

Asset Protection Newsletter

It is not the strongest of the species that survive, nor the most intelligent, but the one most responsive to change

– Charles Darwin



**Welcome to Our February
2014 Asset Protection
Newsletter!**

Is an S corporation as protective as a regular C corporation?

S and C corporations provide the same limited liability. They differ only in how they are taxed. There are also restrictions as to who can be stockholders in an S corporation. One restriction is that S corporation shares cannot be owned by other entities. That limits your ability to protect your stock ownership.

Would you normally use a corporation to protect your personal assets?

No. For a corporation to give you inside protection, you must transfer your personal wealth to the corporation. You would then no longer personally own your boat, car, paintings, etc.; instead your corporation would. Your personal creditor could not directly claim the assets owned by the corporation, however, they could seize your corporate shares. That's the problem. Your ownership interest in the corporation can be seized and controlled by your personal creditor. If you own a controlling interest in the corporation, your creditor would indirectly control your



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Important Changes in Florida Law

Latest update: In June of 2010, the Florida Supreme Court held in *Olmstead*

corporation's assets. So you can never safely use the corporation alone to protect your personal assets. You must use a corporation in combination with other asset protection tools to adequately shield your personal assets. Nevertheless, a corporation can provide temporary shelter for personal assets. For instance, one memorable client transferred \$100,000 to a Nevada corporation only two days before a creditor won a sizeable judgment against him. Had the client kept the bank account titled in his own name, the creditor would have immediately levied the account. But with his funds temporarily titled to a corporate account in another state, the creditor would first have to go through discovery before the creditor could find and seize the corporate shares. Of course, this gave us ample time to create a safer repository for his money.

In sum, the problem with using a corporation to protect personal assets is that you literally 'chase your tail.' While your assets are no longer exposed, your shares are instead vulnerable. For protection, you must then find ways to protectively title your corporate shares, as they cannot be owned by you personally.

What is a Durable Power of Attorney?

The Durable Power of Attorney is a legal document that names a person, also known as an agent, to handle financial matters for you. Some states allow you to have a "springing durable power of attorney," which springs into effect only in the event that a physician signs off on your incapacity; however, Florida recently changed its law and does not allow springing powers for powers of attorney.

The net effect of a durable power of attorney is that you have to be very careful whom you choose as your agent because that person's power is effective immediately upon your signing the document. With that in mind, a good Florida attorney will show you how to avoid the potential for abuse. It is important to have this document in effect as it may assist you to avoid the need for a guardianship in the event of your incapacity because the durable nature of the power of attorney allows the document to survive your incapacity.

Further, the durable power of attorney is used for financial and business matters. For instance, an agent would have the power to open and close bank accounts for you as well as buy stock. The agent acts in the capacity of a fiduciary, which means that person is in a trusted position and must act prudently on your behalf. This power of attorney can also be used to sign business papers and enter into contracts in the name of the principal, or the person creating the durable power of attorney.

It is important to note that this power cannot be delegated. For

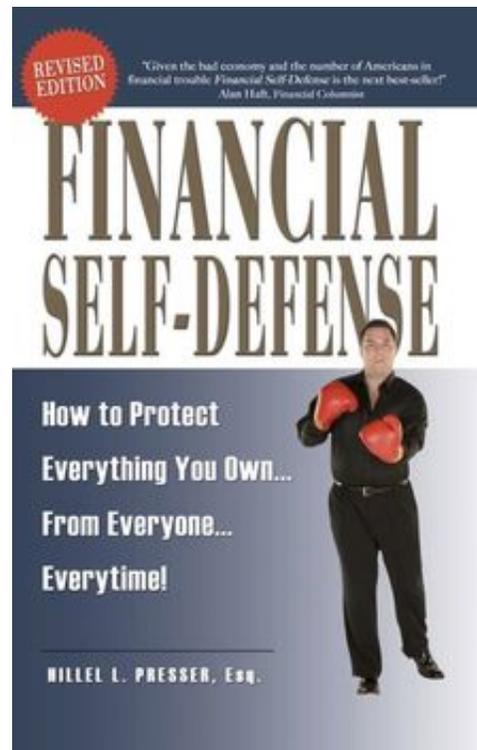
v. Federal Trade Commission (No. SC08-1009) that a charging order is not the exclusive remedy available to a creditor holding a judgment against the sole member of a Florida single-member limited liability company.

Be one step ahead, keep following our newsletter for up to date changes in the law!

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example, if you delegate the power to your father and he remarries, your father cannot “delegate” this power to his new wife, or anyone else. An agent can’t give someone else the power to be another person’s agent, only you can.

The Presser Law Firm, P.A. - Asset Protection Attorneys

The Presser Law Firm, P.A. represents individuals and businesses in connection with the establishment of comprehensive Asset Protection plans that incorporate both domestic and international components.

We help our clients protect themselves from lawyers, malpractice claimscreditors, foreclosure deficiencies, former or current spouses, children, relatives, and greedy lawsuit-obsessed citizens. While many people can make money, few know how to protect it.

In addition to Asset Protection, The Presser Law Firm, P.A. represents individuals in the areas of business formation, legal and business counsel, estate planning, and estate administration (wills and trusts).

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We have been working around the clock to improve our Firm's online presence to ensure that you receive the most up-to-date information on how to protect everything you own from everyone, every time. We will be constantly updating our social media with new cutting edge information, just click the links above to follow us.

If you know a colleague, friend, family member or anyone that would benefit from this important information, please have them contact us to be added to our newsletter!

Best Wishes,

The Presser Law Firm, P.A.
Asset Protection Attorneys

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The Presser Law Firm, P.A.
Asset Protection Attorneys

800 Fairway Drive
Suite 340
Deerfield Beach, FL 33441

Info@AssetProtectionAttorneys.com
www.AssetProtectionAttorneys.com

THE PRESSER LAW FIRM, P.A.
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Website Twitter LinkedIn Facebook YouTube

800 Fairway Drive, Suite 340, Deerfield Beach, FL 33441, United States

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