



Frequently Asked Questions

General Feature & Benefit FAQs:

How different is your Asset Protection Structure versus others?

You can protect your asset in many ways, using many structures. Usually attorneys recommend separating assets into different LLCs to limit your liability to whatever equity you have in each of the LLCs that could be sued.

We always believed that the Ultimate Asset Protection Structure is one that is simple, powerful, inexpensive to set up and maintain but does not allow anyone to go after any asset or any equity whatsoever.

Most importantly it must pass muster in court with a proven track record of judgment proof and legislative protection power against charging orders.

What is the structure of your Asset Protection?

The structure:

1. We set up for you a special WY LLC. (Specially drafted Articles of Organization and Operating Agreement to stand in any court in the USA)
2. We set up a special arrangement debt obligation to the benefit of that LLC. (You control the LLC as the Manager and you hold the Certificates of Ownership)
3. We draft a specially worded Promissory Note for each of your RE assets and a specially worded Debt Instrument for each of your business assets.
4. We draft a lien in accordance with each state and local law requirements. Such a lien could be either a mortgage lien for each of your real estate properties (to eliminate any real estate equity). Or the lien could be a UCC1 Filing for each of your business entities (to eliminate any business equity, or value of inventory, receivables, future orders, patents and any and all other assets held under your business name and entity).
5. We send you all the documents by email so that you could have the Tax ID for the LLC along with the LLC's bank account. You will also be able to record all the mortgage liens against your real estate properties no matter the location around the USA and also record the UCC1 filings against your business assets no matter their location(s) around the country.
6. You have full control of the simple and manageable structure.

What are the benefits of your Asset Protection Structure?

The benefits:

1. You do not need to transfer any assets out of your name or current entities name. You would not incur any transfer tax assessment, any additional attorneys' fees and any due on sale clause issues on any of your loans
2. You do not need to have an attorney set up and maintain multiple LLCs
3. You do not need any third party to operate the structure since you are in full control
4. You do not need to set up anonymous corporations or go offshore
5. RE properties and business entities will reflect no equity or net worth under your name or entities as you would have more debt than the liquidated value of all your assets combined
6. This discourages any litigants and attorneys will require high retainer fees in advance to pursue a lawsuit
7. Even if you lose in court and a charging order is issued the litigant cannot go after the WY LLC because it is protected by law and WY LLC Act and if they force you to sell any or all Assets you must pay all creditors (including your own LLC by law) henceforth making it impossible for a litigant to collect
8. A Litigant that wins a lawsuit in court for a certain amount of money could be taxed on that money as phantom income even though he/she has not collected a penny. Such litigant will either drop the lawsuit altogether before getting to that stage, or will settle with your insurance or you much earlier.
9. This structure has added benefit not only in case of a lawsuit but also (see below) it can be used for bankruptcy protection, prenuptial agreement, post nuptial agreement, mortgage default etc.
10. The entire structure is inexpensive to set up and maintain yet easy to operate for a long time with legislative protection against lawsuits and charging orders



Frequently Asked Questions

Why do you prefer to set the LLC in WY and not in the state where my assets are located?

We prefer setting up the LLCs in Wyoming because:

1. They originated the LLC entity structures in 1972 vs. NV for instance that adopted LLCs in 1994. So the Judges in WY protect the structure through various legislations
2. An LLC filed in WY does show on public record who the owners are or who the managers are. One must obtain a subpoena from the court to get such information, which is costly, tedious and requires additional time
3. Most lawsuit attorneys are not too familiar with WY laws and how it protects LLC entities against charging orders and lawsuits (including single member LLC - i.e. WY LLC Act 17-29-503)

Why do you prefer to set up the LLC in WY instead of NV?

The best state to set up an LLC for asset protection is Wyoming and the reasons are:

1. Less expensive to file
2. Faster to obtain
3. Less expensive to maintain yearly
4. Higher level of privacy for WY LLCs (No filing of Manager or Members- Plaintiff will have to obtain a subpoena through the court to get a hold of the Manager)
5. Wyoming created the LLC structures in the US over 40 years ago so the Wyoming Judges provide stronger protection
6. Most Plaintiff's attorneys are less familiar with Wyoming compared with Nevada

What other business use can I get out of the LLC?

