

# Asset Protection Planning

# Agenda

- Definition
- The Supply
- Basic Asset Protection Planning
- Common Mistakes
- Advanced Asset Protection Planning
- Business Development

# Asset Protection Planning

*The process of employing risk management products and legally acceptable strategies to ensure a person's wealth is not unjustly taken from him or her.*

# Asset Protection Planning

- Financial products
  - Insurances
  - Retirement plans
- Legally acceptable
  - Bright-line transactions
  - The issue of *Fraudulent Conveyance*
  - All transactions make business sense
- Unjustly taken
  - Not about hiding money
  - Jury's perspective
    - Business owner is morally correct in his or her actions
    - The strategies implemented were economically and legally sound given the business owner's personal, professional and financial situation

# Badges of Fraud

- Knowledge of an impending claim
- Reasonable equivalent consideration for the asset transfer
- Transfer of assets to an insider
- Debtor insolvent at the time of the asset transfer or very near to the time of the asset transfer
- Asset transfers are done without transparency

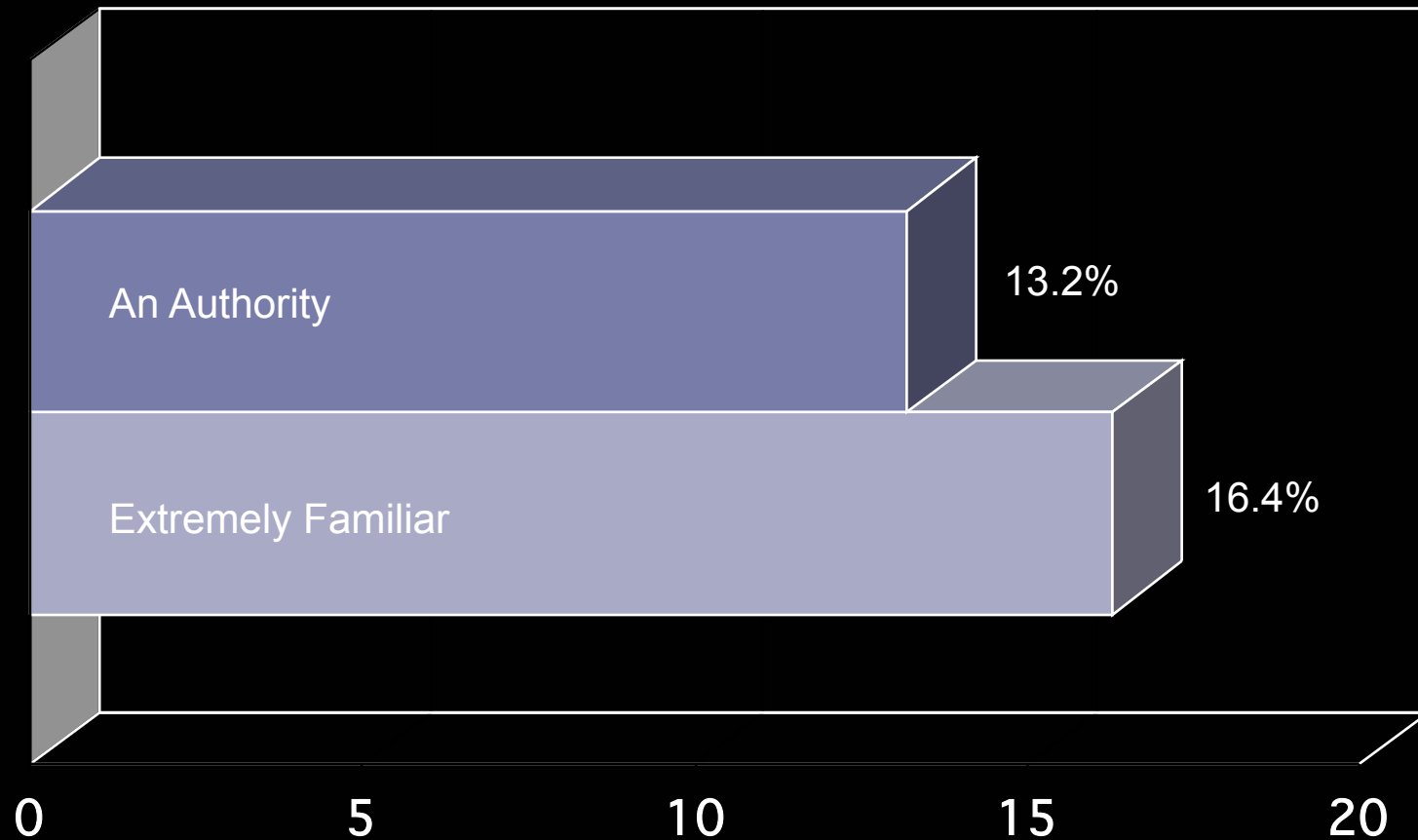
# A Matter of Settlement

- Questions about winning a judgment
- Time involved in the legal process
- Litigation costs
- Doubts about collecting

# The Supply

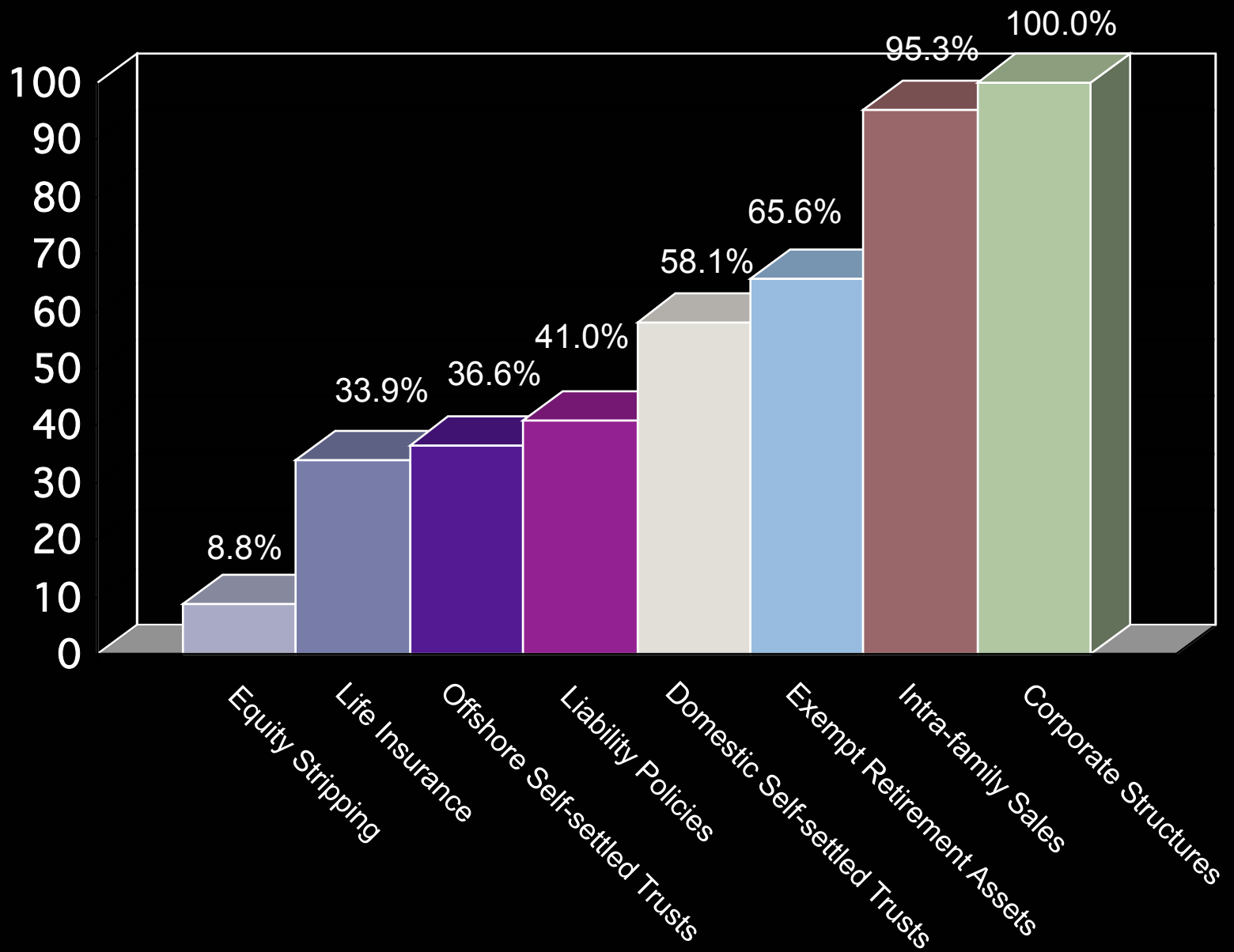
- Anyone can say they do “asset protection planning”
- Even among professionals that specialize in asset protection planning there’s a clear hierarchy of talent and capabilities
- Study of 227 self-identified asset protection lawyers

