



Scott Royal Smith, Esq.

Scott@royallegalsolutions.com

512-757-3994

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SERIES LLC STRUCTURE WITH ANONYMOUS TRUSTS

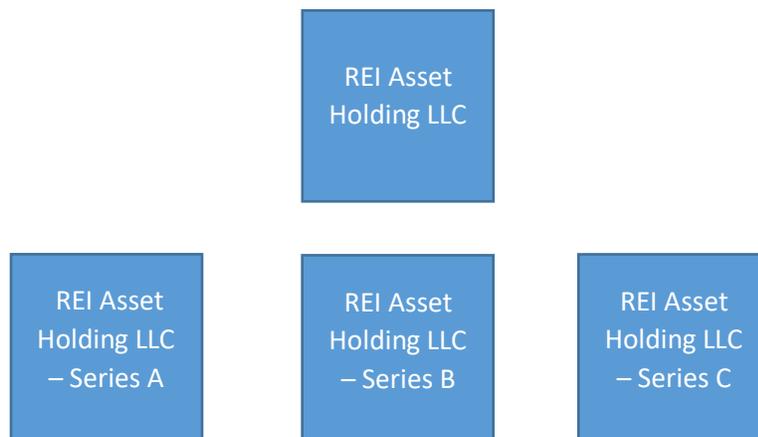
A proper asset protection strategy lets you sleep easy at night even if you are sued. Below, I will share with you the secrets that will have you sleeping easy at night and going about your business as usual even when you're being threatened by a lawsuit. What will have your friends aging overnight, you'll barely even worry about. After implementing a proper strategy, lawsuits will never even get filed and the problem is gone before it even starts.

Asset Protection for real estate investors is premised on two parts: (1) isolating the assets for liability purposes inside of a Holding Company and (2) hiding the assets from being connected to you or the Holding Company. Additionally, this company structure is scalable at no additional costs or fees, streamlines your taxes, can be used in conjunction with traditional financing, and allows for the traditional recording keeping you are likely already using. After it is set up, you won't even notice it's there in your normal course of business.

WHICH TYPE OF COMPANY SHOULD I USE TO HOLD MY REAL ESTATE?

The best holding company for real estate asset protection is the Series LLC. You can think about the Series LLC as a Parent - Child relationship. The Series LLC is the Parent, and it can have as many children as it wants. Each child is known as a 'Series'. Even though the Series LLC is technically one company with one filing with the state and one tax return, each child 'Series' is treated as if it were its own LLC for liability purposes.

Each Series is typically designated with its own letter, e.x. Series A (See the picture below). This means that if a lawsuit is filed against Series A, it cannot affect Series B, Series C, etc. A lawsuit against Series A can only affect the assets held in Series A.





In the diagram above, the REI Asset Holding LLC has three Series. Each Series has only one property held by it. REI Asset Holding LLC – Series A owns a single asset, a piece of Real Property located at 123 Main st. As such, since Series A only holds that single piece of real property, a lawsuit against Series A does not jeopardize the real property located at 456 Main st. or 789 Main st. Moreover, if there was a lawsuit against the owner of the parent REI Asset Holding LLC, that lawsuit could only collect against the assets of the owner and not against the assets of REI Asset Holding LLC. In this way, a lawsuit against the owner of the LLC does not affect his or her assets. ¹

HOW TO STOP A LAWSUIT BEFORE IT EVEN STARTS:

The Series LLC limits our downside risk in the event of a lawsuit since it limits the maximum amount we can lose, the amount held in the Series. However, limiting the amount of the lawsuit is our last result. What we want is a protection system is that stops the lawsuits before they are ever filed.