Although we recommend you leave this LLC intact so it does not create any liability for you, you can conduct some no to low risk business transactions such as:

1. Selling your equipment to it and leasing it back.
2. Setting up a Solo 401K and transferring income into your retirement account while deducting taxes (contact www.iPlanGroup.com)
3. Setting up a trading account and trading securities from your LLC account
4. Place extra cash reserves in it because it is protected
5. The key thing is you do not want to operate a full and active business with potential liability under this LLC. And you do not want to tie it up with any other entities you may have so it can stay on its own protecting your assets as a lender from a distance.

Can I set up a Solo 401K-retirement account using my LLC in WY?

Go to www.iPlanGroup.com and contact Suzi or Lynn for a free consultation to make sure you can structure a Solo 401K. Each case is slightly different and if you can get one set up the benefits are phenomenal and 401K are 100% lawsuit proof.

What if I have equity in 2 or 3 properties and/or businesses?

You do not need to set up another LLC or even transfer ownership etc. We can just increase the amount of the Lien and record it secured against several properties for cross collateral (there is an additional fee for each additional lien or UCC that we have to draft for you to file and record against each asset) But the good news is you do not have to pay for any more LLCs or maintain several structures. It is only one and the paperwork to maintain an LLC is drafted once and remains in your possession and control.

Do you provide a sample of the documents so I can see how it would work for me?

This is like asking an attorney for the contract before he/she drafts the contract! The answer obviously is "no", we do not provide a sample of the documents.

While generally speaking, the structure is the same, (one LLC in WY. Stripping all equity in each asset), the details are different from one individual to another, from one asset to another and each state where an asset is located has different requirements. The documents are personalized to meet individual needs and concerns from the capitalization amount to the structure of the promissory note.



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You need to understand that different attorneys draft different parts of the documents because entity structuring and lending laws are slightly different from state to state and we spent a lot of money preparing the correct legal documents for each step of the process.

We have attorneys working with us to draft the legal paperwork for the structure and no matter where you live in the United States; our documents will be in full compliance.

If we place this structure prior to getting sued does it then hold up in any federal court and if so why?

The structure of properly and adequately stripping the equity of your assets holds up in any court not only because of timing (prior to being sued) but because of how we word the legal documents and personalize them for each individual and family as needed.

Here is what we do for our clients to protect them:

1. We create an Operating Agreement for their LLC based on whether they are single or married, in a community state or not, etc.
2. We use a separate attorney for the Operating Agreement of the LLC, this document is over 70 pages long, and the attorney must show separate business reasons for the capitalization requirement in addition to asset protection and so on)
3. Another attorney drafts the Promissory Notes and Liens because it is a different specialized field that has to do with lending laws and we use special wording that can hold up in court as well as terms for the each Note that are acceptable for the client)
4. Each Promissory Note for each Asset gets drafted based on the laws of each county in each state where the asset is located. (We must follow the rules for Non-Judicial states vs. Judicial state, Trust Deeds or a Mortgage Notes etc.)
5. The Lien itself is also drafted specifically for each property and each state to match whatever is required by that specific county in that specific state.
6. Finally if they are going to be stripping the equity for their business as well, then the Promissory Note and the lien (in that case it is a UCC1 filing) are different based on each company's type of entity and the specific amount they want to strip from their inventory, receivables, patents, brand value etc.

I try to keep it simple for the investors interested in the structure by providing them with 2 forms to fill out and we do the rest by asking specific personalized questions and getting back up documents such as grant deed for real estate and/or inventory information for businesses etc..

How do you compare to other attorney's firms' services or seminar Gurus that sell asset protection?

You can email us a specific company if you want us to be specific about their offer versus ours. But generally speaking most other attorneys or gurus in the seminar circuit prefer to sell a kit for \$4,995 - We give you a turnkey set up at that price plus a few additional dollars for extra liens as you need.

Regarding the firms that actually set you up, well there is no one that can beat our value: We offer a the simplest most powerful structure that keeps you in full control at a very competitive price and the lowest on going expense (one entity to renew per year only).

No delays, no transfers of assets and no ongoing attorney fees. We even give you a Living trust for the LLC at the lowest price ever guaranteed, so it can serve you as probate avoidance as well.

General Set-up FAQs:

What do you need from me to protect my real estate and business assets?

All you need to do is fill out the form with your name, a couple choices of LLC names, tell us the amount you wish to record as a lien to eliminate the equity in each of your properties and/or businesses.



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And email us a copy of your property deed so we can get the exact way the title is currently vested, the full address of the property, the Assessor's Parcel Number and the complete legal description. (If you cannot locate your deed you can get one on line or call the county records or even give us a copy of a Trust Deed lien (Mortgage Deed lien) that already exists on the property as a first lien because it will have all the exact info needed.

