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ATTORNEYS AND COUNSELORS AT LAW

**IIR 16<sup>th</sup> Annual  
Family Office Forum**



*Asset Protection:  
Preserving your Wealth for  
Generations to Come  
Through Innovative  
Structuring Strategies*

Thomas J. Handler, J.D., P.C.

**June 8-10, 2009**

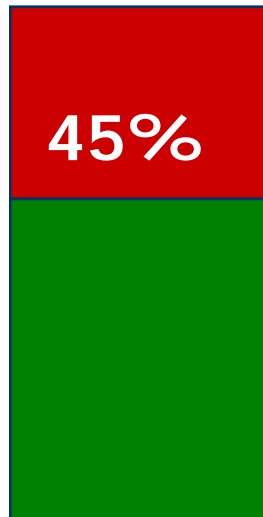


## Growth of Asset Preservation Planning

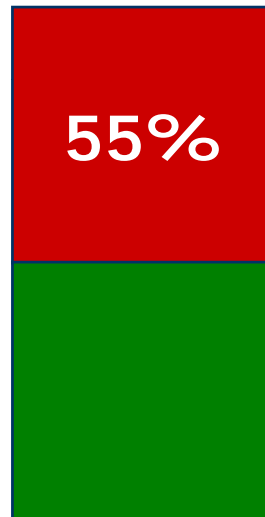
- *Legitimate Component of Business Planning*
- *Increasing Awareness by Practitioners in Tax, Financial & Estate Planning Engagements*
- *Explosion of Litigation*
- *Growth in Spheres and Magnitude of Liability*
- *Proliferation of Wealth*
- *Aggressiveness of Government Agencies*



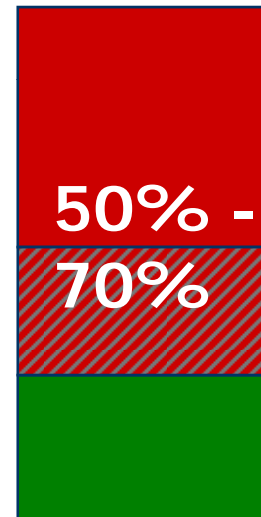
## What is your exposure to LOSS?



**Income Taxes**



**Estate Taxes**



**Divorce &  
Child Support**



**Lawsuits,  
Injuries,  
Bankruptcies,  
Class Actions**



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# Personal Asset Protection Optimization

The four principal components include:

1. Risk Management Practices
2. Insurance Coverage
3. Exempt Asset Planning
4. Protective Legal Structures



# Personal Asset Protection Optimization

## Planning Step 3

*Exempt Asset Planning: Identify Exempt Assets and Maximize Those Assets: Your State/Country*

- Homestead Exemption
- Tenancy by the Entirety
- Qualified/Retirement Plans
- Life Insurance
- Annuities



# Personal Asset Protection Optimization

## Planning Step 4

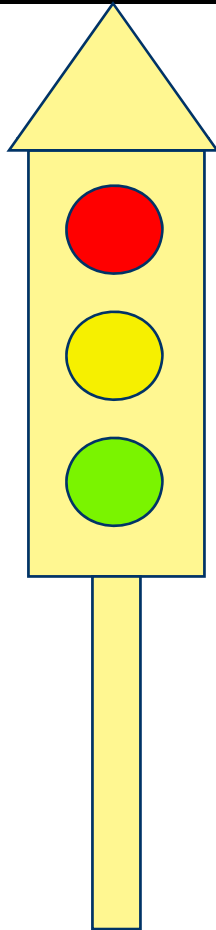
### *Use of Legal Structures: Transfer Remaining Assets to Asset Protection Vehicles:*

- Business Entities – FLP/FLLC
- Asset Protection Trusts – Third Party, Self-Settled, Domestic, International
- Other People/Trusts, but subject to suits and claims of their creditors
- Equity Stripping
- Corporations, LLCs, etc.