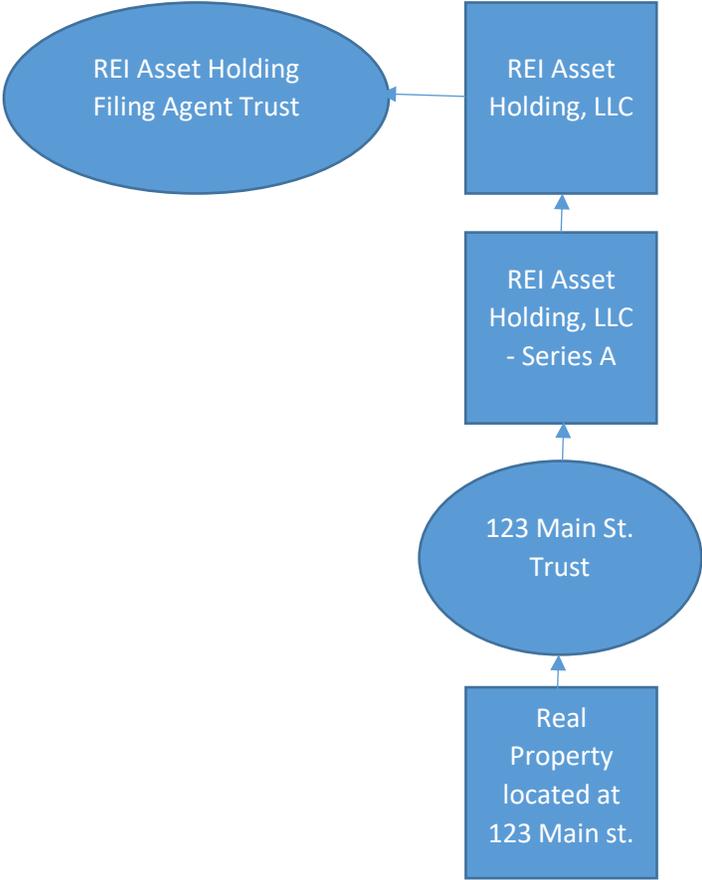
To stop a lawsuit before it is filed you have to take out one of the three essential pillars of a lawsuit. The essential pillars of a lawsuit, i.e. what you need as a litigator to make a case worthwhile, are the law, the facts, and the recovery. The law and the facts are generally easy to fabricate, and any decent lawyer can find a basis for a lawsuit that will survive summary judgment. The asset protection system I put in my place for my clients attacks the third leg, the recovery. The recovery is the ability to seize assets and get paid after you win a judgment. A judgment is worthless on its own, it is only a piece of paper. It is only as good as there are assets to seize with it. So, before a case is filed an attorney will always research whether there are assets which he can seize from the defendant in the case that he wins. If it appears that the defendant has very limited or no assets, then in all but the cases but personal self-righteous vindication will the lawsuit be foregone.

To show the opposing side that there will be no recovery from the lawsuit we hide the assets using Anonymous Trusts. These Anonymous Trusts can own the LLC itself as well as serve as Title Holding Trusts for the real estate asset. The LLC typically must disclose the members of the LLC on the filing instruments called the Articles of Incorporation. However, the member listed on the filing can be an Anonymous Trust. Since the Anonymous Trust is a private document and it is not filed with the State, anybody researching the Owner or Beneficiary of the Trust will be unable to find that information in the public records. Additionally, anyone researching the owner of the real estate asset by searching the County Clerk records will only find the name of the Anonymous Land Trust. Typically, the property owner's name is listed on the County Clerk's records, but in this case the owner of the property would

¹ Please note that this is not true in all cases, but it is the case per the Business Organizations law for Texas companies.

be listed as the 123 Main St. Trust. Since the Owner of Trust and the beneficiary is not registered with the state, they cannot find out that the Series LLC is the beneficiary of that Trust.

For the purposes of clarity, I refer to the Anonymous Trust used for the purposes of filing the LLC itself as the "Filing Agent Trust" and the Trust used for holding the real property as the "Anonymous Land Trust". The Filing Agent Trust in the below example is the actual owner of the Series LLC.



WHAT SHOULD I EXPECT FOR TAX PLANNING?

The taxation structure with the above entity is typically done in one of two ways depending on the number and type of owners. If the owner is a single individual or a married couple, then the entire structure is a pass through entity and the investor owner(s) simply report the income on their personal income tax return under Schedule E. If the owner investors are unmarried, then the LLC will need to file a partnership tax return.

Financing inside of a company structure should only be done once traditional personal financing is exhausted. Traditional financing is typically with better, cheaper terms than the commercial financing required if the property is purchased directly in the name of the LLC. Once the property is purchased in your personal name, the property will need to be deeded into the company structure. Deeding the property into the company structure will violate the Due On Sale clause located in the mortgage; however, we have not seen a bank foreclose based upon the Due On Sale clause since before 1960 as long as the payments are made. I hear of lots of threats, but I have not seen any banks actually do it.

HOW DO I KEEP RECORDS AND MAKE SURE MY LLC WILL NOT BE “PIERCED”?

There are several things you must do to keep an LLC from being pierced including filing franchise tax, having an operating agreement and managing the money correctly. Where I see most of my clients drop the ball is on the money management and record keeping.

The recording keeping of the above structure is likely very similar to what you already do for your basic accounting of the investment. For any investment, you need to know the profitability of the particular asset purchased, so you need to have records which reflect the amount of capital invested into the asset, the amount earned buy it, etc. The Series LLC structure above will require you to maintain the records of each Series separately just as if they were separate companies. In many cases, all this requires is for you to “tag” the entries in your quickbooks so that the entry is shown in correlation to the specific company. If you do not use quickbooks and instead use an excel spreadsheet, then be sure to add a new entry any time you add or withdrawal money from the bank account for the company. If you forget to do this a few times it is not the end of the world. You can always go back after and “catch up” on the accounting. The Court will allow this as long as it is “reasonable”: nobody expects you to be perfect, but don’t abuse it.

THIS SOUNDS GREAT! HOW DO I GET STARTED?



My specialty is in structuring companies to protect and hide assets in anticipation of litigation. 100% of my clients are real estate investors, and I am an investor myself. Whether you are looking to protect your personal assets, set up a self-directed IRA, or need estate planning, I can help.

Contact me at (512) 757 – 3994 or email at Scott@royallegalsolutions.com

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