How can I open a bank account in the name of the LLC?

We will send you the instruction form regarding setting up a Tax Identification number with the Internal Revenue Services by phone and/or online.

Once you've obtained the Tax Identification number for the LLC, you can contact a bank (preferably an internet bank or out of state bank) and ask them to list the documents they need to open the account. (Usually the bank needs a copy of: Certificates of Ownership, Articles of Organization and your Identification).

What needs to be done to record the lien against my property and eliminate the equity? And how much does it cost? We will send you all the documents you need to take or mail to your county recorder's office after you sign them and notarize them (to show your consent to pledge your property as a collateral security for the debt obligation to the LLC).

The county clerk will verify that the documents have the exact and accurate legal description of the property as indicated on the deed you gave us and then he/she will record and will mail you a copy.

The cost of recording the lien runs from less than \$100 to a few hundred dollars based on the county fees.

When choosing a name for the WY LLC how do you suggest I name it?

Our personal preference is to always give a name that sounds like a legitimate financial institution or property lender. We do not like names with family members' names or initials.

When setting up my structure I was asked what "address" to have the Deed mailed to? Should I use my address? Will that make my structure less protected?

We allow clients to use our address for the filing of the deed only, then the deed would be forwarded to the you. Please do not start using the address for anything else. Do not use the address for property taxes and IRS issues. Understand that the benefit of this structure is not the anonymity. The power of this structure's protection is dependent upon the "monthly, quarterly or annual payments. If you don't make the payments into the LLC this structure will not hold up. It's not based on the address- it's based on the payments. Keep that in mind. You may use our address for the filing of the deed: 1621 Central Avenue, Cheyenne WY 82001.

Do I need to have the WY LLC register to do business in my state? I am in California, if that makes any difference.

No, you do not need to have your WY LLC register to do business in your state, no matter where you live, because the LLC is not conducting active trade of any sort and is only owed a sum of money through a Promissory Note and a Lien.

The LLC is not "Holding" any property in any other state where you have your assets. Hence it does not have to worry about each state's Corporation Code (such as California Corporation Code 17450). These codes are in place to govern any claims arising between the members and the managers etc. but you are either a single member LLC or a multiple member LLC not conducting any trade of business in your particular state(s) where your Asset(s) is located.

If litigants obtain a charging order against you in California (because you reside in California and your asset(s) is in California), they would find that the WY LLC has not registered to conduct business in California, because it is not conducting an active trade or business in California.

You see if you were conducting business in California, your entity would've had to register in California and it would've availed itself of California's laws which would've given the Litigants the power to foreclose on your assets as a member of the LLC under California Code 17402 (foreclosing on member's interest in an LLC).

Our structure with WY LLC being an out of state entity, not conducting any trade or business in the state(s) where you have your asset(s) or where you reside, hence not needing to register as doing business in that state, gives you a huge advantage without additional entities and complicated structures because WY LLC would not fall under the state's



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Jurisdiction and it becomes immune from its enforcement actions.

In the unlikely event that the Litigant obtain a Charging Order, and forces you to sell your assets in a foreclosure proceedings, you would have to by law, pay the existing liens first which is whatever you own to a bank on the 1st Trust Deed position and the amount of lien you owe the WY LLC in the 2nd Trust Deed position (Your LLC). This would leave the Litigant with nothing collected other than a tax bill due to the "phantom income" that could be assessed against them from the IRS after winning their lawsuit for a specific amount and obtaining the charging order

Does the WY. LLC need to register to do business in the states where I am holding the assets?

No, you do not need to have your WY LLC register to do business in any other state. It is not engaging in any business. It is simply owed money for capitalization purpose.

Should I use my personal or business address on the documents? What is recommended for the best protection?

This is a question of is anonymity worth it? Back in the 1980's and 1990', anonymity was a valid form of asset protection. It still has value today, but much less. In our opinion we recommend you get an address just for the LLC which is better than using your home address.

Can I use an online bank? If so what are your recommendations?

Yes, you can use an online bank. Banks are rapidly changing today as to what kind of business they will or will not accept so do your research.

KMAGB.com does not formally recommend any online banks, but many of our clients have been happy with their online bank and we listed those companies out below.

Keep in mind, there are many online bank possibilities. Below are listed just a few. The online banks regularly change and alter the kinds of business that they accept and how they do business. So, in the end the only way to find out what they are doing at any moment in time is to go to their website and check them out.