TM

# The Asset Protection Profile



## Red Zone:

Assets are 100% at risk and basically reachable

## Yellow Zone:

Assets are protected to a degree; creditors cannot force liquidation

## Green Zone:

Assets are significantly protected and very difficult to reach

# JOHN & JANE SMITH

## Asset Protection Profile (Before Planning)



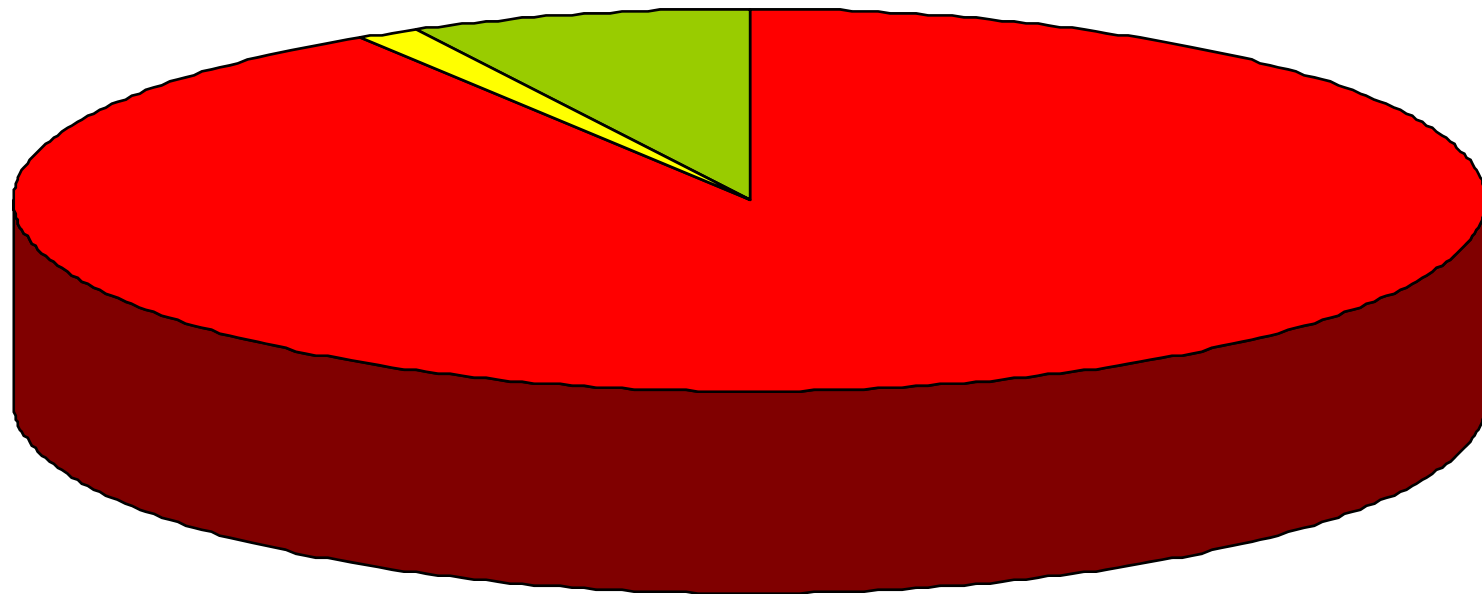
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ASSETS						
Description	John	Jane	Tenancy by the Entirety	Exempt by Law	Subtotal	TOTAL
<b>Cash, Bank Accounts and Equivalents</b>						
Cash	1,100,000				1,100,000	
Accounts Receivable	1,500,000				1,500,000	
<b>Stock, Bonds, and other Marketable Securities</b>						
Bonds and Annuities	278,000				278,000	
Equity in Hedge Accounts	375,000				375,000	
Stocks including Community First Bankshares	5,300,000				5,300,000	
<b>Non-Marketable Securities</b>						
ABC, Inc.	4,000,000				4,000,000	
Maple Grain Co.	2,350,000				2,350,000	
ABC Grain and Feed	1,100,000				1,100,000	
25% interest in Oakville Cotton	789,000				789,000	
37.5% interest in Yorkville Cotton	274,000				274,000	
<b>Life Insurance- All Whole Life Policies</b>						
CSV American General (2nd to die)				158,598	158,598	
CSV Sun Life (2nd to die)				372,141	372,141	
CSV Manulife (2nd to die)				94,581	94,581	
CSV New England Life (2nd to die)				102,834	102,834	
CSV New England Life (John's Life)				185,466	185,466	
CSV New England Life (John's life)				271,191	271,191	
CSV The Principal (John's life)				291,947	291,947	
<b>Real Property</b>						
3939 acres of Farmland	2,550,000	2,550,000	386,000	7,500	5,100,000	
Nashville House					393,500	
