

Asset Protection Essentials for the Florida Small Business Owner



Presented By:

Rarick & Beskin, P.A.
ATTORNEYS AT LAW

Webinar Objective

Broad Overview of Basic Asset Protection strategies

Future webinars:

- Asset Protection Strategies for the Physician & High Risk Professional
- Maximizing Basis Step Up for Spouses
- Your Feedback is welcome
- Call Phil or Jay at (305) 556-5209



About Us

Phil Rarick

Jay Beskin

Locations:

Miami-Dade: 6500 Cowpen Rd, Suite 204, Miami Lakes

Broward: 3109 Stirling Rd, Suite 101, Ft. Lauderdale

Other Southeast Florida cities served: Miami, Hollywood, Doral, Miramar, Hialeah, Pembroke Pines, Weston

Focus of practice



Introduction

Integrated Estate & Asset Protection Planning

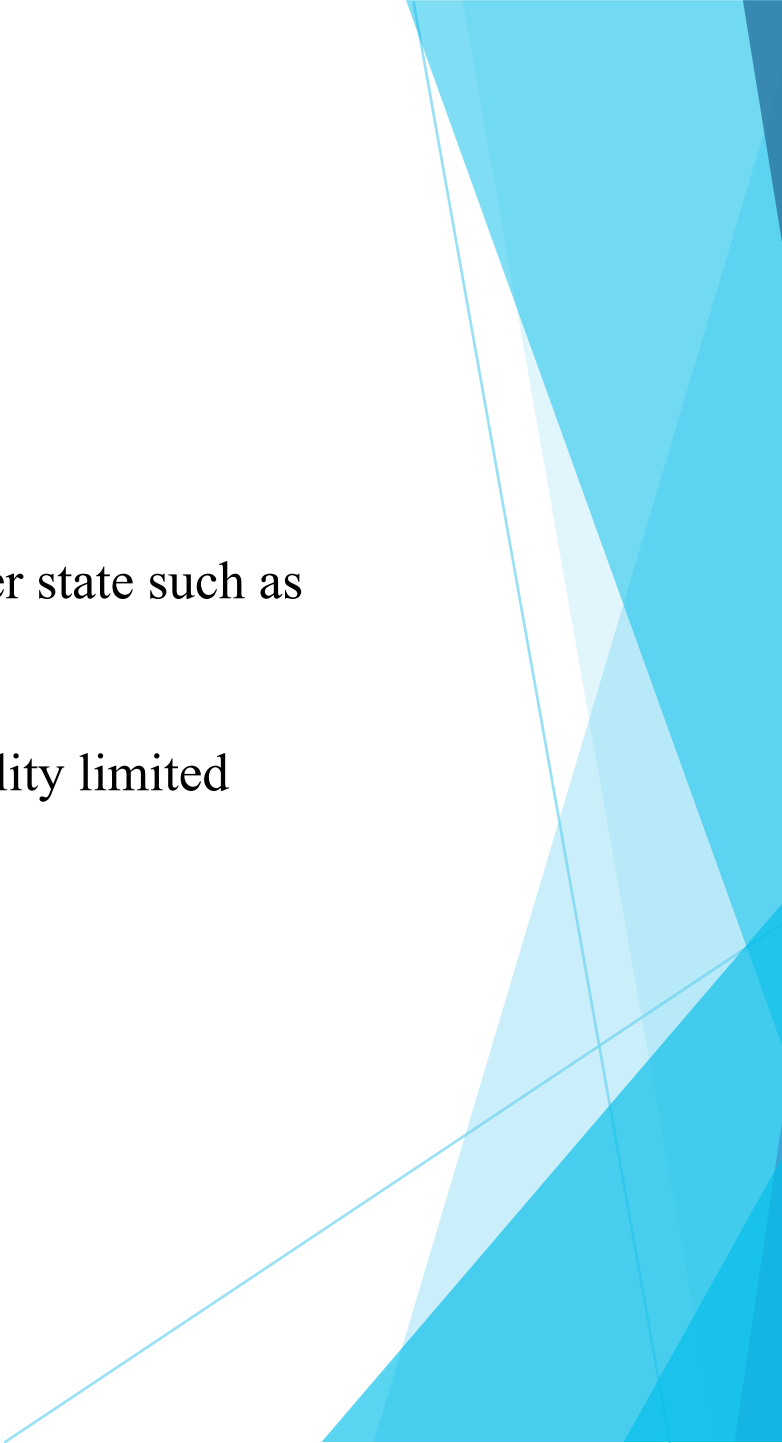
- **Definition**
- **Why important to integrate Estate Plan with Asset Protection Plan**



The Asset Protection Ladder: Not all Entities are Equal



The Asset Protection Ladder

1. Off Shore Planning:
 2. Domestic Asset Protection Trust: Nevada (or other top tier state such as Delaware, South Dakota, Alaska)
 3. LLC: Limited Liability Company or LLLP: limited liability limited partnership
 4. Corporation (Properly maintained)
 5. Tenancy by Entirety (only for Husband and Wife)
- 

SPECIAL NOTES#

1. Timing is critical
2. Not based upon concealment#

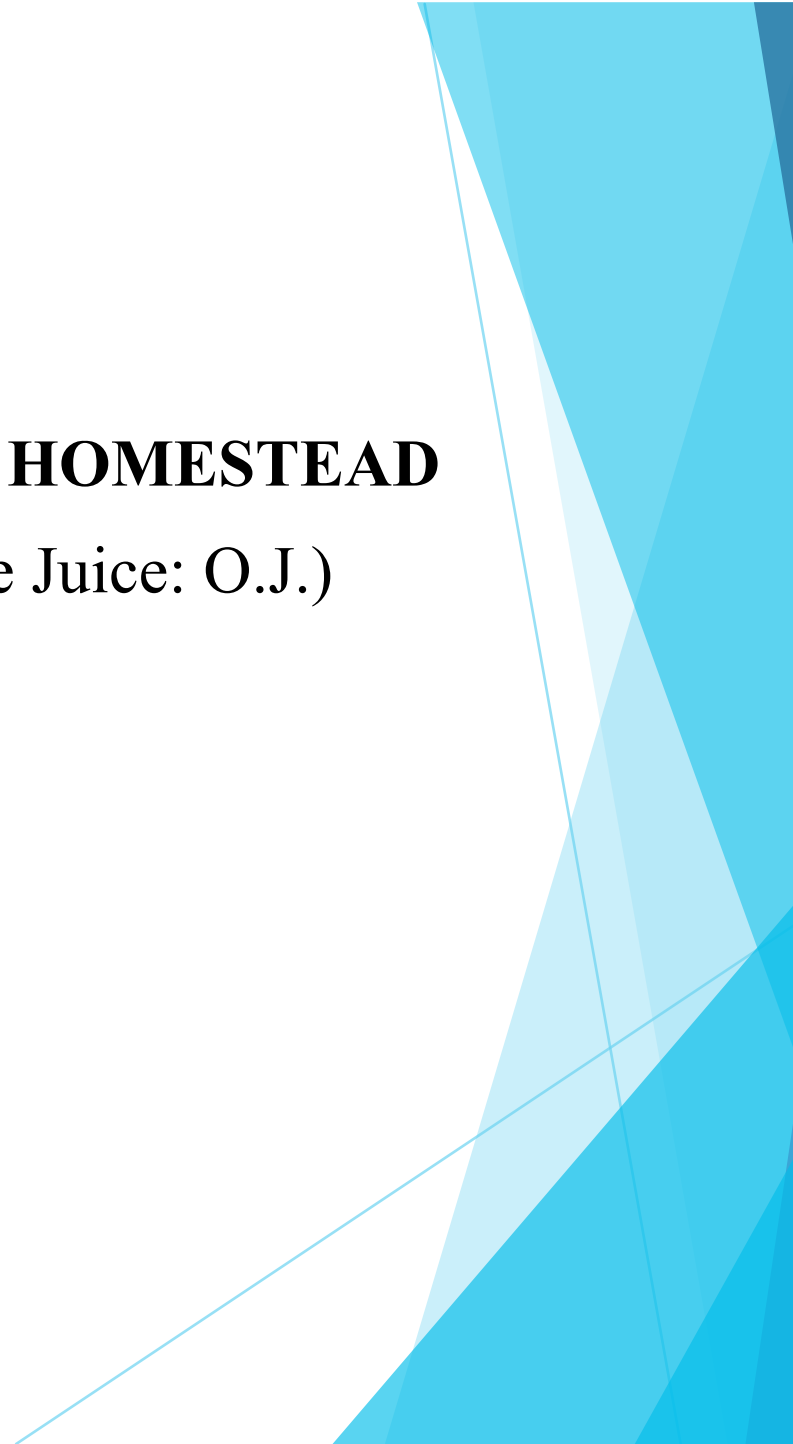


On Shore vs. Off-shore Asset Protection Planning

1. On-Shore vs. Off-Shore Bias
2. Our approach
 - Not dogmatic
 - Practical and budget sensitive
 - Multiple options/strategies to meet client's objectives and budget
3. Watch out:
 - National Asset Protection "Experts" selling "Bullet proof" plans

Florida Law Protections

- Best and Biggest Florida Protection: **FLORIDA HOMESTEAD**
- Good reason to move to Florida (Remember the Juice: O.J.)