Here are some that prior customers have used and been happy with.

Ally Bank

www.ally.com, 1-877-247-ALLY

ING Direct

www.ingdirect.com, 1-800-ING-DIRECT

PerkStreet

www.perkstreet.com, 866-792-2834

Bank of Internet USA (BoFI)

www.bankofinternet.com/bofi, 1-877-541-2634

1stBank

<https://www.efirstbank.com/products/online-mobile/business-internet->

If my spouse is on the deed of a property I would like to place a lien on, does he/she need to be on the LLC? If not, what is the process?

If your spouse is named on the deed, they do not have to hold ownership on the LLC. They do not have to, but they must sign the deed of trust or the mortgage and the note. There is no way around that. If you want them off the LLC it can be done for SPOUSES ONLY, but the idea is that the owners of the property capitalize the LLC with the note and get the share certificates in return. They then pledge the property as collateral. So, the question could always be "Why did the spouse agree to pledge the property as collateral when they got nothing in return?" That may ultimately be the question you have to answer. For those who really want to leave their spouse off the LLC, then the only real answer is "that since you are married it was done for the benefit of the marital estate". But you could be questioned on it so be prepared. For none married owners then "NO" it does not work.



Frequently Asked Questions

Structure Maintenance & Renewal FAQs:

Are there any states that may charge a fee/tax for recording a lien?

There are seven states currently charging mortgage recording taxes: Alabama, Florida, Kansas, Minnesota, New York, Oklahoma and Tennessee. Rates vary from state-to-state. The low end being states like Tennessee, where the tax is \$0.115 per \$100 of mortgage principal, with the first \$2,000 exempt. The high end includes states like New York State, with a basic tax of \$0.50 per \$100 of mortgage principal, with additional taxes of \$.025 – \$1.25 per \$100 of mortgage principal based on special conditions. This is a one-time fee and it legitimizes the structure in both form and substance.

I received a copy of my certificate in my secure DropBox, but it has no stamp. Has my company been led with the Court system?

Over the past 10 years most Secretary of State's offices have jumped on the digital bandwagon. Almost all of them now email certificates of formation for entities. In the old days, they would mail them and in some cases, they had brightly colored certificate on thick paper. Nevada was famous for its nice colorful certificates.

But, in the interest of saving money this practice has changed. Most states now email the led certificates. Wyoming is one of those states.

The certificate that was given to you was emailed to our company by the Wyoming Secretary of State as a PDF attachment. We simply save that PDF attachment and then forward it onto our client's folder. Your company is filled and is legitimate.

I see that I can renew my WY LLC for \$100 with other companies. What does the KMAGB WY LLC Renewal Fee include?

Based on our years of experience with our clients we know that support from our team goes a long way especially if you have questions and specific case studies you need prompt answers on. Our annual fee includes the extra support you will need. The KMAGB Annual Fee includes: state fees, resident agent fees, the annual report fee and the year access to our team of CPAs and attorneys to ask any questions that may come up over the year regarding your asset protection structure.

For example, last week one of our clients needed assistance in working with a bank to refinance. We assisted him and guided him through what changes needed to be made for the refi and post refi. We are totally fine with you using another registered agent and keeping up with the fee. Just note that if you decide to do that we will note your record and no longer keep up with the reminders to pay into your structure or renew. If you end up having questions the \$99 consultation fees will be billed to you. We bill \$99 every 30 minutes.

The KMAGB Registered Agent fee includes:

- State fees
- Resident Agent Fees
- Annual Report Fee
- One year of Asset Protection Support and Consulting
- 20 pieces of mail forwarding for the year. (Any mailings we receive will be sent to you to forward on to any U.S. address. If you go over the 20 pieces you can get a mail forwarding package that is \$29 a month or \$295 a year.)
- You can also use our address since we are listed as their registered agent. (Address provided once your structure is set up.)

If our Registered Agent receives any legal process on behalf of your corporation, such as a civil summons and complaint or garnishment, the paperwork is logged, scanned, and forwarded to you by first class mail and email. Our team of Registered Agents are Accredited members in good standing with the Better Business Bureau. For our fee, you can enjoy the personalized service you deserve!



Frequently Asked Questions

FAQs for a Business:

Can I eliminate the equity in my business instead of my real estate?

Yes, same exact procedure except that we will not record a lien secured by your property, we will file a UCC-1 form with the Secretary of State's office where your business is located.