Sheridan House	100,000				100,000	
520 acre Texas farm	169,000	169,000			1,900,000	
33% interest in ABC Co. farmland	1,900,000				44,000	
Keller duplex	44,000				10,000	
Lane Log Cabin	10,000				8,000	
Dryer Lot	8,000					
<b>Retirement Plans</b>						
401(k)				387,000	387,000	
<b>All Other Property</b>						
Household Furnishings & Antiques						
Art Collection						
<b>Other Assets &amp; Machinery</b>						
Inventory of Grain	421,000				421,000	
Supplies, part, tools	400,000				400,000	
Three Cotton Gins	800,000				800,000	
Non-appraisable vehicles	669,000				669,000	
<b>TOTAL ASSETS</b>	<b>24,137,000</b>	<b>2,719,000</b>	<b>386,000</b>	<b>1,871,258</b>	<b>29,113,258</b>	<b>\$ 29,113,258</b>
<b>LIABILITIES</b>						
Description	John	Jane	Tenancy by the Entirety	Exempt by Law	Subtotal	TOTAL
<b>Unsecured Short-Term Debt</b>						
Deferred Payables	872,000				872,000	
Family Debt	465,000				465,000	
Accrued Interest	52,000				52,000	
Accounts payable-Trade	156,000				156,000	
Income Tax payable	150,000				150,000	
					0	
					0	
<b>Secured Long-Term Debt</b>						
SBA Farm Loan on 496 acres	121,000	121,000			242,000	
Farm Credit Loan on 649 acres	9,000	9,000			18,000	
First Citizen National Bank Loan on 2411 acres	1,210,000	690,000			1,900,000	
					0	
<b>TOTAL LIABILITIES</b>	<b>3,035,000</b>	<b>820,000</b>			<b>3,855,000</b>	<b>\$ 3,855,000</b>
					0	
					0	
<b>NET WORTH</b>	<b>21,102,000</b>	<b>1,899,000</b>	<b>386,000</b>	<b>1,871,258</b>	<b>25,258,258</b>	<b>\$ 25,258,258</b>
<b>Key:</b>						
Assets are reachable	91%					
Assets are difficult to reach	2%					
Assets are generally not reachable	7%					
	100%					