Take Away Points for Florida Homestead

Never transfer homestead to corporation, LLC or any entity other than a revocable trust

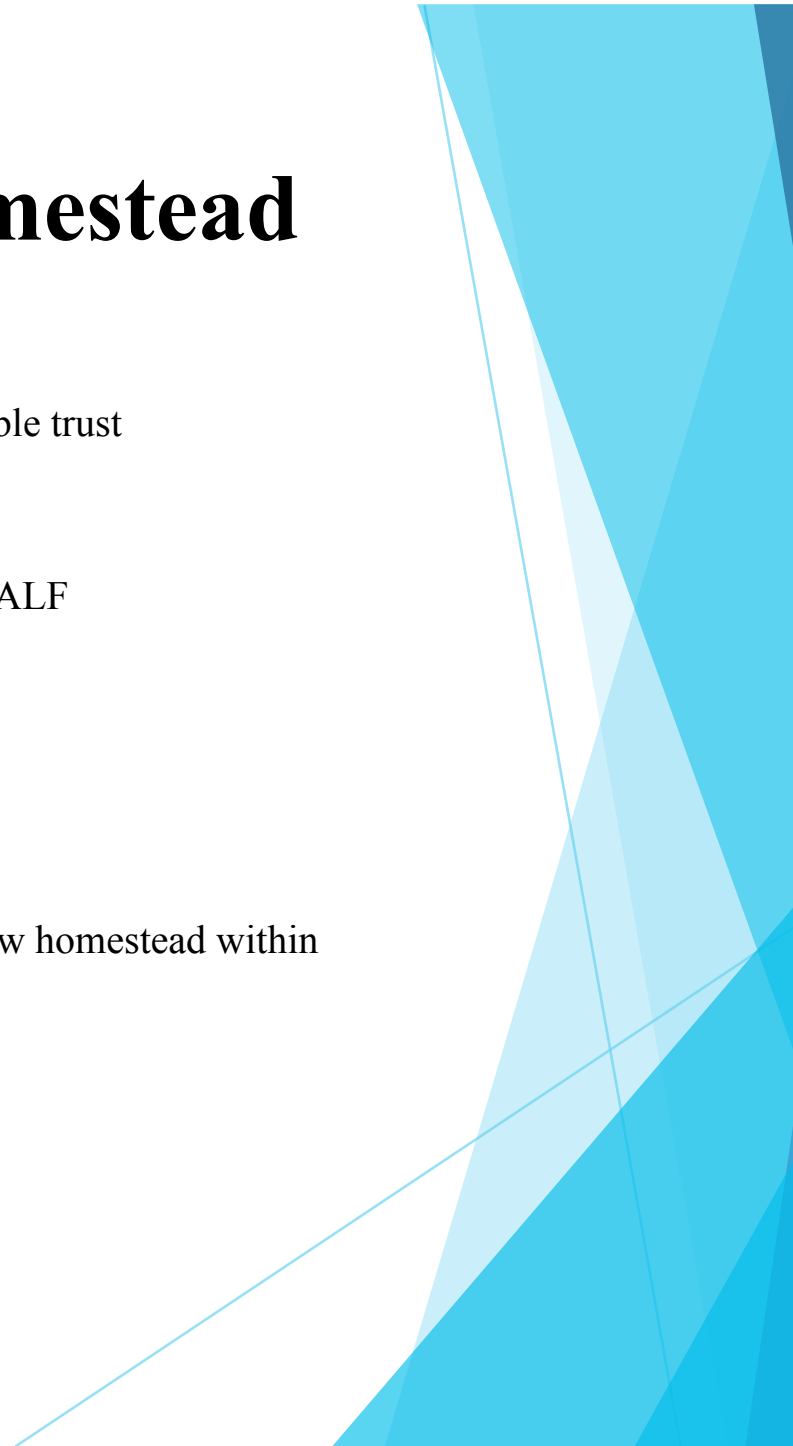
If you rent it & don't occupy, you lose it.

- Caution for Medicaid Recipient Clients: Don't ever rent if you must go to ALF
- You can only have one homestead

If you have more than ½ acre in a municipality, only ½ acre is protected

Non-Citizens can rarely qualify for homestead

If you sell your homestead, keep proceeds in separate account and reinvest in new homestead within reasonable time.



Other Florida Law Protections

1. IRA & Qualified Plan Benefits
2. Wage Exemption
3. Wage Accounts - but only for 6 months
4. Life Insurance: both term and cash value
5. Annuities



Tenancy By Entirety for Real Property

1. Vs. Creditor of Only 1 Spouse: Good
2. Vs. Creditor of Both Spouses: Bad



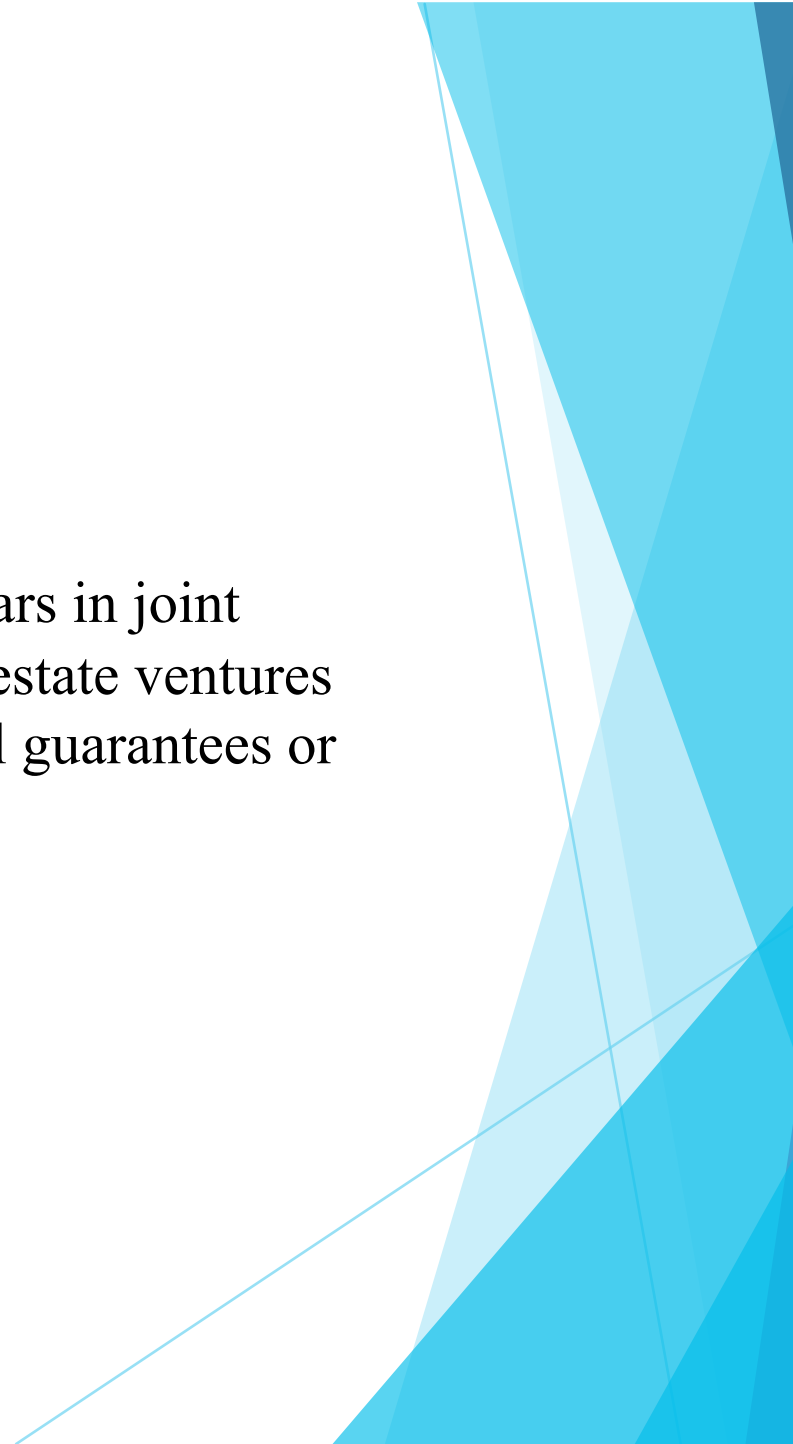
Take Away Points for Tenancy By Entireties - TBE

No Protection for creditor against Husband & Wife

- Query: How many married couples have their cars in joint name? How many doctors have invested in real estate ventures and both doctor and spouse have signed personal guarantees or notes?