Do I need to have the WY LLC register to do business in my state? I am in California, if that makes any difference.

No, you do not need to have your WY LLC register to do business in your state, no matter where you live, because the LLC is not conducting active trade of any sort and is only owed a sum of money through a Promissory Note and a Lien.

The LLC is not "Holding" any property in any other state where you have your assets. Hence it does not have to worry about each state's Corporation Code (such as California Corporation Code 17450). These codes are in place to govern any claims arising between the members and the managers etc. but you are either a single member LLC or a multiple member LLC not conducting any trade of business in your particular state(s) where your Asset(s) is located.

If litigants obtain a charging order against you in California (because you reside in California and your asset(s) is in California), they would find that the WY LLC has not registered to conduct business in California, because it is not conducting an active trade or business in California.

You see if you were conducting business in California, your entity would've had to register in California and it would've availed itself of California's laws which would've given the Litigants the power to foreclose on your assets as a member of the LLC under California Code 17402 (foreclosing on member's interest in an LLC).

Our structure with WY LLC being an out of state entity, not conducting any trade or business in the state(s) where you have your asset(s) or where you reside, hence not needing to register as doing business in that state, gives you a huge advantage without additional entities and complicated structures because WY LLC would not fall under the state's Jurisdiction and it becomes immune from its enforcement actions.

In the unlikely event that the Litigant obtain a Charging Order, and forces you to sell your assets in a foreclosure proceedings, you would have to by law, pay the existing liens first which is whatever you own to a bank on the 1st Trust Deed position and the amount of lien you owe the WY LLC in the 2nd Trust Deed position (Your LLC). This would leave the Litigant with nothing collected other than a tax bill due to the "phantom income" that could be assessed against them from the IRS after winning their lawsuit for a specific amount and obtaining the charging order.

FAQs for a Real Estate Investor:

How can we function and transact after we set up the Asset Protection?

The functions:

1. You are in full control of the structure and can refinance, borrow or sell any of your assets by showing the certificate of ownership to the bank, the title co. or any other party with whom you are transacting
2. You only pay for ONE LLC to be set up and the few liens to be recorded once
3. The WY LLC does not need to register to do business in any state because it is not owning anything it is simply owed money
4. You only pay to maintain one LLC per year less than \$500 for all of your assets (Less than you pay for insurance)
5. You do not need to transfer assets
6. No hiding behind complicated entities or anonymous structures
7. You never have to deal with attorneys
8. No offshore entities whatsoever



Frequently Asked Questions

What if later, I want to borrow against the property, the bank will want to place a 2nd Trust deed loan or a credit line etc. How could I do that if the lien you placed for the asset protection will be in the 2nd Trust Deed position?

Remember that you are the Lender LLC as well as the Borrower/Obligated party. You can simply tell the title company that you want to move the LLC lien to a junior position.

We provide you with a subordination clause in your lien document that states that the lien could be voluntary pushed to a junior position if the Owner of the property wishes to record a new voluntary lien senior to the existing one.

Your bank giving you a credit line or a 2nd Trust Deed Loan would ask us to first release the lien before they would provide the loan, then after they record in a senior position, the title company will re-record your LLC lien in a junior position.

For instance, if you want to refinance, the title company will handle all that for you and they can release the lien first then refinance the mortgage. After the mortgage lender places a lien on the property, they will re-record the trust deed that eliminates the equity in a more junior position back secured by your property to the favor of your LLC. This is the commonly accepted procedure.

What if I am ready to sell the property?

You simply talk to the title company and as the LLC Managing Member and owner you can provide them with a signature to release the lien (you don't have to release the debt) and just have them record it secured by another property or business asset that you wish to protect from lawsuits. There is no debt forgiveness and no related tax consequences.

When the promissory note is created between my LLC and myself as an individual/owner of a house, or an investment property or a Business, can you structure the Promissory Note with no payments from me to my LLC?

We do not recommend having no payments. In order to stand up in court as a legitimate lien, you must make periodic payments. We place a section about a periodic payment "requirement" in the promissory note that we draft between you and your LLC to protect you in the rare case the lien is questioned.

You do not want to run the risk of not showing an economic substance for the actual lien, which is the basis of the structure. After all you are making the payment to your own LLC.

Of course, since the payments are made into the LLC bank account and you control the bank account, you can use these funds to pay directly for any business expense.