## John & Jane Smith Asset Protection Profile – Before Planning

■ 1 Reachable      ■ 2 Difficult to Reach      ■ 3 Generally Non-Reachable



# JOHN & JANE SMITH

## Asset Protection Profile (After Planning)



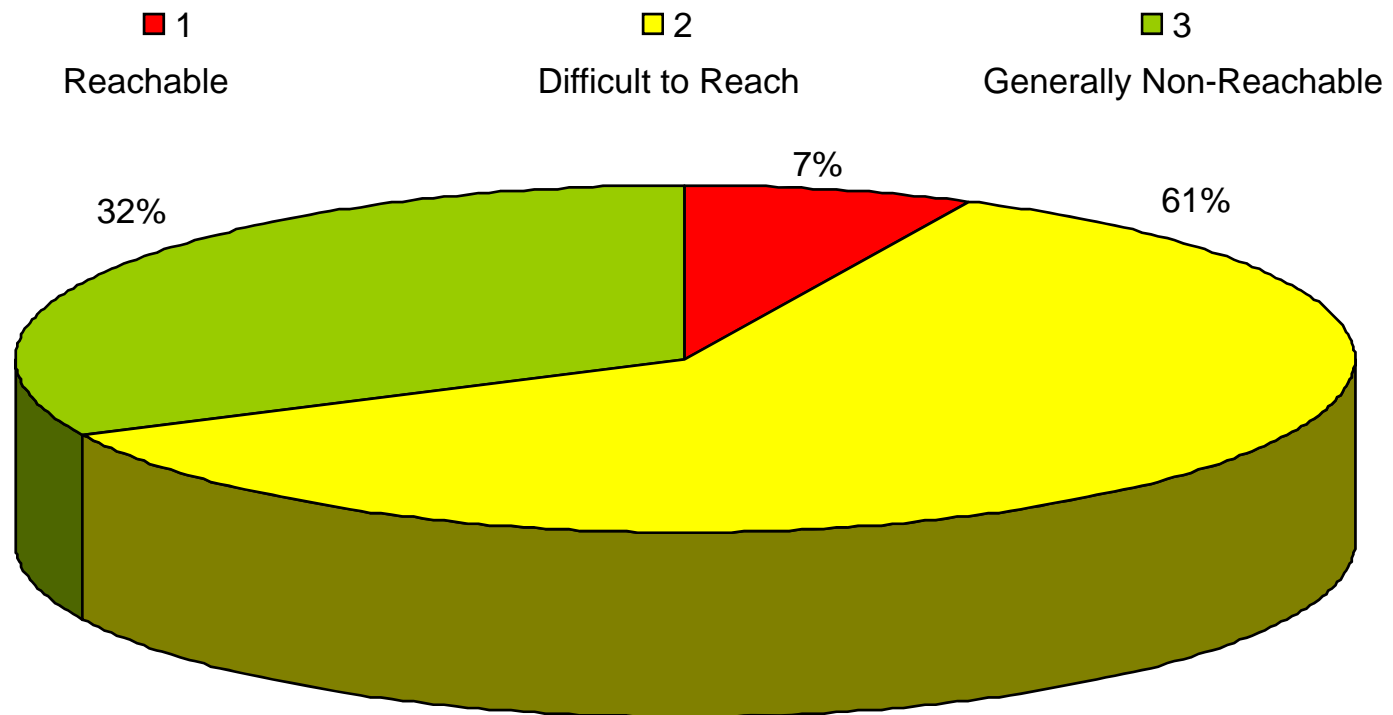
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ASSETS											
Description	John	Jane	Tenancy by the Entirety	FLLC	Exempt by Law	DAPT	OAPT	CRT	Children/Minors' Trusts	Subtotal	TOTAL
<b>Cash, Bank Accounts and Equivalents</b>											
Cash	100,000						1,000,000			1,100,000	
Accounts Receivable	1,500,000									1,500,000	
<b>Stock, Bonds, and other Marketable Securities</b>											
Bonds and Annuities				278,000						278,000	
Equity in Hedge Accounts				375,000						375,000	
Stocks including Community First Bankshares								5,300,000		5,300,000	
<b>Non-Marketable Securities</b>											
ABC Co.	4,000,000									4,000,000	
Maple Grain Co.				2,350,000						2,350,000	
ABC Grain and Feed				1,100,000						1,100,000	
25% interest in Oakville Cotton				789,000						789,000	
37.5% interest in Yorkville Cotton				274,000						274,000	
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<b>Real Property</b>											
13939 acres of Farmland				5,100,000	7,500					5,107,500	
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Sheridan House				100,000						100,000	
520 acre Texas farm				338,000						338,000	
33% interest in ABC Co. farmland				1,900,000						1,900,000	
Keller duplex				44,000						44,000	
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Dryer Lot				8,000						8,000	
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Art Collection											
<b>Other Assets &amp; Machinery</b>											
Inventory of Grain				421,000						421,000	
Supplies, part, tools				400,000						400,000	
Three Cotton Gins				800,000						800,000	
Non-appraisable vehicles				669,000						669,000	
<b>TOTAL ASSETS</b>	<b>5,600,000</b>	<b>0</b>	<b>386,000</b>	<b>14,956,000</b>	<b>1,871,258</b>		<b>1,000,000</b>	<b>5,300,000</b>		<b>29,113,258</b>	<b>\$ 29,113,258</b>
LIABILITIES											
Description	John	Jane	Tenancy by the Entirety	FLLC	Exempt by Law	DAPT	OAPT	CRT	Minor's Trust	Subtotal	TOTAL
<b>Unsecured Short-Term Debt</b>											
Deferred Payables	872,000									872,000	
Family Debt	465,000									465,000	
Accrued Interest	52,000									52,000	
Accounts payable-Trade	156,000									156,000	
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										0	
<b>TOTAL LIABILITIES</b>	<b>3,035,000</b>	<b>820,000</b>								<b>3,855,000</b>	<b>\$ 3,855,000</b>
										0	
										0	
<b>NET WORTH</b>	<b>2,565,000</b>	<b>(820,000)</b>	<b>386,000</b>	<b>14,956,000</b>	<b>1,871,258</b>		<b>1,000,000</b>	<b>5,300,000</b>		<b>25,258,258</b>	<b>\$ 25,258,258</b>
<b>Key:</b>											
Assets are reachable	<b>7%</b>										
Assets are difficult to reach	<b>61%</b>										
Assets are generally not reachable	<b>32%</b>										
	<b>100%</b>										