No Protection if one spouse dies

Underused and Overused



Take Away Point:

Place large investment accounts in an LLC, not TBE



Using Business Entities for Asset Protection



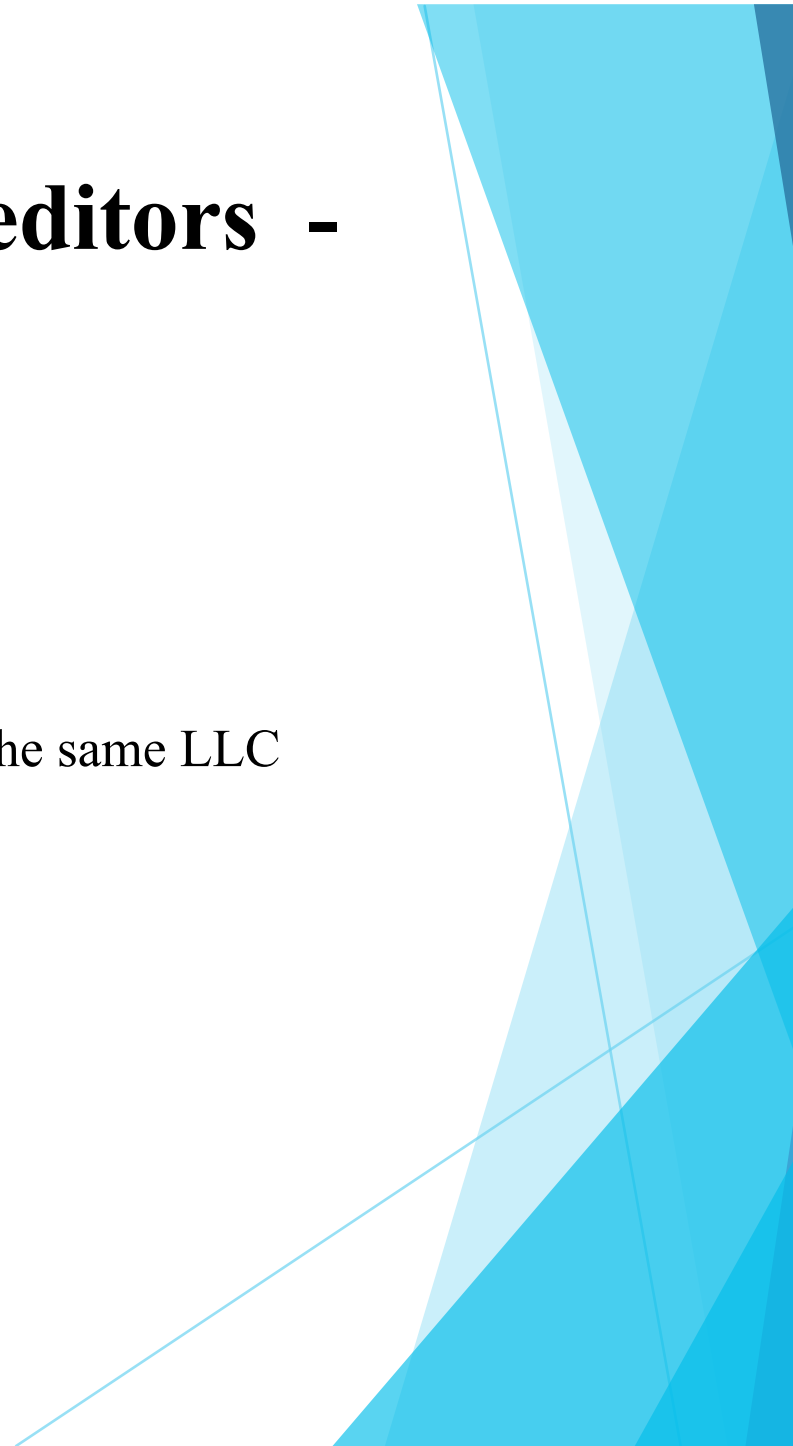
Internal Creditors vs. External Creditors - Watch Out for Both

1. Internal vs. External Creditors

- Internal creditor
- The problem with bundling multiple properties in the same LLC

2. External Creditors

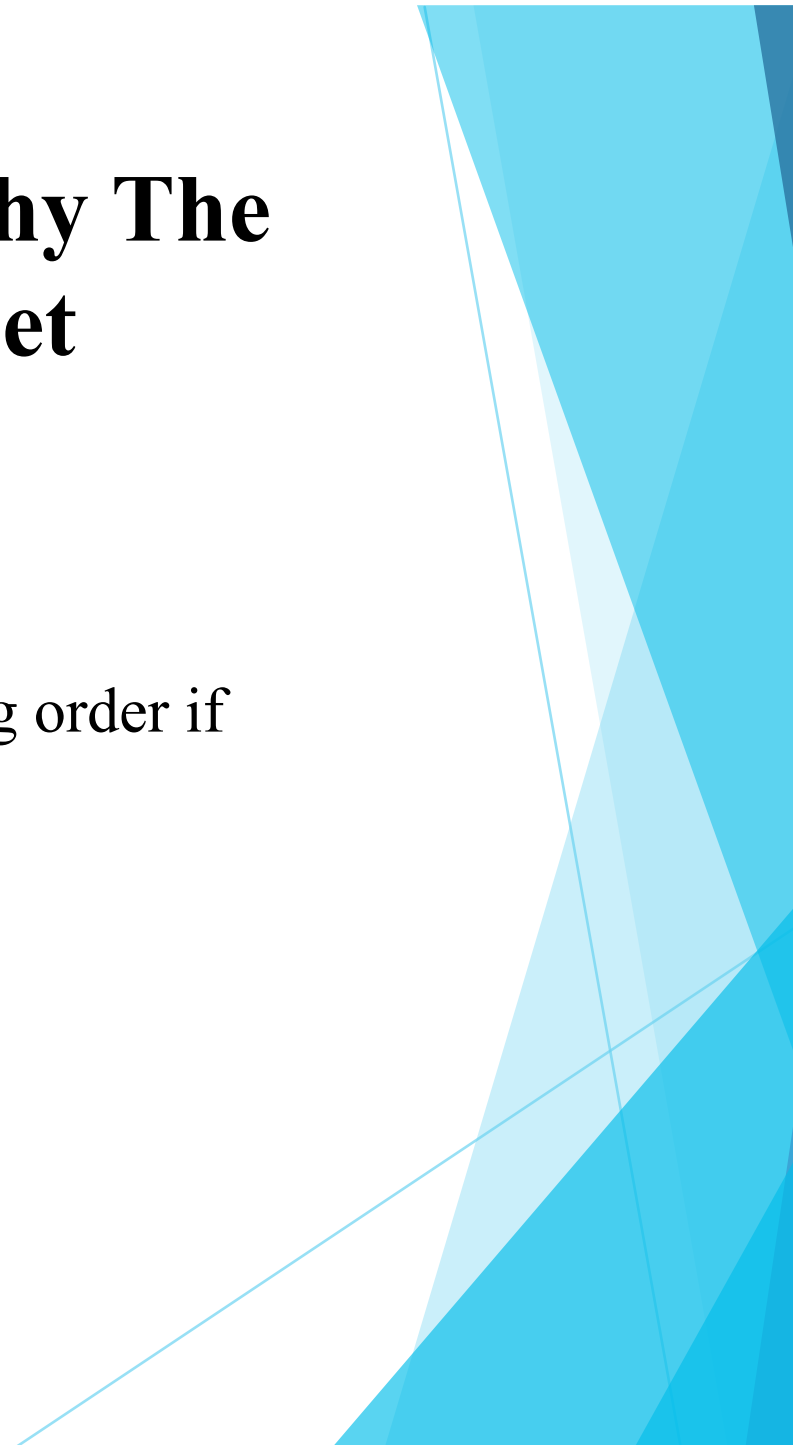
- Auto accident
- Physician Malpractice
- Your friendly Yorkie that bites your neighbor



Florida LLC vs. Corporation: Why The LLC Provides Higher Quality Asset Protection#

