

# LIABILITY SHIELD™

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## **PROPERTY PROTECTION PLANNING**

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# WHAT KIND OF LIABILITIES?

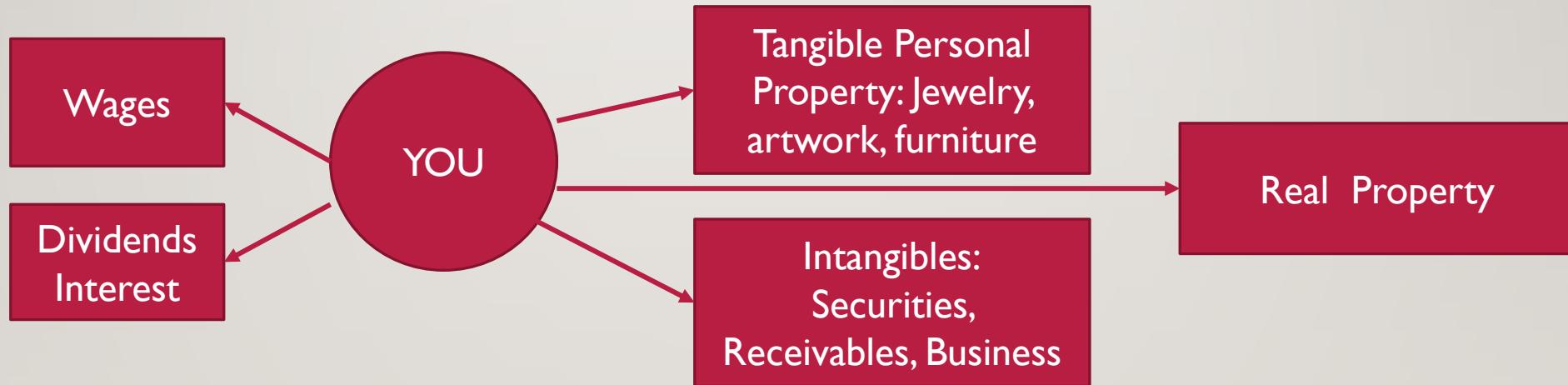
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- **Financial (civil)** legal responsibility for an act or event
- **Voluntary**, e.g., by contract (loan), becoming a partner
- **Involuntary**, e.g., auto accident, act of another (e.g., your employee or agent)
- **Primary (direct)**, i.e., liability for your own acts
- **Contingent**, i.e., liability for another's acts, such as guaranteeing a loan
- **Vicarious, respondeat superior**, i.e., your employee or agent
- **Cross Liability**, e.g., own 2 apartment buildings  loss in one building threatens the other
- **Upstream ↑ Downstream**, e.g., my direct liability threatens the buildings I own, or liability in a building I own threatens me, personally

# WHY DO YOU NEED A LIABILITY SHIELD?

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- Because, EVERYTHING you own (tangible or intangible) and your income are At Risk.



# COMMON USE OF LIMITED LIABILITY ENTITIES

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- A **Limited Liability Entity** – **may protect the entity owner** from Liability arising **within the Entity**, e.g., **Corporation, Limited Partnership** (limited partners), **LLC**
- Limited Liability Entities protect against **Vicarious Liability; not Primary or Contingent Liability**.
- **Limited Liability Entities = Limited Liability Protection**
  - Protection against Cross Liability and, probably against Upstream Liability; but not Downstream Liability (If you are liable outside the entity, then the entity is your asset and it is exposed to lawsuits and creditors).
  - However, depending on type of LLC and jurisdiction of formation, a limited liability company may limit downstream liability to a “charging order”.

# HOW DO YOU CREATE A LIABILITY SHIELD?

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- The key to creating a Liability Shield is understanding “property you own”.

