Summary Checklist for Family Limited Partnership Formation and Operations

By

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Summary Checklist for Family Limited Partnership Formation and Operations
Current Through September 30, 2008

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Problems That are Created Upon Formation of Family Limited Partnerships

- Delay in Funding: P/S Created Under Law Before Funding
- Delay in Registering Partnership with State
- Nearly 100% of Founder’s Assets [including residence] Contributed
- Sole Asset Transferred to P/S is Residence, Then Rented by Transferor
- Aggressive Marketer [Fortress Group] Promoted FLPs, Provided Complete Packages, Including Legal Documents for a Flat Fee
- Excessive Powers Over Operations, Distribution and Withdrawal are Retained
- Documentation of Transfer of Assets to FLP Delayed
- Simultaneous Transfers: FLP Formed and Gifts of FLP Units Made
- Founder of FLP has Power to Control GP/Replace GP
  - Kimbell Circuit Court Rejected Implicit Control Doctrine
  - Bongard applied a “Practical Control” Test
- FLP Formed When Founder was Very Old [95, 86, etc.] and/or Terminally Ill
- P/S Agreement Powers Vitiate General Partner’s Fiduciary Duty
- There is a Lack of an Independent Trustee