1. Exclusive Remedy for Florida LLC is charging order if multi-member

- Note: *Single Member LLC's:*
Charging Order Not exclusive remedy



LC vs. Corporation: Other Benefits of the LC Over the Corporation#

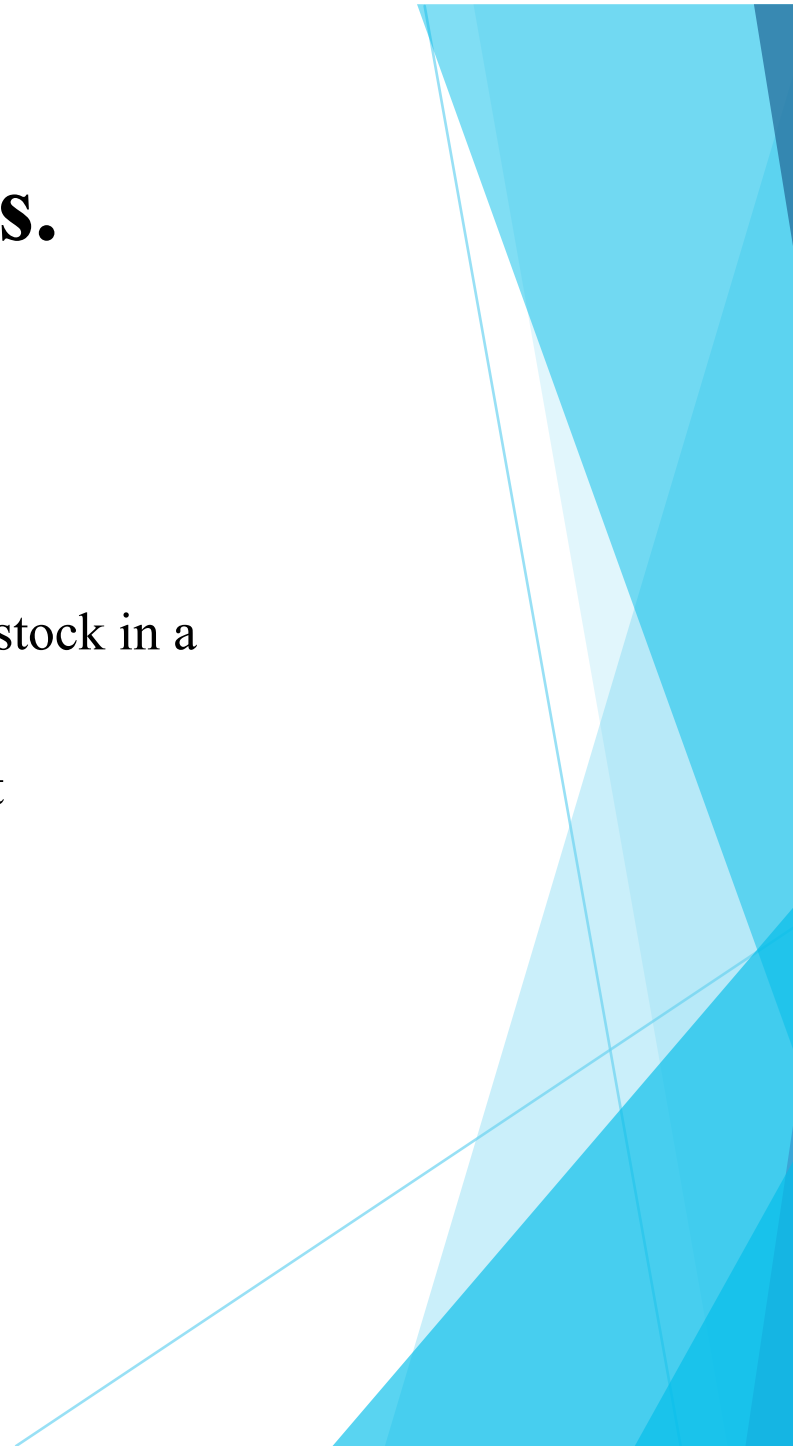
1. Creditor has only rights of an assignee: Entitled to share in profits when distributed.
2. No voice in LLC when distributions are made
3. Distributions are made by Manager of the LLC
4. No ability to change Manager
5. Rev. Ruling 77-137 may require assignee of a partnership to report the income attributable to debtor's partnership interest
6. Tactic: Threaten Creditor with a K-1

Restrictions On Assignability of LLC Interest#

1. Operating Agreement can prevent assignment of LLC interest without consent of all members
2. Even if assignable, assignee can be given no participation rights

Take Away Points: Florida LLC vs. Corporation#

1. No similar Charging Order exclusive protection
2. No similar protection for assignment of a shareholder's stock in a corporation
3. Director liability for unlawful distributions and other act
4. Multiple remedies for creditor against corporation



Florida LLC vs. Delaware LLC#

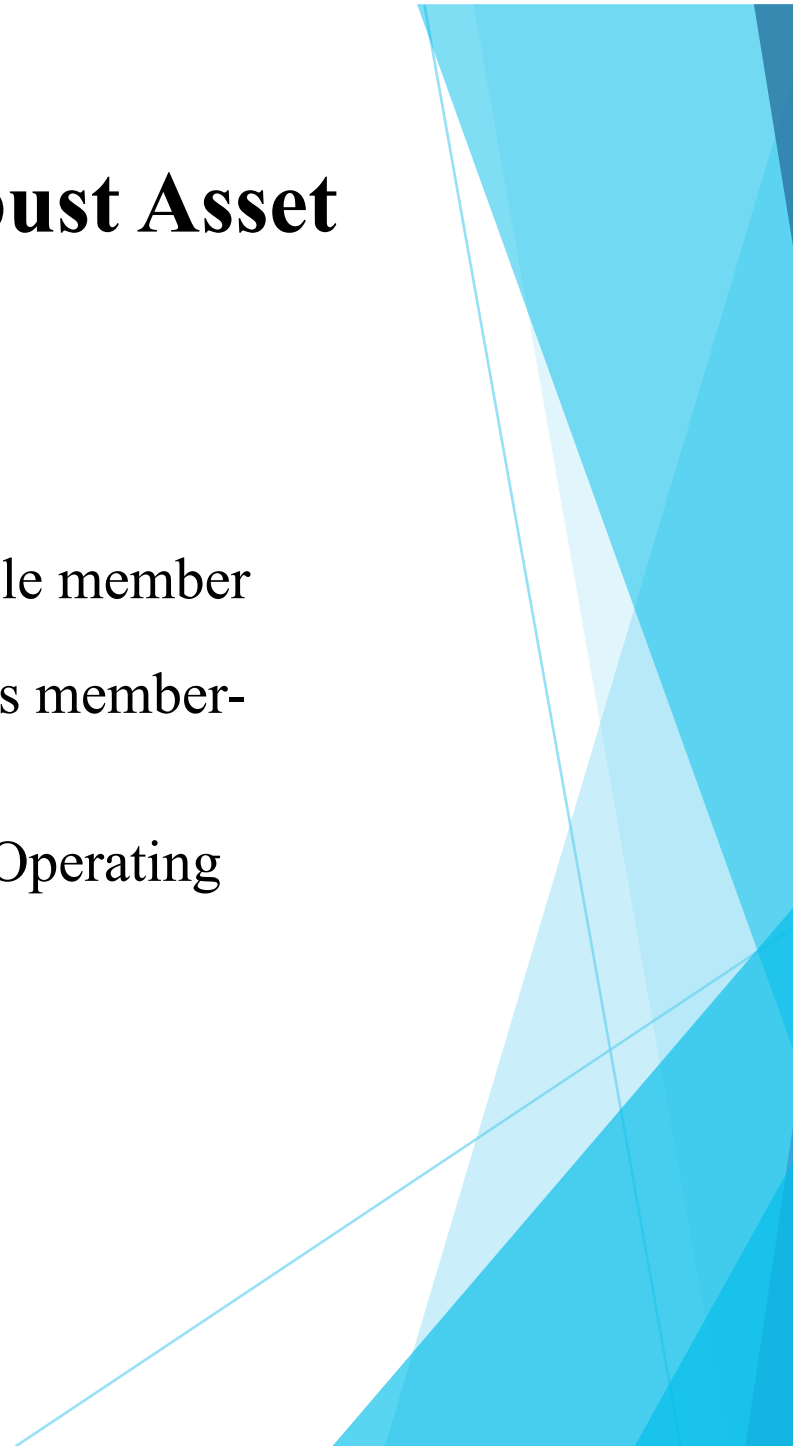
Florida Single Member Problem

Delaware Single Member LLC



Why Every LLC Should Have A Robust Asset Protection Operating Agreement

1. If no operating agreement, may be considered single member
2. Default status: without operating agreement LLC is member-managed
3. Practice Note: Do Not Form LLC without strong Operating Agreement



Domestic Asset Protection Trusts



Florida does not permit self-settled spendthrift trusts#

11 states do; Florida may be 12th

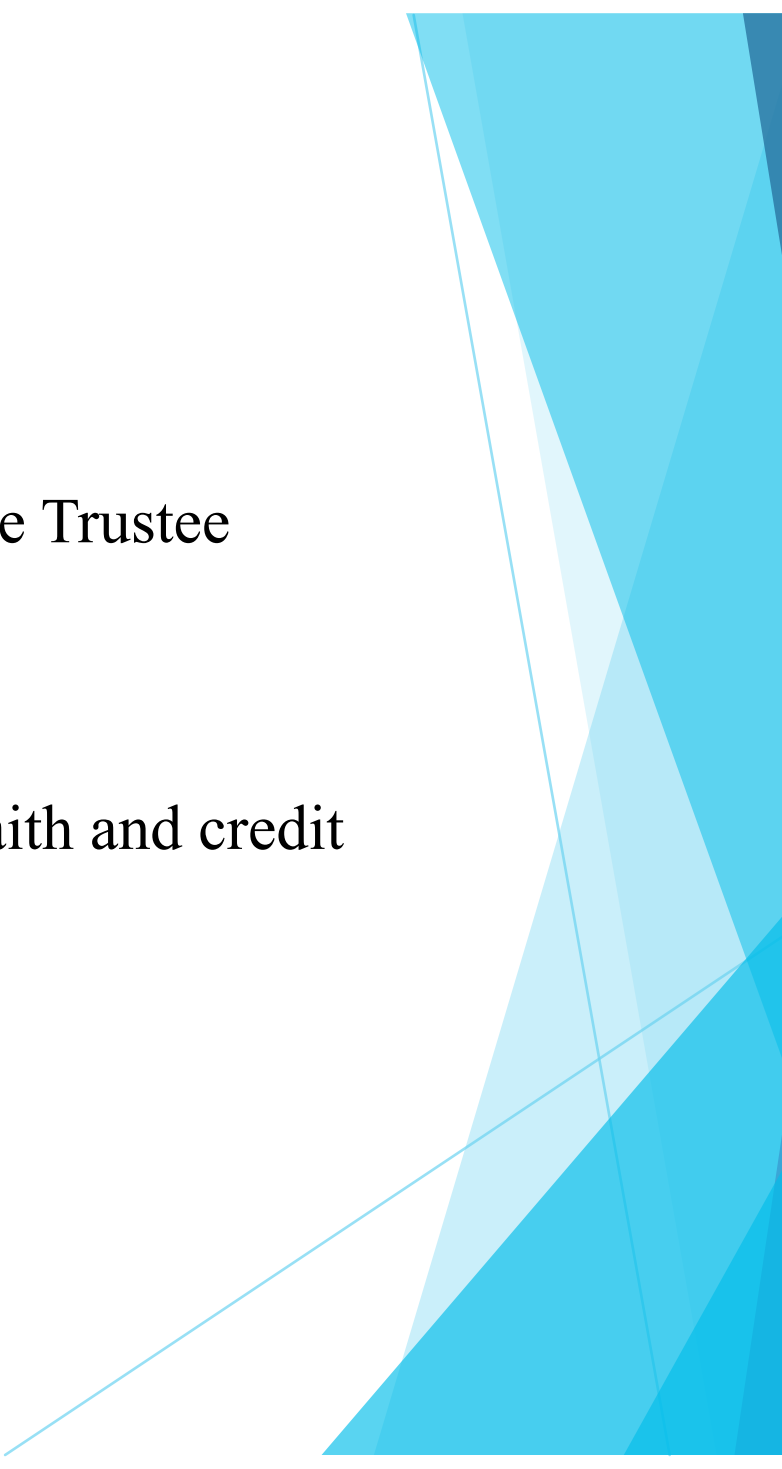
States that do: Alaska, Delaware, Utah, etc.



