses a detailed questionnaire and follow-up interview to learn about your business, your needs, and your desires and hopes for an asset protection plan, and we incorporate these into a master plan you can use to get a “bird’s eye view” of your business and its asset protective entities.

We can begin work on this plan for you today for a special consultation charge of \$250, a reduction from our hourly rate. We accept Paypal, Google Checkout, and credit cards, as well as personal check and cash. These plans take about 2 to 3 hours, depending on the complexity of your business and your family. The plan also includes all anticipated start-up costs, annual fees, and professional fees associated with keeping the plan running.



**The GILBERT** Law Office, PC  
 Confidential Attorney  
 Work-Product  
 Protection Plan for:

**Legend:**  
 Red are assets that result in liabilities that the plan manages  
 Green are assets or the flow of assets, as well as shields that protect against red liabilities  
 Blue are individuals  
 Black are entities

**Some notes:**  
 The Family LLC is only a limited partner in everything and is never the general partner in anything. This is designed such that the Family LLC should never have a claim be able to be made against it, so long as corporate formalities are adhered to.

To retain limited partner status, it is imperative that the limited partner not engage in the management of assets within the limited partnerships. The LP agreements will be written to support this completely.

All LLCs will be structured such that a member who is pursued by creditors or suffers certain other events may be bought out by the others to ensure control remains in the family.

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## Can I Afford Asset Protection?

Wealth is very relative. The right questions to ask yourself are these: "How long did it take me to earn what I have?" and "How would I feel if it were taken from me?"

Hard economic times are hard all over, and can pressure people who wouldn't sue otherwise to sue. If you own assets that could be taken by a lawsuit, you can't afford not to protect them.

Being cautious and kind will not save you. You can do everything right and still be sued, because a potential plaintiff doesn't have to foot the bill for the lawsuit. And everyone runs out of luck, eventually.

An American has a one-in-five chance of being sued this year. An American business owner has a one-in-three chance of being sued this year.

Can you afford to become a lawsuit's victim?

The  
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