



Legal Note – Origins of Asset Protection

We are often asked how asset protection began. Interestingly, the practice is generally thought to have begun as a reaction to the common law of England. In the middle ages, the feudal system imposed onerous financial burdens on holders of legal title to real estate. The feudal system entitled the lord of the land to “relief” which generally consisted of money payments by the owner (known as the “feoffor”) due upon the occurrence of certain events. Such events included, for example, the passage of the property to an heir, marriage of a daughter, the knighting of the eldest son or upon the holding of the “tenant” for ransom.

Owners of property in England would therefore transfer legal title to a “foeffee” or trustee, bound by agreement to direct profits and sales proceeds of the property to a “cestui que use” or beneficiary. The maneuver allowed the owner to escape the burdens of legal title. The act of vesting legal title in another, while controlling use of the property, also established an important additional benefit. The arrangement took advantage of the fact that the common law provided no remedy to a creditor of the beneficiary regarding property in trust. The fifteenth century beginnings of trust law are therefore generally attributed with having established the origins of modern asset protection.