Advantages of Nevada Domestic Asset Protection Trust (DAPT)

1. Allows self-settled trusts
2. No state income tax
3. 2 year statute of limitations for future creditors
4. 2 year statute of limitations for 6 months from date of discovery for pre-existing creditors
5. No spouse/child support exception for creditors: i.e. : ex-spouses
6. No pre-existing torts exception creditors


Limitations of DAPT

1. Need Corporate Trustee and Must Pay corporate Trustee
 2. Control issue: Settlor cannot be Trustee
 3. Conflict of laws for Florida domiciliary: Full faith and credit
- 

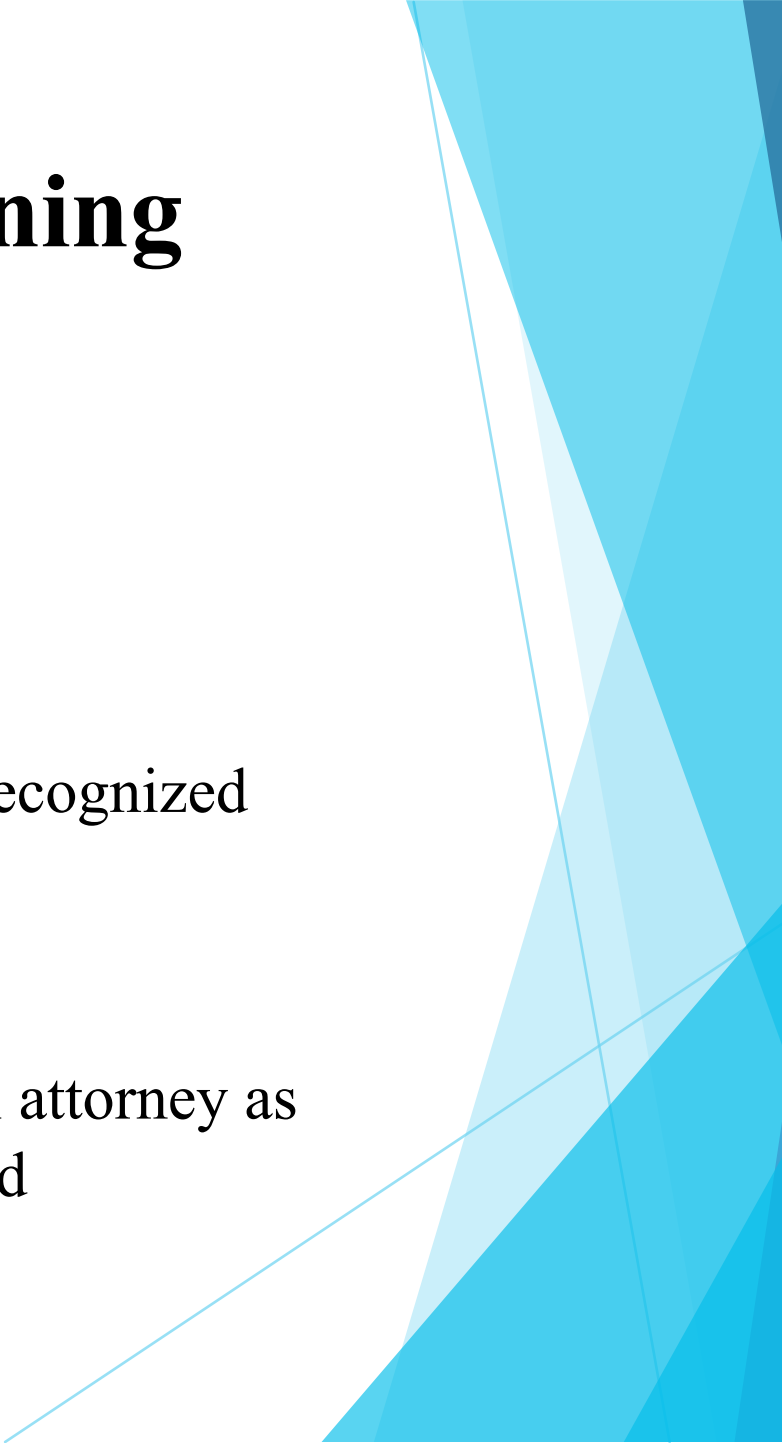
Off-Shore Planning

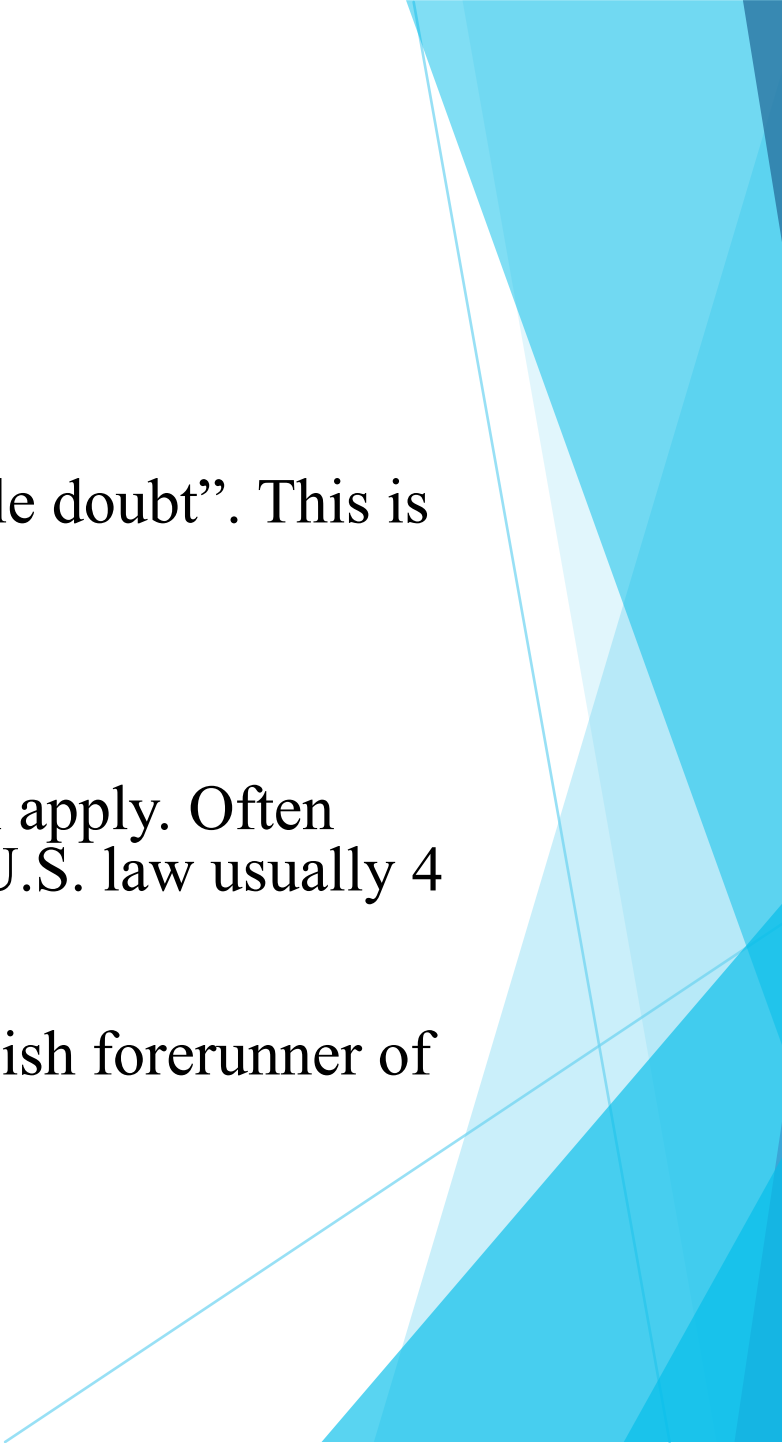


Off-Shore Planning Cautions

1. Not just for very wealthy
 2. Quality off-shore jurisdictions
 3. Predictability of off-shore jurisdictions vs. U.S. Court system and the “result oriented” judge Not for avoidance of income taxes
 4. Not a substitute for avoiding filing bankruptcy
- 

