As asset protection attorneys, we have implemented all kinds of family limited partnerships ("FLPs"), offshore trusts, domestic asset protection trusts, special power of appointment trusts, and other asset protection strategies for many clients over many years. We have seen these tested in court cases, bankruptcy, divorce, IRS collection matters, and other challenges. In our opinion, the best asset protection strategy is to create an irrevocable trust that contains a "special power of appointment." I call this a "541 Trust®." You can read more about this strategy by clicking here: 541 Trust® Gives You Better Asset Protection.

CALL 801-765-0279 or click HERE for a free customized asset protection proposal tailored to your situation.

The following are 10 reasons why the 541 Trust™ is better than an FLP, and 10 reasons why the 541™ Trust is better than an offshore trust:

**Better than a Family Limited Partnership**

1. Better Because You Have No Ownership. It is often said that the best strategy is to control everything and own nothing. The reason is that if you don't own it, it can't be taken away from you. One problem with an FLP is that you typically retain some portion of the ownership of the FLP. The portion that you own must be included on your financial statements and in any disclosure of your assets. The portion owned by your family members is included on their financial statements. This exposes the FLP to scrutiny and attack. Because the 541 Trust® is irrevocable, and because the beneficiaries have no vested interest, none of you have any ownership and the assets are not included on your financial statements or in any disclosure of your assets. The 541 Trust® is better than the FLP because you retain no ownership and this makes it much harder for creditors to find and attack.

2. Better Case Law to Support It. There are many cases where an FLP has been disregarded because proper formalities were not followed, or because the FLP owned personal assets in addition to business assets, or because a person exerted excess control over the partnership. A good example of this would be the case of In re Baldwin, 593 F3d 1155 (10th Cir. App. 2010). In this case, the bankruptcy trustee was able to liquidate an FLP by stepping into the shoes of the debtors. The 541 Trust® does not have these concerns because the grantor has no ownership at all in the trust and even if a bankruptcy trustee stepped into the shoes of the grantor, they would have no powers over the trust or its assets. There are many cases where an FLP has been disregarded, but there are no cases where a 541 Trust® has been disregarded or pierced by the creditors of the grantor. For a listing of laws and cases upholding a 541 Trust®
3. Greater Flexibility. Once you give away interests in an FLP, there is no convenient way to get them back. Even if family members are willing to give your assets back, gift tax rules limit the amount that can be given in any calendar year. Also, an FLP cannot be amended without the consent of the other partners. This makes an FLP very difficult to change or get out of if you change your mind. Many clients have created an FLP and given away interests to their children, only to regret it later on when the relationship with the children turns bad, or when the children have liabilities of their own. In contrast, the 541 Trust® includes a special power of appointment which is often referred to as a re-write power, meaning a power to re-write the trust. This means that the terms, conditions, beneficiaries, and other provisions of the trust can be changed at any time. The special power of appointment can also be used to appoint the assets back to you, in any amount, at any time, and without any cost or tax consequences.

4. Fewer Tax Returns. An FLP requires at least one additional tax return and possibly more. It also involves the hassles of sending K-1s to family members and then calculating the affect on their taxes and making distributions to reimburse them for the increase in their taxes. Attempting to reduce income taxes by splitting income with children is now greatly limited by the kiddie tax rules and it is often offset by the increased compliance costs of the FLP. The 541 Trust® results in no extra tax returns, no K-1s to family members, and no income tax complexities.

5. Fewer Family Complexities. One under-advertised problem with an FLP is that it creates family complexities. If children own an interest in the FLP, they and their spouses may want information about the assets and the income of the FLP, and their access to this resource. Children may not qualify for student loans if they own a valuable partnership interest. If your children get divorced, sued, bankrupt, or into trouble with the IRS, their ownership in the FLP is taken into account and possibly subject to sale, partition, or other remedies. Worst of all, once you give ownership away to your kids, you don't have any legal right to take it back. If your family limited partnership or LLC becomes a family mess, don't say I didn't warn you. The 541 Trust® avoid these complexities because the children are not given a property interest in a properly drafted trust.

6. Better Confidentiality. An FLP must be included on the financial statements of every partner. Anyone can obtain information about the partners, their percentages, and the assets and operations of the FLP by looking on the state records and the tax return for the FLP. The 541 Trust® is not filed with any government agency and a public records search will not reveal anything about the 541 Trust® or its owners, managers, assets, or operations.

7. No Income Tax Problems. The transfer of appreciated property out of an FLP could potentially cause tax ramifications if it is a transfer in excess of basis. Moving a home into an FLP could cause you to lose the tax benefits of home ownership. In contrast, you can move...
assets into or out of a 541 Trust ® without tax ramifications and you can put your home in the 541 Trust ® without losing the tax benefits of home ownership.

8. Better Exit Strategies. The creator of an FLP has no easy exit strategy. You can't simply choose to dissolve the FLP and take all the assets back. If one of the other partners should come into trouble with you or with others, you can't just take his interest away. The 541 Trust ® includes a special power of appointment that can be used to appoint all the assets back to the creator, or to any other person or trust. This power can be used to eliminate the beneficial interest of any potential beneficiary if the beneficiary is in financial trouble or if there is some other reason to eliminate their interest permanently or temporarily. The 541 Trust ® has a clean and easy exit strategy, and the FLP does not.