Confidential - Attorney/Client Privileged Communication



## John & Jane Smith Asset Protection Profile – After Planning





## Self-Settled Spendthrift Trust

● *Public Policy in U.S.*

*vs.*

● *Laws in Foreign Jurisdictions*

*vs.*

● *Federal Bankruptcy Code*

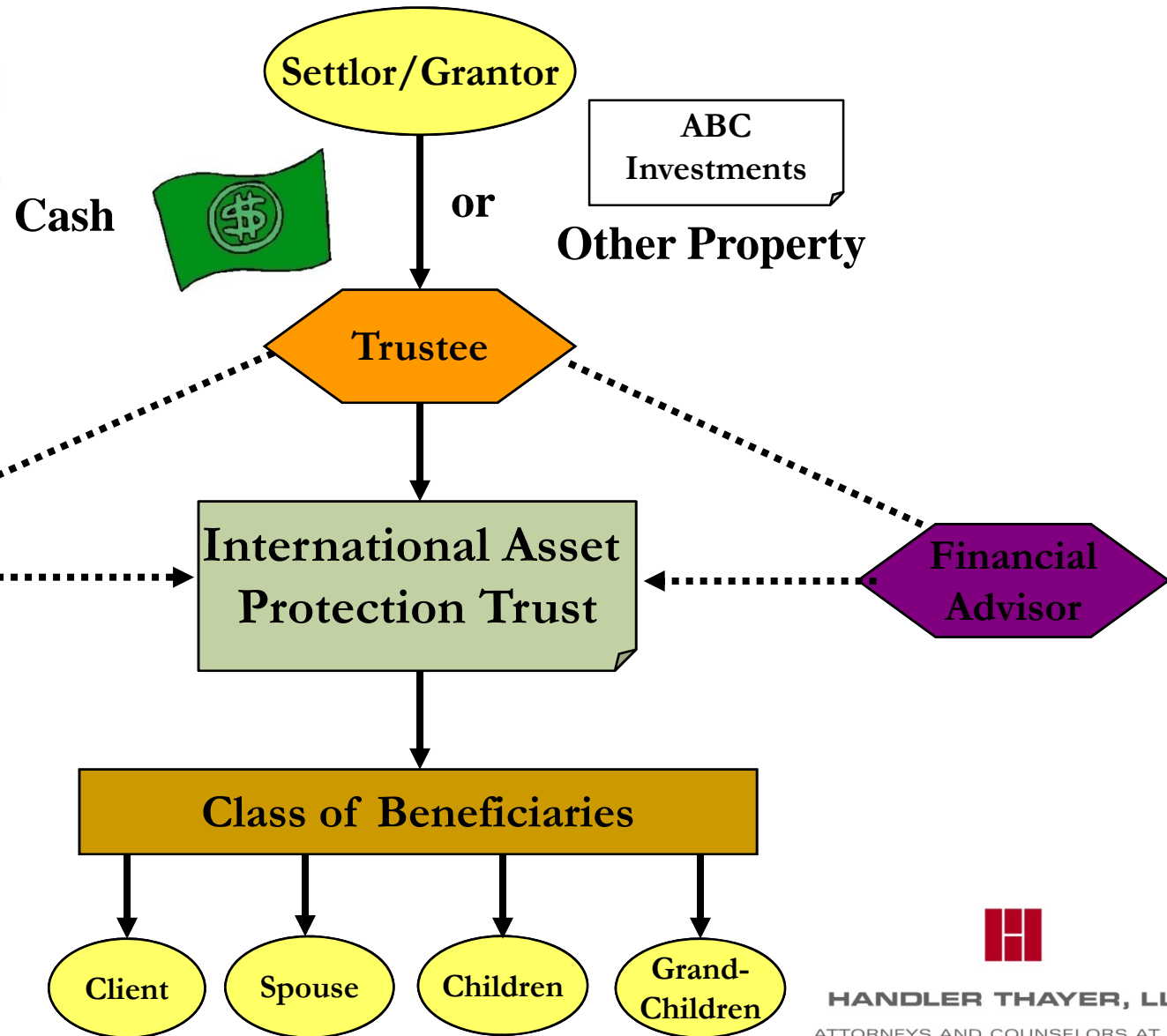
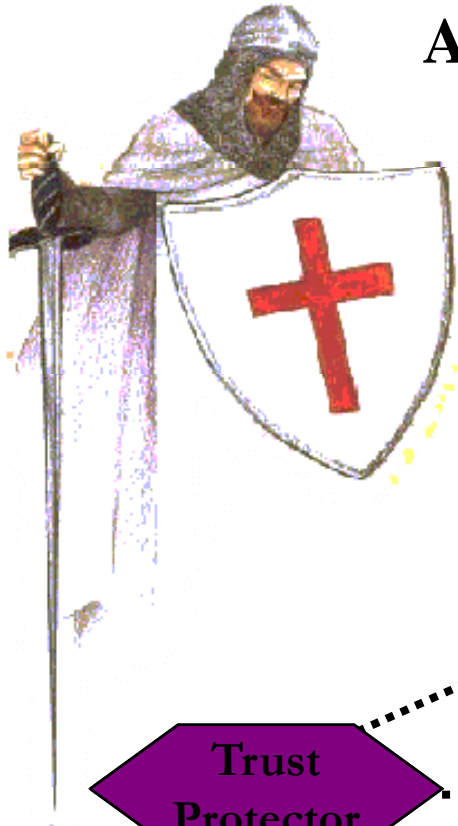