Why Consider Off-Shore Planning

1. Completely change rules of the game
 2. “Self-settled trust” rule is not applicable
 3. No full, faith and credit: U.S. judgments not recognized
 4. Need trial de novo
 5. No contingent fees: Creditor must pay the local attorney as litigation proceeds; substantial retainer required
- 

- 
6. “Loser pays” is usually applicable.
 7. Creditor must post bond
 8. Higher standard of proof: “beyond a reasonable doubt”. This is the traditional American criminal standard.
 9. Burden of proof is always on the creditor
 10. Short fuse: A shorter statute of limitations will apply. Often statute begins when assets transferred to trust. U.S. law usually 4 years; several off-shore have 2 yr. S/L
 11. Statute of Elizabeth overruled. This is the English forerunner of our Fraudulent conveyances act.

Why Not to Use Off-Shore Planning

1. Cost
2. More IRS Reporting#
 - FATCA: Foreign Account Tax Compliance Act
 - FBAR: Report of Foreign Bank and Financial Accounts

Popular Off-Shore Jurisdictions

1. Nevis
2. Cook Islands



NEVIS



Nevis



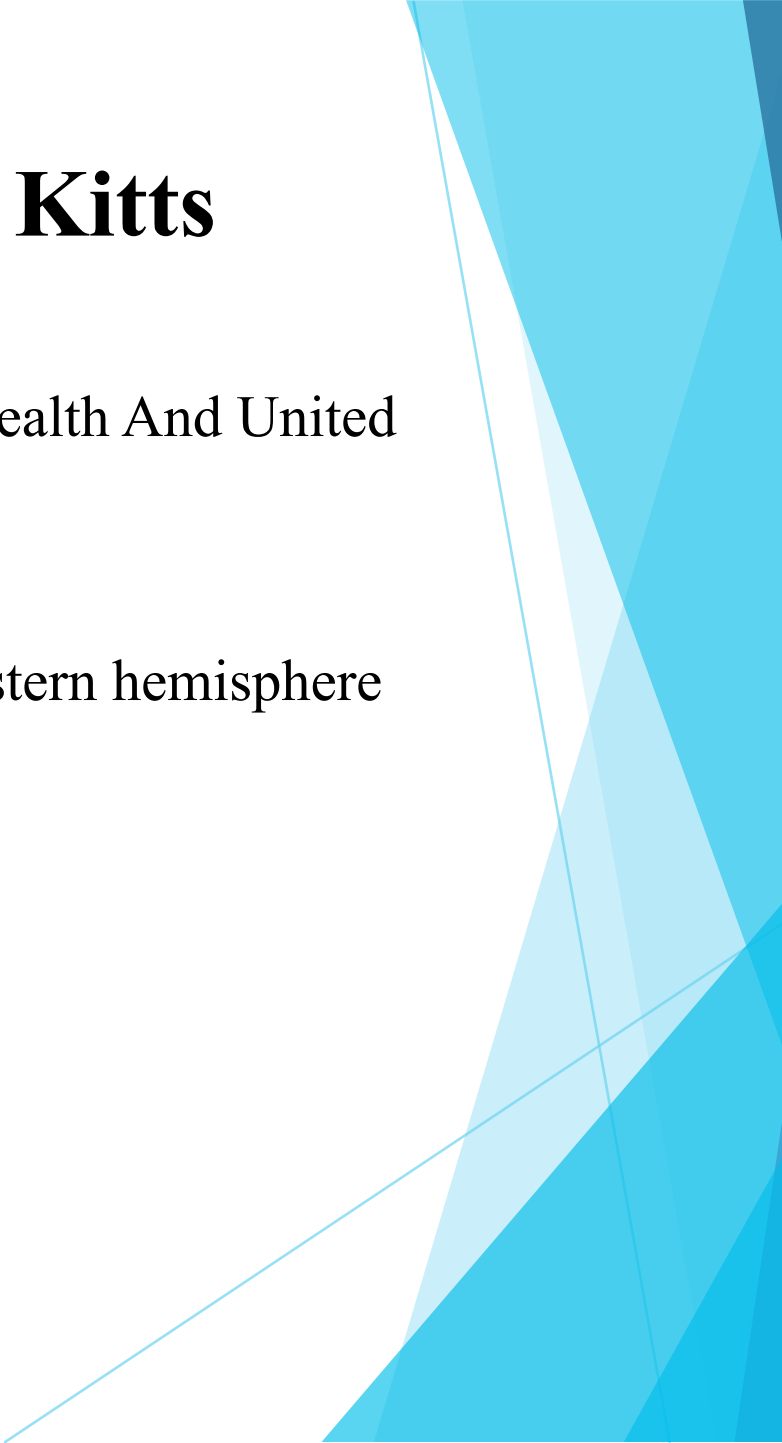
NEVIS



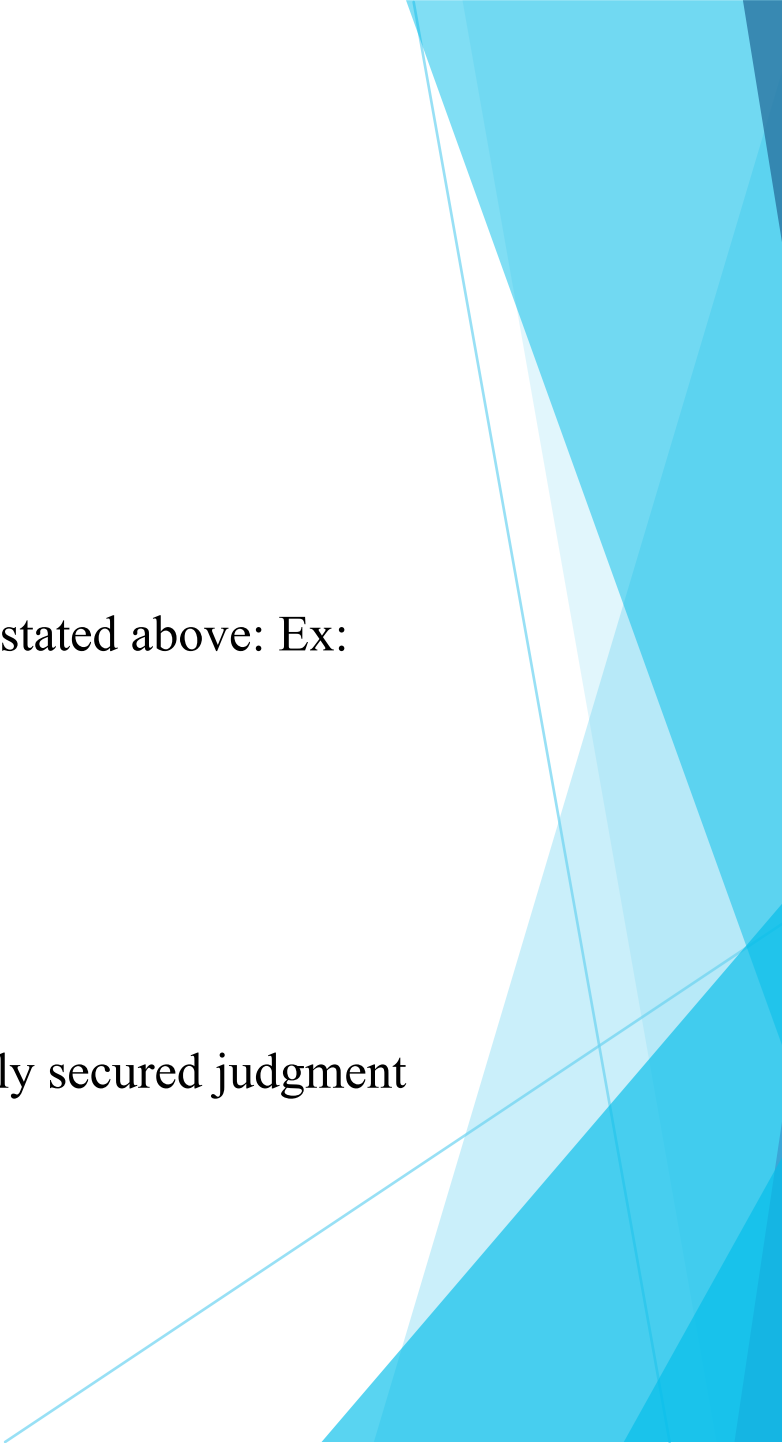
NEVIS - Four Seasons Marriott



What and Where: Nevis & St. Kitts

1. Sovereign Country; Member of British Commonwealth And United Nations (Participated in the Olympics)
 2. British Parliamentary System
 3. Politically stable: 96% literacy rate: highest in Western hemisphere
 4. Population: 12,000; Main City: Charleston
 5. Birthplace of Alexander Hamilton
 6. Location: Southwest of Virgin Islands.
- 