I want to strip equity on assets but my aggregate equity is close to \$70 Million dollars. After telling my new attorney, about your set up, he called me the next day after researching and he was shaking his head in awe at your structure. The question we both have however is: Isn't it too much money to capitalize a new entity with over \$70 Million dollars when it is just a start up?

In some rare cases being "under capitalized" could be a problem. For instance, if a company starts with very little capital (whether cash, property, notes or any other form) and then borrows successfully but cannot make good on its debt obligation, creditors or litigants can sue the entity and the courts may say that the entity did not have sufficient capital and may place liens against any assets it may still have.

This is not your case and it is not what we do. Your concern is about being "over capitalized", so really you are wondering if there is a point at which the courts would feel someone have over capitalized an entity. (In your case you want to capitalize at over \$70 Millions dollars).

Well, according to federal court cases in the US, there has never been an issue for over capitalization in the legal sense. But as a general rule of thumb all the equity contributed at the time a business entity is formed (LLC or C Corporation etc.), whether the equity contributed is in cash, property, promissory notes, business assets or any other acceptable form, such equity should be more than any loan or total loans to the business at the time of formation.



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And the law is well established that formation is the relevant time to for assessing "adequate capitalization".

Since we have many clients with very high net worth and same concern, we do offer a credit line (from one of our corporations that hold millions in assets and cash) and we show that the credit line is secured against your LLC in WY with special wording to show that at the time of formation, the credit line was extended and secured against your capitalization amount.

We keep this credit line documents and formality for 24 months, and then we cancel the credit line. I remind you that over capitalization have never been the issue in the legal sense and there has not been a court case challenging over capitalization.

While the credit line will not be used by your entity, it does establish that your WY LLC had enough assets securing the promissory note and justifies such a valuation and large yet appropriate capitalization when forming the entity.

Prenuptial Agreement Alternative FAQs:

You had mentioned previously that this asset protection could be used as a prenuptial agreement without "asking the soon to be spouse to sign for a prenuptial agreement? How does that work?

If you do not want to him/her to sign a prenuptial agreement, but are concerned about the remote possibility that you get into a divorce situation, and he/she goes after your assets, here is what you do before you get married: Figure out your total equity, set up the WY LLC and capitalize it by creating a Promissory Note for more than your equity, you will then record the liens against your assets and will the LLC certificate of ownership to your loved ones or even your spouse to be if you want. The key thing is you will remain in full control and if done before you get married you do not need his/her signature on any of the documents.

What if I am already married? Is there a strategy with your asset protection structure to protect me like a postnuptial agreement?

If you are already married you can split the assets based on the equity values 50/50 or whatever percentages, you agree upon. Then we set up 2 WY LLCs, one for you and one for your spouse. We capitalize the entities based on the percentage of equity values you have decided and then each of you will have the promissory note and liens recorded with separate ownership certificates. It is like a TIC structure of real estate but this is for all of your assets. If you divorce or die, you can have your certificate of ownership with your assets go to whomever you choose.

If my spouse is on the deed of a property I would like to place a lien on, does he/she need to be on the LLC? If not, what is the process?

If your spouse is named on the deed, they do not have to hold ownership on the LLC. They do not have to, but they must sign the deed of trust or the mortgage and the note. There is no way around that. If you want them off the LLC it can be done for SPOUSES ONLY, but the idea is that the owners of the property capitalize the LLC with the note and get the share certificates in return. They then pledge the property as collateral. So, the question could always be "Why did the spouse agree to pledge the property as collateral when they got nothing in return?" That may ultimately be the question you have to answer. For those who really want to leave their spouse off the LLC, then the only real answer is "that since you are married it was done for the benefit of the marital estate". But you could be questioned on it so be prepared. For none married owners then "NO" it does not work.

FAQs About Tax Responsibility When Set-up with KMAGB.com:

Will I have to file taxes in Wyoming for the LLC?

For tax purpose the LLC is usually set up as a disregarded entity. Meaning income and expenses flow through to the owner(s) for tax purpose.

You make a periodic payment to the LLC as per the promissory note and you get a tax deduction. But the payment you made is now income to the LLC, which you own and it ends up flowing through to you, making the structure tax neutral.



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“Disregarded entity” is a legal and tax term meaning all income and expenses flow through to owner(s) of the LLC making it a tax neutral structure.