# Delivering Expertise





# Degree of Familiarity



# Basic Asset Protection Planning

- Determining ownership
- Business entities to hold the assets
- Asset protection trusts
- Gifting assets

# Business Entities to Hold Assets

- Limited liability partnerships
- Limited liability companies
- Corporations

# Ownership

- Used for real estate and personal property
- Example – *Tenancy by the Entirety*
  - Married couples
  - Creditor would need a judgment against both spouses to seize the asset (e.g., house)

# Asset Protection Trusts

- A “self-settled” trust where the individual (a “settlor”) creates and funds the trust is also the beneficiary of the trust
- Domestic asset protection trusts
  - Relatively new – 1997 oldest domestic asset protection trust
  - Yet to be tested in the courts
- Offshore asset protection trusts
  - Long history
  - Does not restrict the government from imposing penalties on the settlor

# Gifts Assets

- Gifting cash or other assets to family or others
- Need to address gift taxes

# Common Mistakes

- *NO ASSET PROTECTION PLAN*
- Un-tested faith in liability insurance
- Failure to update the asset protection plan
- Not prepared for different directionalities

# Advanced Asset Protection Planning

- Equity stripping
- Captive insurance companies
- Floating islands



# Pop Bands & Captive Insurance Co's

## Scenario

A popular band was planning an open-ended world tour and was unable to secure a sufficient amount of liability coverage to protect the band members, the management team and their assets.

## Actions

1. An offshore captive insurance company was funded with \$8.6 million of the band's money
2. The desired amount of liability coverage was purchased through the captive for \$3 million
3. The remaining \$5.6 million was placed in a principal protected structured note as a reserve for claims and settlements
4. The assets were levered up 4X allowing \$22.4 million to be invested

## Results

The tour ended after 30 months with no legal actions and the captive was dissolved. In that time the investment had generated an additional \$2.8 million which was shared by the band members.

# Entertainers & Floating Islands

## Scenario

A number of unaffiliated entertainers - each with a history of lawsuits - were seeking ways to further protect themselves.

## Actions

1. Establish a series of self-settled trusts in select jurisdictions around the world
2. Liquidated a specified portion of each participating entertainer's assets
3. Assets were distributed across the trusts, and subsequently moved between them, based on a set of algorithms tied to exchange rates
4. Assets may be accessed through select local fiduciaries

## Results

Keeping assets in motion helps in shield the entertainers and their assets from unsubstantiated claims. Assets can be withdrawn without disrupting the collective effort, which can continue as long as needed.

# Actors & Equity Stripping

## Scenario

A renowned actor wants to diminish the value of his personal holdings to deter frivolous lawsuits.

## Actions

1. Establish a series of trusts to hold the actors personal and commercial real estate, jet, yacht and various collectibles valued at \$61 million
2. The assets are appraised and loans are taken against the property for the full value through a commercial bank
3. Another trust is used to invest the assets in hedge funds and name a different beneficiary for further dissociation
4. The bank sells a promissory note for the loans to a second hedge fund creating another layer of anonymity for the actor

## Results

Securing loans against property effectively “strips” the equity but leaves the assets unencumbered and decreases their appeal. Structures remain in place as long as needed.

Q&A