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# **International Legislation Designed to Frustrate Spurious Lawsuits**

- **Do not Recognize Foreign Judgments**
- **Do not Recognize U.S. Attorneys**
- **Do not Allow Contingency Fees**
- **Shorter Statute of Limitations**
- **Must Post a Bond**
- **Loser Pays Legal Fees**
- **Allows Trust to Flee Jurisdiction**

# Anatomy of an International Asset Protection Trust



## Offshore Asset Protection Trusts - Comparison of Jurisdictions

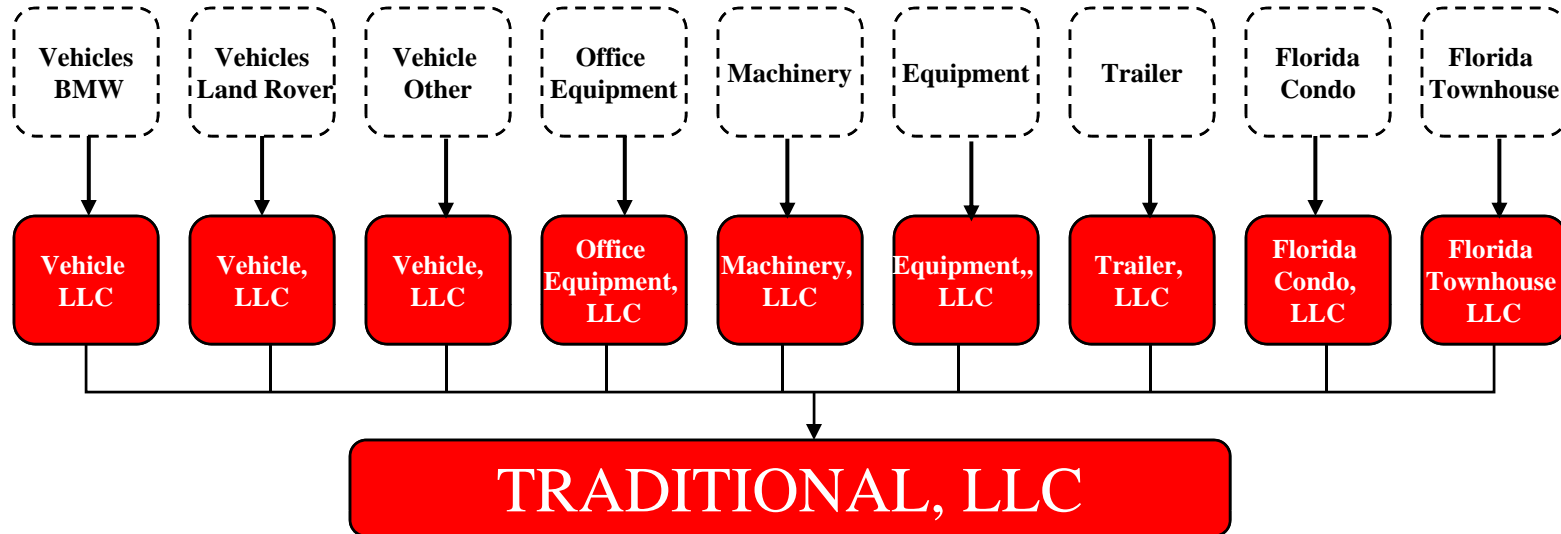
Country	1	2	3	4	5	6	7	8	9
	Statutory certainty regarding non-recognition of foreign judgments	"Beyond reasonable doubt" standard of proof required in establishing fraudulent intent	SOL for challenging an APT	Statutory certainty that settlor can be a beneficiary	Statutory certainty that settlor can retain some degree of control	Burden of proving fraudulent intent is always on