1. In any state, any one person can own an LLC and it can be a disregarded entity for tax purposes. In a community state a husband and wife could own the LLC 50/50 and the LLC could be a disregarded entity.
2. States in which community property laws apply: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington State and Wisconsin. (Additionally the state of Alaska and the US Territory of Puerto Rico give you a choice if you wish to hold assets in a community property).
3. In non-community state a husband and wife could own the LLC 50/50 but the LLC would not be considered a disregarded entity, it would be a partnership. But even then, it is taxed as a pass through to the partners with a K1 to each of them.
4. In any state if the owners are not married then the LLC would not be considered a disregarded entity, it would be a partnership, meaning the profit and loss would just flow through to each of the respective members via a K1.
5. Each member would then report his/her share of profit or loss on their respective annual personal tax returns in their respective state.
6. Ideally in non-community states and in non-marital partnerships, each of the husband and wife or each of the Partners should set up his/her own LLC.

Hence each LLC entity would then be considered a disregarded entity and income as well as expenses would flow through to each owner of each LLC making it a hassle free, tax neutral entity.

Worst Case Scenario FAQs:

What happens if I get sued anyway, lose and a charging order is obtained against me while I have the lien recorded to the benefit of the LLC?

When a charging order is obtained against you and is legally in place, no distribution is allowed/made to the creditor/litigant based on the Operating Agreement.

The advantage of this structure with the proper Operating Agreement is that the creditor/litigant ends up getting stuck legally with a tax bill based on the amount of the charging order. This is despite the fact that no money was paid out/distributed to the Creditor/Plaintiff. It is called phantom income and under IRC section 37-177 that litigant could owe taxes as if he/she received the amount of funds awarded by the court.

The fact that they would have to pay taxes against monies they have not received is extremely discouraging to litigants and is a powerful incentive for them to either not pursue the lawsuit, drop it after starting it or settle as soon as they win for anything you offer.

What if I have a bunch of investment properties and one of them in particular is upside down. If I try to do a short sale, my attorney told me they would go after my other investment properties that have equity, even though they are in different entities. What should I do now? (By the way- my attorney had told me to separate everything in different entities etc. but that strategy does not work when you default and they can go after everything anyway)

We will answer this from the technical not legal standpoint. Please check with your state law and see how much disclosure you must give your bank. But here it is:

The WY LLC could be formed now ASAP while you are still making the payments and are in good standing. You will capitalize it by creating a Promissory Note in the aggregate value of your equity in your other holdings. You will then record liens against those other properties (that have equity) and then continue making your payments on time for at least the next 12 months. After which point you should contact the bank on the upside down property and discuss the short sale option. I realize that making 12 more monthly payments is painful, but if you want to keep all your other equity in the other properties then you need to do it.

The bank will first verify if the property is really under water (meaning loan is higher than value), then if they decide



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to go after your other assets, they will quickly realize there is no equity there and liens have been recorded over 12 months prior, so they will work out a good modification of payments, a short share or a settlement of some sort for the specific property in question. Please check with an attorney to make sure you would not run afoul with the law in your state regarding this strategy.

What if I have your asset protection structure and now I want to file bankruptcy, because my business has gone upside down but I want to keep the equity in my properties because I am too old to start over?

When it comes to Bankruptcy laws, things have been modified as of a couple of years ago and all the courts require is that you had been set up with this asset protection structure for at least 2 years prior to filing the bankruptcy.

While there is no 100% certainty what a bankruptcy Judge will decide, this structure has past muster in the past based on a few conditions.

It is advisable to have made at least one payment per year and not taken the money out for personal purpose. Keep it in the LLC's bank account or use it as an expense for the LLC business operation or marketing etc.

Disclose all your assets in full and show on all court documents that the liens are to your WY LLC.

Timing is one of the most crucial elements here as if the structure had been in place for at least 2 years prior to your filing of bankruptcy there is a higher likelihood that the Judge would accept the structure as is.

What would make these documents NOT hold up in court?

- If you set up the structure AFTER a lawsuit had been initiated against you, then a Judge may unravel the structure.
- If you have an incomplete Operating Agreement with clear business purpose and separate reason for the capitalization and several other requirements than the Judge may very well refute the structure.
- If you've filed a lien that is incorrectly worded and/or is not in full compliance with your specific state lending laws, a judge could dismantle the structure
- If you do not make the payments to your LLC, as structured in the promissory note, then a judge could consider the structure false and a mere front to transfer assets.

What if I am being sued right now, can I still use maybe even a part of this structure to protect some of my assets?

Yes, you can attempt to protect the rest of your assets but there are no guarantees how the Judge would look at it.

