



FLB Consulting Services, LLC

The Perils of Asset Protection with LPs and LLCs

In recent years, it has become common place for high net worth individuals to utilize the structure of a Limited Partnership or Limited Liability Company to shield personal assets from creditors. While creating a corporate structure to hold assets is a useful and valid practice, it should not be viewed as complete protection from all ensuing claims.

The legal doctrine of “Reverse Piercing the Corporate Veil” which seeks to attach the liabilities of an individual shareholder to the corporation can be a potent threat to this structure. To illustrate this concept:

George and Martha decide to create a Limited Partnership to hold all of their family assets. Several years later George is involved in a fatal automobile accident and is sued by the family of the deceased. George and Martha think they are shielded from liability. Through the doctrine of reverse piercing, the family of the deceased has the potential to collect on their judgment against George and Martha’s Limited Partnership.

Real world examples of reverse piercing are certainly much more complex. Nevertheless, the purpose is simple, creditors attempt to prove the LP or LLC is simply an alter ego of its owners in order to attach its assets. A person cannot shelter assets in an LP or LLC simply to avoid liability from judgements.

Proper record keeping is essential. The absence of corporate records, payment of personal obligations from LLC accounts, commingling of assets, failure to observe corporate formalities and shareholder control will all be considered by the Court to determine if the LP or LLC is a valid business entity or simply an alter ego of its owners.

One solution to this dilemma is to have ownership of the LP or LLC shares vested to a separate entity. Ideally, this entity is created in a jurisdiction with strong asset protection laws and is not managed by the owners.

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