creditor	Posting of bond required before litigation can commence	Statutory certainty that trust remains valid if fraudulent transfers determined to have taken place	Presumption against fraudulent intent if transferor remains solvent following transfers
Bahamas			X	X	X	X		X	
Belize	X			X	X				
Bermuda			X			X		X	
Cayman			X			X		X	
Cook Islands	X	X	X	X	X	X		X	X
Cyprus			X	X		X			
Gibraltar			X					X	X
Labuan	X	X	X	X	X	X		X	X
Mauritius		X	X	X		X			
<b>Nevis</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
St. Vincent and the Grenadines	X	X	X	X	X	X		X	X
Seychelles		X	X	X		X			
Turks & Caicos			X			X			X
** Nonspecific treatment in the law.									
Alaska			X	X	X			X	
Colorado			X	X					
Delaware			X	X	X			X	
Nevada			X	X	X				

# Series LLC Asset Protection Planning



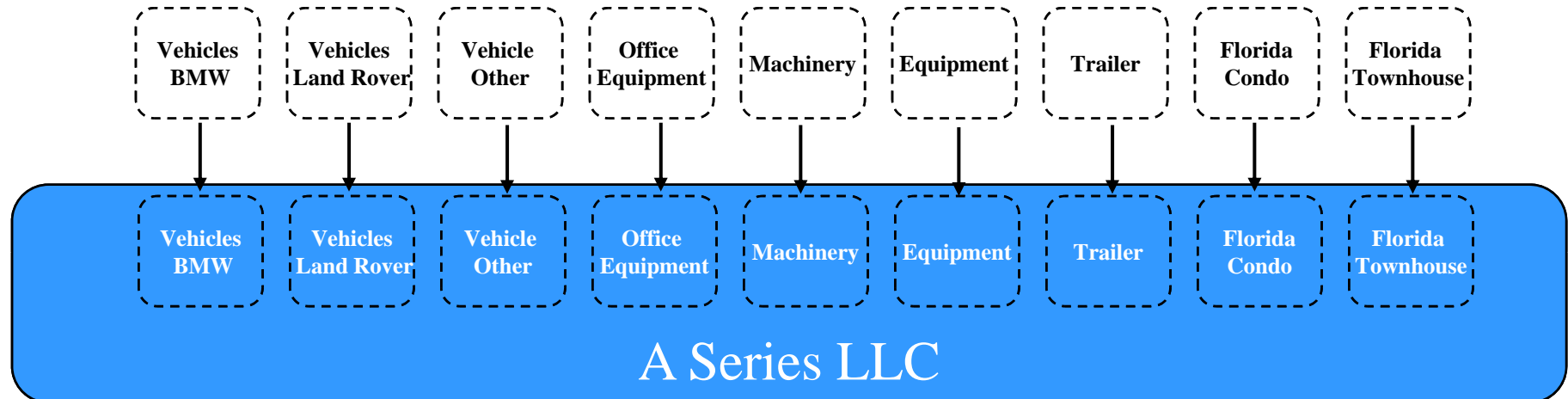
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## Parallel Single-Member LLCs:



