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
**FLP Operation – Actions Taken or Overlooked During Administration of Partnership**

- Required State Filings not Accomplished or Significantly Delayed
- Separate Books and Records for P/S not Maintained
- Separate Bank Accounts Not Maintained: Co-mingling of Assets
- Lack of Recordation of Business Activities
- Disproportionate Distributions are Made to Founding Partner
  - Especially to Meet Living Needs and Medical Expenses
- FLP’s Assets Managed by Outside Party, not the Partnership
- Partner Redeemed Donee Charity Soon After FLP Formed
Indirect Control Provided to FLP Creator in P/S Agreement: so Control Not Given Up

Once FLP Formed, no Donative Transfers are Made [Implies Estate Planning was Sole Motive]

P/S Administered Like a Trust, not a Business Entity

Lack of Regular Partner Meetings

Non Pro-rata Distributions to Partners [Based Upon/ Related to Assets Transferred by Each Partner]

P/S K1’s Misreported Identity of Partners [Ignored Intervening Trust]

Founder as Limited Partner Makes All/Most of Management Decisions

Fiduciary Responsibility of General Partner is not Relevant if FLP Does not function as an Operating Entity

“Big Picture” Considerations: Often Involving Bad Perception
(Another way to consider some of the problems noted above, sometimes alluded to as not passing the “smell test” and noted up front by the courts)

Low Wealth of Founder: Small Sized FLP Includes Personal Residence and/or Other Personal Property

Mass Marketer [Fortress Group] Promotes for a Flat Fee

Extreme Age and/or Sever Ill State of Founder

Unwinding of FLP Soon After Creator’s Death [Implies Estate Planning]

P/S Formed by Agent [Under Power of Attorney] - Founder Uninvolved in the Process

Hard Copy Indicates Discount/Transfer Tax Savings Sole Purpose of P/S

Founders Illness Caused a ‘Call’ on all of P/S’s Income