

New Dimensions in Estate & Trust Planning

*An Article to Benefit Clients & Friends
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Plan Your Estate With A FAMILY LIMITED PARTNERSHIP

by Richard L. Ferris, Esq.

The **Family Limited Partnership (FLP)** is an attractive Estate Planning tool because it permits you—the creator—the following benefits:

(1) Permits the creator/parent to significantly adjust the value (as much as 30% downward) of gifts to children, grandchildren or others that would not be discountable if made as an outright gift.

(2) Permits these gifts to family members while the parent retains control over the transferred assets.

(3) Permits gifts to family members that are removed from the parent's high Federal Estate Tax brackets (37%+).

(4) Permits gifts of income producing property to shift the income tax burden from parent to family members in lower income brackets.

(5) Permits the protection of family partnership assets from creditors or

predators of the partners. For example, for parents who want to transfer assets to their children but are concerned a child might be sued or that a child's former spouse might obtain such assets in the event of a divorce.

What Is A "Family Limited Partnership"?

A Family Limited Partnership is a regular limited partnership comprised solely of family members. It has both General and Limited Partners. The General Partners (i.e., Parents) have FULL control over the FLP even if the General Partners own a small percentage of the FLP (example, 2%).

How Does A FLP Work?

A parent(s) creates a Family Limited Partnership document, similar to a trust, that ensures continuous succession of property OWNERSHIP and CONTROL from one generation to the next while sheltering family assets and retirement resources from

management waste, estate taxation, creditors and predators.

Let's Look At An Example Of How A FLP Works:

Bob and Susanne want to give to their three children—Mary-Theresa, Bob, Jr., and Anne—a parcel of real estate that is worth \$500,000. They want to retain control of the property and not pay gift tax to make the transfer. They create the BSF Family Limited Partnership. Bob becomes a 1% General Partner, and Susanne becomes a 1% General Partner. Each of them, then, become a 49% Limited Partner. Then, Bob and Susanne give each of their three children a 20% Limited Partnership interest. These gifts could be outright or in trust for the children's benefit. Of course, Bob and Susanne retain their 1% each General Partnership interests, thereby remaining in full control of the Family Partnership. According to the document, the children have no voting right, no control, and cannot give away or sell their Limited Partnership interests without their parents' permission.

What Are the Tax Benefits?

Even though Bob and Susanne made a gift of \$300,000—60% of the value of the real estate—the gift tax value of the gift would be much less due to lack of marketability of the children's Limited Partnership interests and other restrictions imposed upon them in the Partnership Agreement. In fact, the gift adjustment could be as much as 40% or \$120,000 (40% x \$300,000).

When either Bob or Susanne dies, their Limited Partnership interest (38%) will likely receive similar adjustments for Federal Estate Tax purposes. And, remember, the future appreciation of the real property and income generated from the real estate will mostly go to the children because

of the gifts made earlier of the Limited Partnership interests.

Any Problems With The Family Limited Partnership?

A FLP must be established for business purposes. Just using a FLP as a gift and estate discounting device or purely for creditor protection is not alone sufficient to give rise to a "business purpose". However, in most situations, a business purpose sufficient to allow the FLP acceptable will evolve during the fact-finding conference with a client. For example, to manage an investment portfolio or real estate, to reduce management costs associated with multiple investments, to increase investment returns by a consistently applied investment philosophy, to prevent family assets from going outside the family are all "business purpose" reasons for an acceptable FLP.

Summary

Estate Planning, by definition, is to **guarantee** that during your life you remain in complete control of your assets and medical decisions in case of disability and at death your wealth is transferred to the "RIGHT" beneficiaries, at the "RIGHT" time and in the "RIGHT" way. And, above all, effective estate planning is to minimize taxes, legal fees, estate administration and distribution delays, publicity and court procedures.

A FLP, in the appropriate situation, is an attractive and flexible planning tool that allows families to maintain control over wealth from generation to generation while sheltering family assets and retirement resources from waste, estate taxation, creditors and predators. In short, this tool can help families create dynasties through their vision of wealth transfer.

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About the Author

RICHARD L. FERRIS began his legal career in 1972 with the Ohio Attorney General's Office, Tax Section. After serving as a Director of a major financial institution's Estate and Business Analysis Department, he founded the Williamsburg Law Firm of Ferris & Associates in 1993. The Firm focuses on Estate & Trust Planning; Probate, Trust and Estate Administration; and, Business Formation and Planning.

Dick earned his Law Degree from Ohio Northern University; Master of Laws (LL.M.) in Taxation from Boston University; and his CLU, ChFC, and Masters of Science in Financial Services Degrees from the American College.

He has authored many articles on Estate and Business Planning, including publication in the Virginia State Bar's *Trusts and Estates*. In addition, Dick is a frequent speaker before civic, social, and professional groups. He has co-authored three books on Estate and Trust Planning: **LEGACY—Plan, Protect and Preserve Your Estate**; **GENERATIONS—Planning Your Legacy** and **LOVE, MONEY, CONTROL—Reinventing Estate Planning**.

Dick is admitted to practice before Virginia, Ohio, and District of Columbia Bars, and is a member of the National Network of Estate Planning Attorneys. He is admitted to practice before the U.S. Tax Court in Washington, D.C.

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