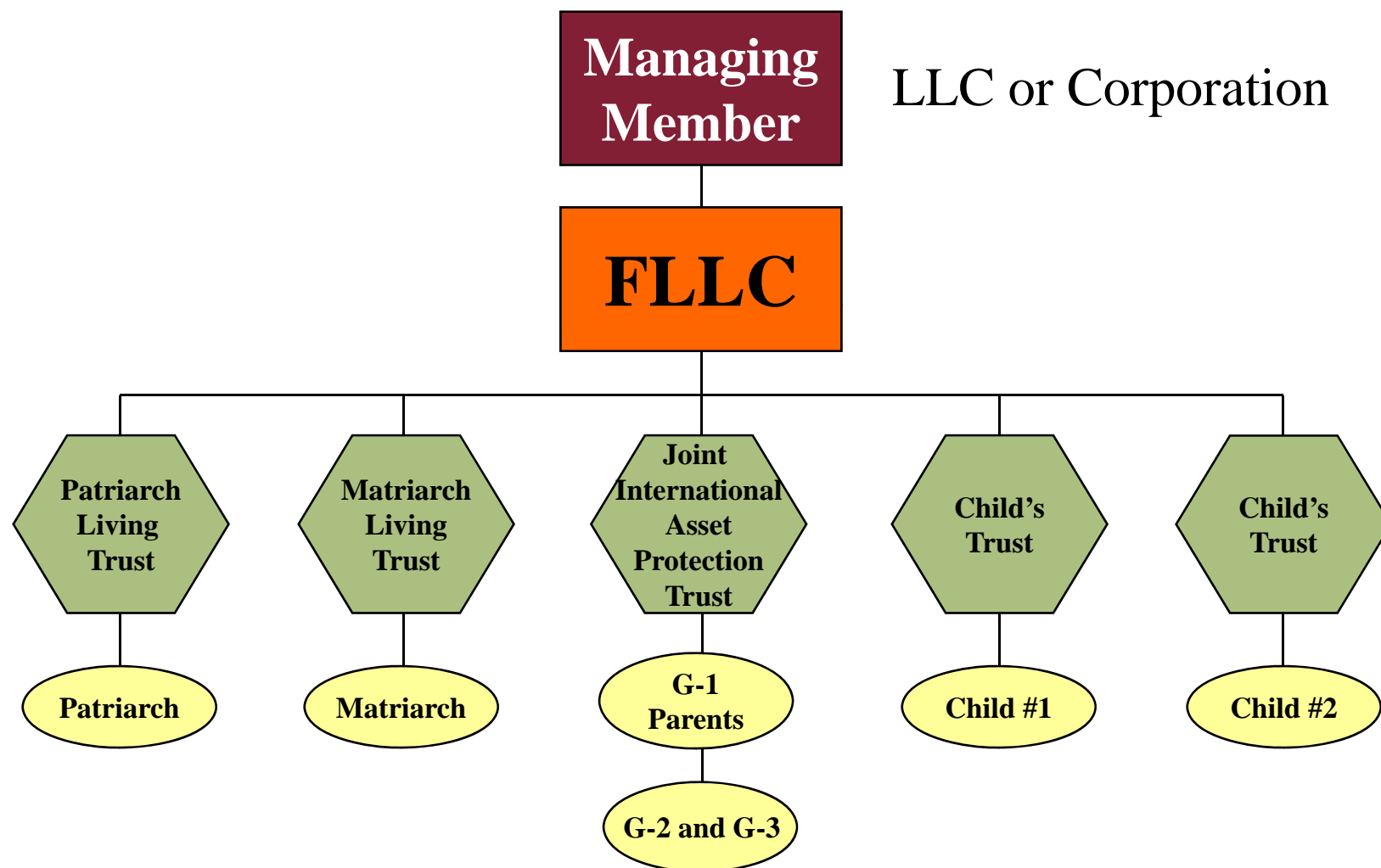
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## Delaware Series LLC:





# Advanced FLLC/FLP Structure





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