Advantages of Nevis LLC:

1. More control than off-shore trust
 2. Less Expensive than Off-Shore Trust
 3. Strongest, Most Comprehensive laws: Have all benefits stated above: Ex: Has “beyond reasonable doubt” standard
 4. Geographical proximity (vs. Cook Islands)
 5. Local Attorney Problem for creditors
 6. No local taxes
 7. Record to date is 100%: No U.S. creditor has successfully secured judgment in Nevis
 8. LLC law similar to Florida
- 

Structure of a Nevis LLC

Operating Agreement Similar to Florida LLC

- Manager-Managed
- Manager: Can be client
Can transfer to off-shore Manager,
Charges \$1,000 annual management fee
- Members: Your client, domestic U.S. Trust, domestic LLC, or off-shore Trust



Cook Islands



ook Islands Manuia Beach Resort



COOK ISLANDS

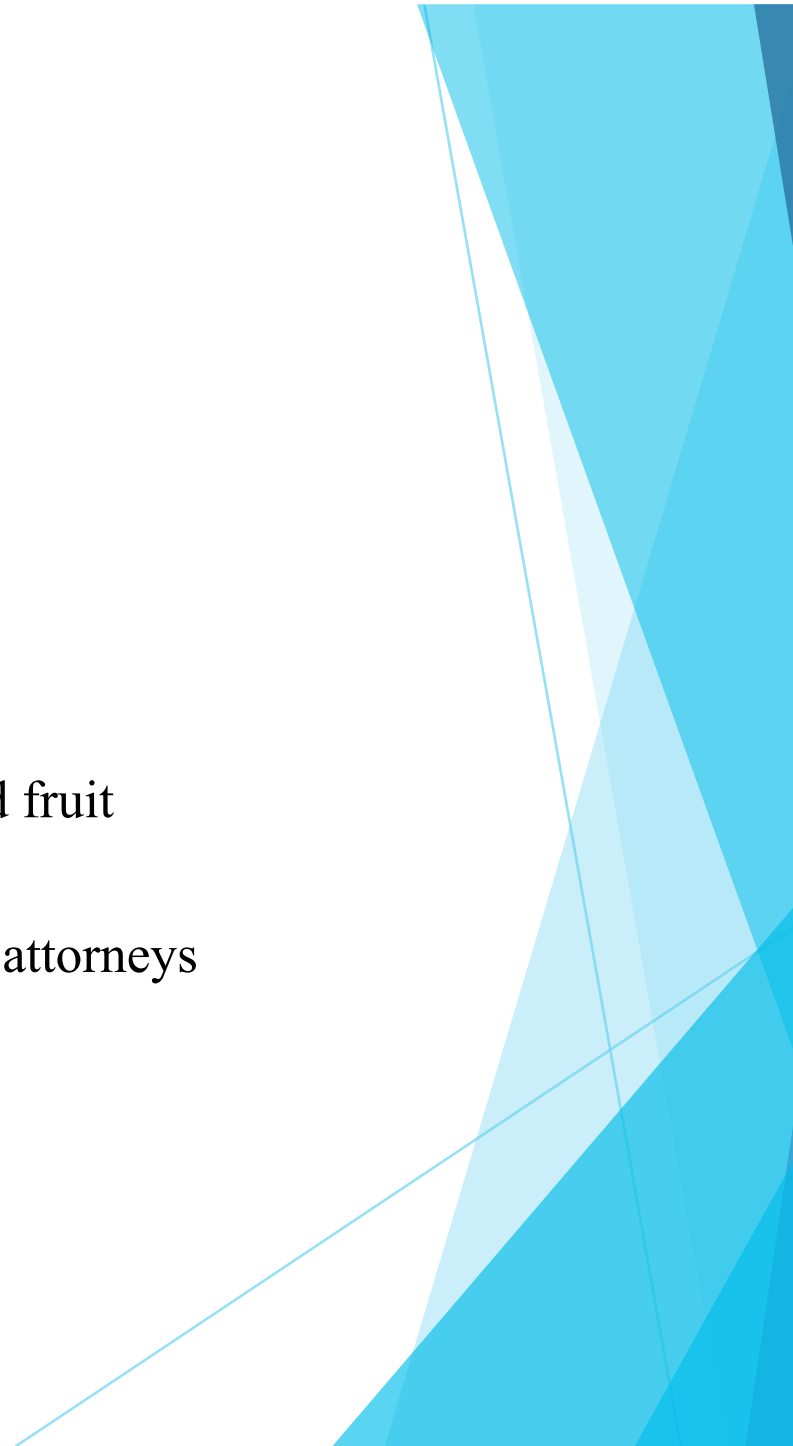


COOK ISLANDS



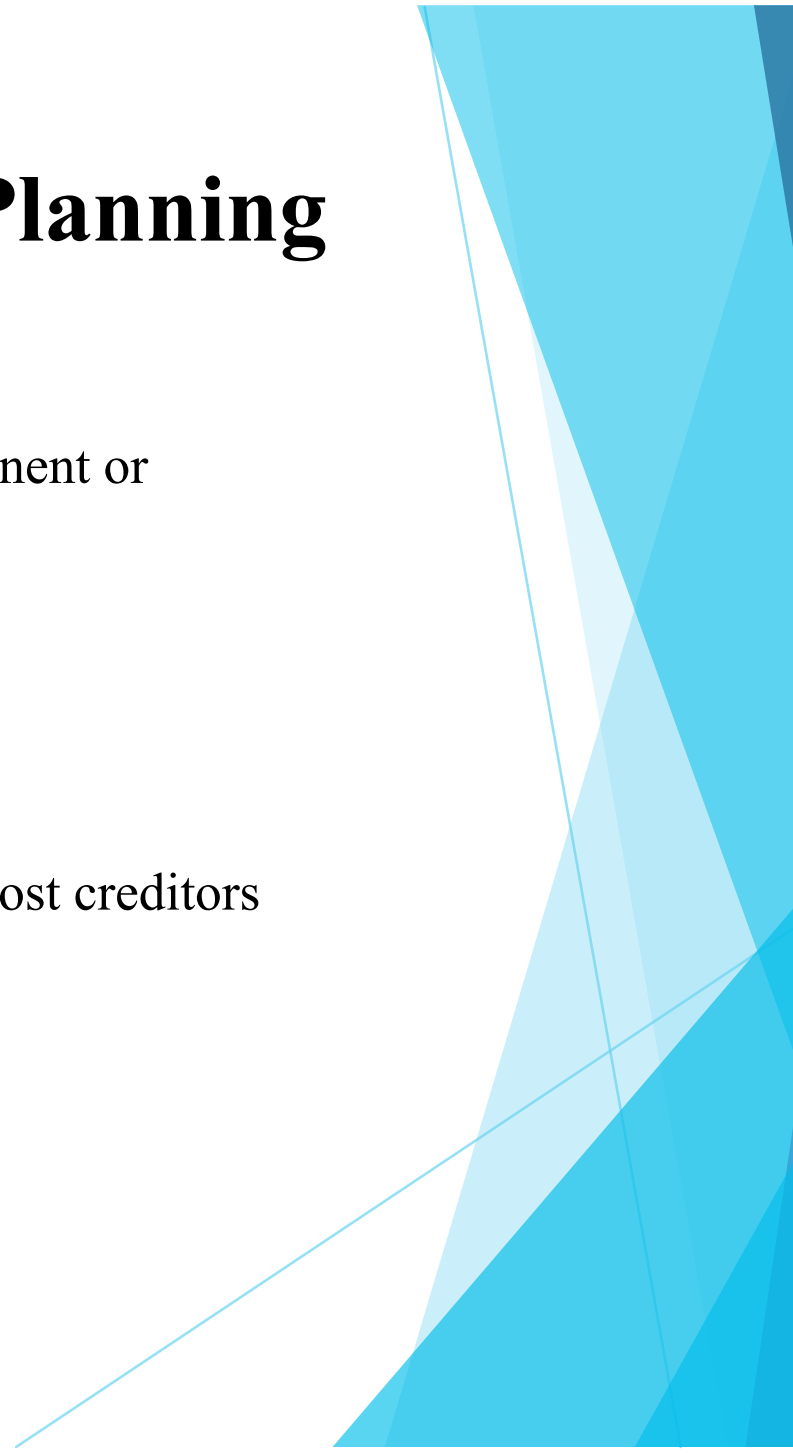
Cook Islands

- Sovereign country in free association with New Zealand
- Population: about 60,000
- Representative democracy with a parliamentary system
- Capital is Rarotonga (10,572 in 2011)
- Economy: tourism, off-shore banking, pearls, marine and fruit exports
- Banking/trust system mostly influenced by New Zealand attorneys



Take-Away Points for Off-Shore Planning

1. Consider a Nevis/ Cook Island LLC or trust as a component or principal part of any Off-shore plan
2. IRS Reporting Requirements must be followed
3. If properly structured, assets are well protected from most creditors other than Federal creditors