For instance, if someone fell in one of your investment properties and is now suing you. We can file liens against all your other assets and businesses with one LLC in WY.

If the plaintiff wins the case against you and the insurance coverage is not enough or the insurance denies the claim for whatever reason and the plaintiff wants to collect on his/her awarded lawsuit, they may try to force you to sell that investment property. If the net they receive is not enough, they may try to go after your other assets. Once they see that they are all stripped of any equity they may want to go through another lawsuit based on a Fraudulent Transfer Act, which basically means that you did what is called a "last minute transfer" and that give the court an opportunity to exercise its power to set aside such transfers of assets and put them aside or revert them back within reach of the plaintiff, who now became a creditor, so funds could be made available to satisfy the judgment they obtained.

Although we are not transferring any of the assets per se, we are still bound by the same act because placing a lien for the benefit of another entity (the WY LLC) could be considered a transfer of equity especially that it was done after the lawsuit was filed. So, we have to assume the worst.



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So, what are the steps the plaintiff who has won the lawsuit and now has become a creditor will have to take to accuse you (of a fraudulence conveyance of assets) and win in a court of law?

It is important to know that the plaintiff, now creditor cannot just take away any of your assets that have been stripped or transferred. The best he/she can do is tie them up until he/she can prove to the court that you placed these assets out of their reach AFTER the lawsuit was filed for the sole purpose of not paying the judgment.

The judge will have to see your conduct in real life such as:

1. When, how and with what motivation these liens were recorded.
2. If you had an intent to defraud the plaintiff/creditor by such transfer (very hard to prove especially if you were trying to reason with the plaintiff and settle amicably)
3. If there are business reasons for such transfers (creation of liens to the LLC are made for over a dozen business reasons spelled out in the Operating Agreement)
4. Whether you have been negligible in your affairs or not (most likely you can easily show that you are a professional and conduct your business prudently)
5. If you have obtained and maintained enough insurance. (easy to prove especially for real estate holdings since each property requires a liability insurance)
6. In fraudulent transfer cases, the court has especially broad discretion to do the "right thing" so despite the clear statute its practical application is not always predictable.

What type of judgment remedies does the court usually allow plaintiffs to go? after if and when they get a judgment against me when I have an LLC?

There are mainly three types of remedies when a plaintiff gets a judgment order to his/her favor against an owner/member of an LLC: A Charging order and/or a foreclosure. This is in only a handful of states like California. (Washington, South Carolina, etc.

Look here: <http://www.nolo.com/legal-encyclopedia/limited-liability-protection-llcs-a-50-state-guide.html>

1. A Charging order only (as the sole remedy) in all the other states. And the best according to legislature is Wyoming.
2. Order the LLC to be dissolved (Very rare)

Where can I see how each state deals with the issue of a personal creditor's' rights and LLCs?

To see how each state deals with the issue of personal creditors' rights and LLCs, follow the link below:
<http://www.nolo.com/legal-encyclopedia/limited-liability-protection-llcs-a-50-state-guide.html>

When it comes to LLCs, a foreclosure is a bad thing and a charging order is a good thing. In a state where the "foreclosure" of an LLC member's interest is allowed, if a plaintiff gets a judgment against you (the owner/ member) for \$50,000 and you do not pay it, the plaintiff can attack the LLC and foreclose on your financial interest portion in it. So, if your interest is valued at \$200,000 and you owe the plaintiff \$50,000, he/ she can foreclose and keep the entire \$200,000. But if your interest is valued at only \$25,000, then the plaintiff will foreclose and get that amount but you will still owe him/her the difference.

In a "charging order" state, the sole remedy is the charging order and there is no foreclosure. That means if your financial interest in the LLC is valued at \$200,000, the plaintiff cannot get to keep it all.

If and when you make a distribution however, then the plaintiff can get some money. We write the Operating Agreement in a way that makes it legal for you NOT to make any distribution, (only salaries and other expenses etc.), hence you the plaintiff gets nothing except a tax bill for phantom income as explained in our videos and presentations. In conclusion in a Foreclosure LLC state, the plaintiff can get financial rights over your interest in the LLC. In a charging order LLC state the plaintiff could end up with nothing if the LLCF is drafted properly especially if it is set up in Wyoming.

Please send us any questions you may have regarding Asset Protection and we will do our best to answer them in this section as we update it as often as we can. Email us at Info@kmagb.com or call us at (407) 608-5448.