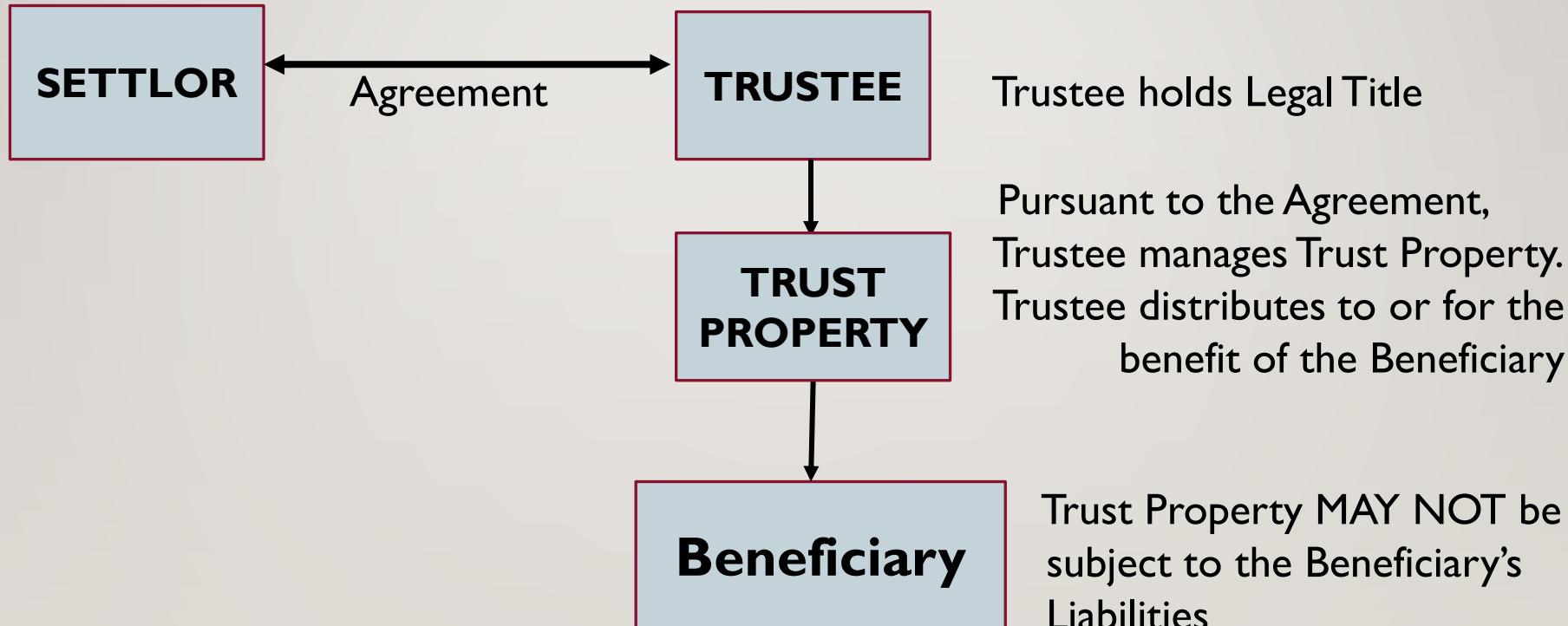
# WHAT IS “PROPERTY YOU OWN”?

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- Unlike the European (French/Spanish) legal systems, the U.S. (English) legal system enables division of property ownership into two components:
  - **LEGAL TITLE**
  - **BENEFICIAL INTEREST**
- Normally, when we speak of ownership, we assume that Legal Title and Beneficial Interest are in the same person or entity
- However, that's not true if the entity is a **TRUST**

# WHAT'S A TRUST?

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# “SPENDTHRIFT”: THE MAGICAL TRUST!

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- Trust Property is **NOT subject to the Trustee's Liabilities.**
- Trust Property of a **Spendthrift Trust is not subject to the Beneficiary's Liabilities.**
- The catch: **I cannot donate my property to a Spendthrift Trust for myself as beneficiary to shield it from my own liabilities.**

# IS THERE MAGIC TO PROTECT MYSELF?

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- The **Bad News** is that a Spendthrift Trust will not protect property I transfer to the trust for my own benefit.
- The **Good News** is – Yes, there is another way.
- Depending on the State where it is set up, there is a Special Trust that can **Protect You!**

# CONCLUSION: **WHEN SHOULD I CREATE A LIABILITY SHIELD?**

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- **NOW!** If you wait for a claim to arise, it's too late.
- Traditional Estate Planning does NOT create a Liability Shield for you.
- You **need a Liability Shield**, IF you:
  - Are in a **high liability business or profession**;
  - Own or are acquiring a **business**; or
  - Own or are acquiring **valuable property**.

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