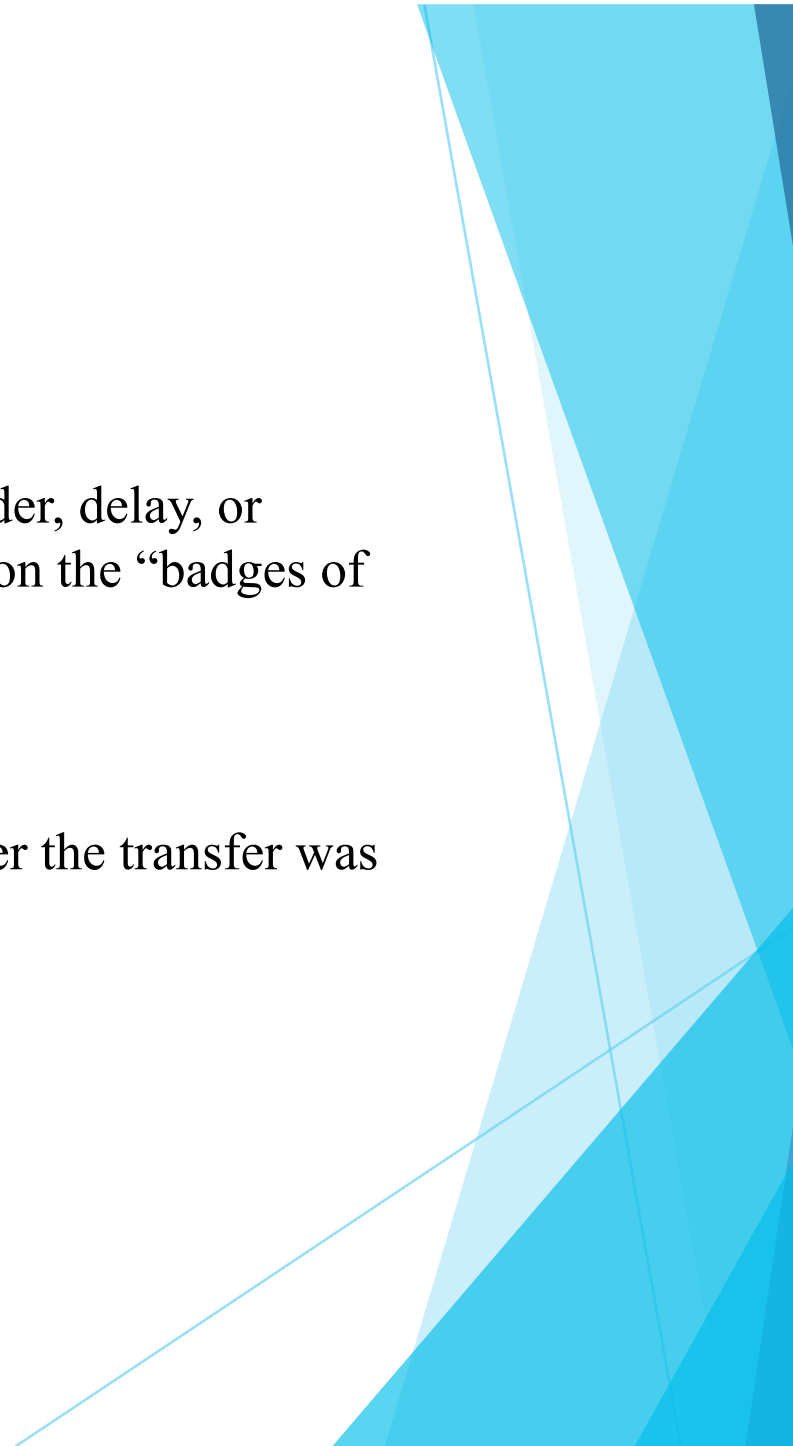
fraudulent Transfers

- **FUFTA: Florida Uniform Fraudulent Transfer Act, F.S. 726**
- **New Legislation: Florida Voidable Transfer Act**
- **Civil Remedy vs. Criminal**



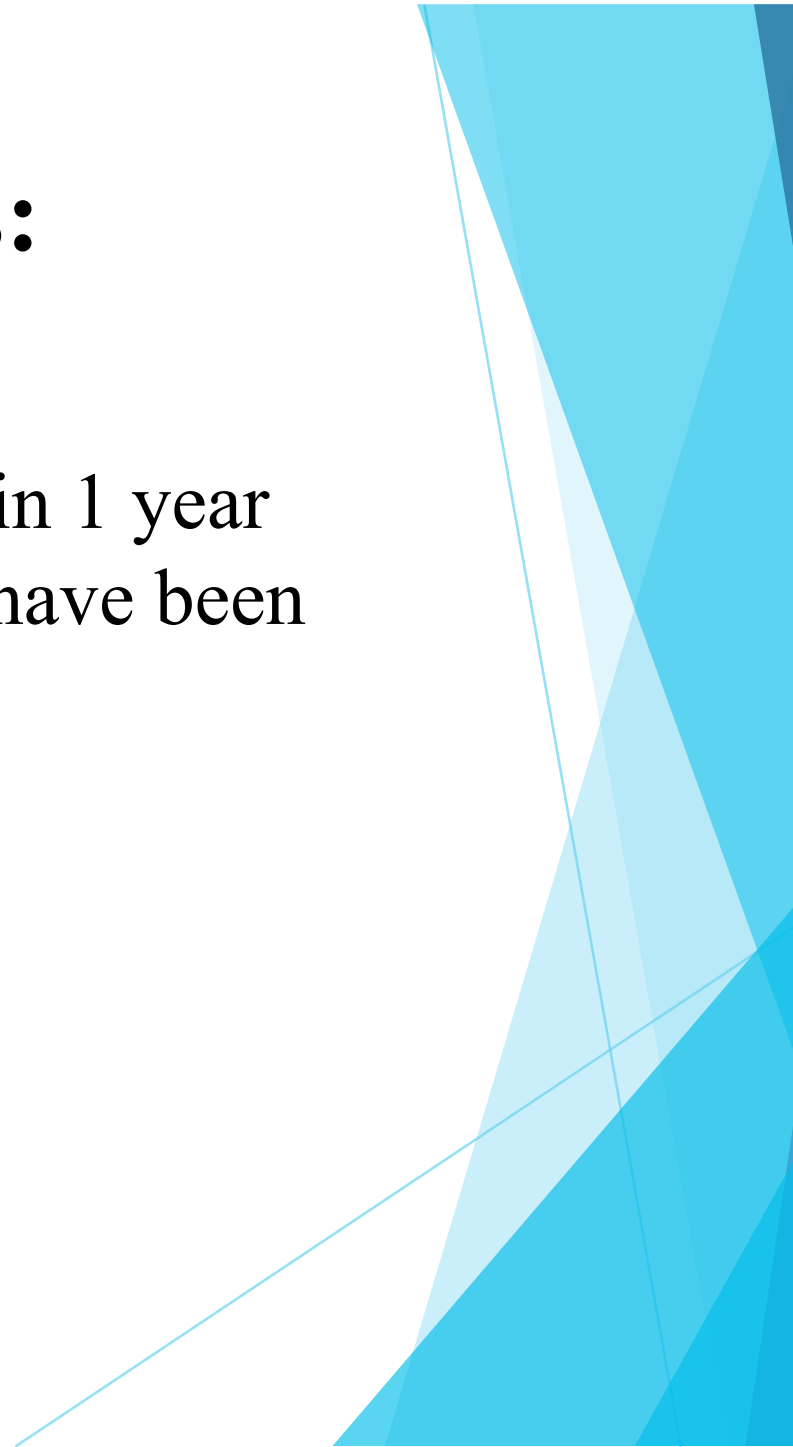
Transfers Under F.S. 726.105

- A transfer is fraudulent if made “with actual intent to hinder, delay, or defraud any creditor of the debtor”. Creditor may rely upon the “badges of fraud”
- Big Reg Badge of Fraud:
- The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred



Florida Statute of Limitations:

years after transfer made or if later, within 1 year after the transfer was or reasonably could have been discovered. F.S. 726.110(1).



Final Take-Away Points

1. Timing is critical
2. Check how your clients hold title
3. [Asset Protection Checklist for the Florida Small Business Owner](#)
4. **Florida Asset Protection: 7 Key Strategies For The Small Business Owner**
5. Insurance is not the sole answer: makes your client more attractive target
The myth of “UMBRELLA INSURANCE”

TOO MUCH INSURANCE



FINAL TAKE AWAY

The Porcupine Effect



The Porcupine Effect



The Porcupine Effect



uture Webinars

- **Asset Protection Strategies for The Physician & High Risk Professional**
- **Maximizing Basis Step Up For Spouses**
- **Your Feedback Is Welcome**



Rarick & Beskin, P.A.

ATTORNEYS AT LAW

Rarick & Beskin, P.A.

Miami-Dade

6500 Cowpen Rd., Suite 204
Miami Lakes, FL 33014
www.rblawfl.com
Tel: (305) 556-5209
E-mail: prarick@raricklaw.com

Rarick & Beskin, P.A.

Broward

3109 Stirling Rd.
Suite 101
Ft. Lauderdale, FL 33312
Tel: 954-861-1426
Email: info@raricklaw.com