9. Better Succession Plan. FLP interests are subject probate, and the creator of the FLP has little to no control over the succession of the interests. The 541 Trust ® can be used to provide a clear and binding succession plan which avoids probate and can include any terms and conditions that you may want to provide for the succession of the beneficial interests in the trust.

10. Less Expensive. The set-up costs for an FLP and a 541 Trust® are both pretty reasonable. However, the FLP involves significant ongoing legal and accounting expenses and the 541 Trust ® does not.

Better than an Offshore Trust

1. No Beneficial Ownership. Offshore Trusts are created in jurisdictions that provide asset protection for a "self-settled trust." A self-settled trust is a trust in which the grantor is included as a potential beneficiary of the trust. Most states do not allow asset protection for a self-settled trust. At least two bankruptcy courts have held that an Offshore Trust violates the public policies of the federal bankruptcy code. When a person files bankruptcy, they are asked whether they are the beneficiary of any trust, including Offshore Trusts. Unless you plan to lie under oath and risk going to prison, your Offshore Trust will be exposed and subject to scrutiny by a federal bankruptcy judge. The 541 Trust ® is safer than the Offshore Trust because you have no beneficial ownership in the 541 Trust ®.

2. Better Appearances. Appearances do matter. When a judge, jury or government agency finds that you have an offshore trust, they look at you as a bad guy who is hiding assets from the long arm of the law. This appearance of wrongdoing will certainly have a negative affect on the outcome of your case. The 541 Trust ® has the appearance of an ordinary estate planning transaction and it does not raise red flags with
judges, juries, or government agencies.

3. No Contempt of Court, or Denial of Discharge. In at least nine cases over the past 15 years, a judge has sent a person to jail for contempt of court for refusing to repatriate the assets of an Offshore Trust. Bankruptcy courts have established a precedent for denying a discharge to debtors who have transferred assets to an offshore trust. If you believe that a judge is going to roll over and give up because you have put your assets beyond his reach, you are kidding yourself. US courts view an offshore trust as a notorious device whose only purpose is to defraud creditors and evade the law. The 541 Trust® is different because it is considered a legitimate estate planning tool that is supported by the bankruptcy laws and the laws of every state.

4. Offshore Trusts Don't Protect Onshore Assets! Ask any competent asset protection attorney, and they will tell you that an offshore trust is totally useless for attempting to protect onshore assets. US courts have jurisdiction over onshore assets and they can easily attach them even if they are owned by an offshore trust. The 541 Trust® is equally effective in protecting any kind of asset, no matter where it is located.

5. Better Case Law to Support It. To see a listing of cases where an offshore trust has failed or backfired, see Better Than Offshore. For a partial but extensive listing of statutes and cases upholding a 541 Trust®, see Law-and-Precedent-Supporting-541 Trust®

6. Simpler and Less Expensive Tax Reporting. An offshore trust requires a tax return for the trust, a tax return for the trustee, and a tax return for each offshore account that holds over $10,000. Because these returns are unusual for most CPAs, they are especially complicated, expensive, and time consuming. The 541 Trust® requires no tax return and no extra cost or time for tax compliance. In creating 541 Trusts® for many clients, I have coordinated with hundreds of CPAs and all have agreed with the tax treatment that we recommend.

7. Less Risk of Tax Problems. The transfer of appreciated property to an offshore trust may result in immediate recognition of capital gains (See IRS Code Section 684). In addition, the reporting of offshore trusts, accounts, and transactions may raise a red flag that results in heightened scrutiny from an IRS auditor. The 541 Trust® has none of these concerns because you can transfer assets in and out without any tax effect, and the trust has zero affect on your taxes or your tax reporting.

8. Better Confidentiality. Any creditor can subpoena your tax returns and learn the exact location and amount of money you have in an offshore trust or offshore account. In contrast, the 541 Trust® and its assets are not not identified on your tax returns.

9. Greater Flexibility. An offshore trust is generally irrevocable and not amendable. The 541 Trust® includes a special power of appointment that allows the trust and its beneficiaries to be...
changed at any time. It is possible to add flexibility to an offshore trust by including a special power of appointment, but most promoters of offshore trusts fail to do so.

10. Less Expensive. Offshore trusts are heavily advertised and promoted because they are extremely profitable to those who provide them. Set-up costs can be as high as $15,000 to $20,000. Annual trustee fees range from $1,500 to $3,500. The 541 Trust® is significantly less expensive to establish and maintain, and I believe its cost is justified by the legitimate benefits it provides. Because the 541 Trust® is upheld in every jurisdiction, you may be able to eliminate trustee fees altogether.

We are asset protections attorneys and tax attorneys. We do asset protection planning that is ethical, professional, efficient, thoughtful, and eminently effective. If you are interested in asset protection planning, please call 801-765-0279 or send contact us so we can send a free proposal designed just for you.