ROYAL LEGAL

TOP 10 WAYS TO PROTECT YOUR ASSETS

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In cooperation with BiggerPockets.com, to accompany the podcast recorded with Scott Smith, which you can listen to online by visiting the below link: http://BiggerPockets.com/show109

! This is not legal advice. I am not your attorney. You should retain counsel before taking any action.

Real estate is one of the most hotly contested industries. It isn't a matter of IF you will be sued, it's a matter of WHEN. Are you prepared to deal with a lawsuit?

I'm going to provide you with 10 essential asset protection strategies. In fact, you can be fully protected from a lawsuit in as little as a week.

But first, why should you trust me? I am board certified to practice law in both New York and Texas, and I serve more than 1,000 real estate investors nationwide.

As a multi-state real estate investor myself, I've searched for the best state for my operations. Texas law offers some of the most aggressive protection structures to defend against judgments and creditors.

There's a saying, "he's gone off to Texas." If you want to avoid debt collectors pounding on your door, there's no better place. These protections extend to other legal areas as well.

You don't need to be a Texas resident to take advantage of the state's protection laws. You can appreciate the southern heat at a distance while guarding against lawsuits.

In the coming pages, I'll describe how real estate investors encounter legal risk in the form of lawsuits and judgments, as well as the steps they can take to protect themselves.

As you take in all of the details, keep in mind that wealthy people don't own assets. Wealthy people simply control assets and benefit from them.

Scott Royal Smith

OBJECTIVE

To explain how to deter a lawsuit and possible judgment while protecting assets

1-LIABILITY

2-INSURANCE

3-JUDGMENT

4-ENTITIES

5-SERIES LLC

6-MEMBERS

7-ANONYMITY

8-DELAWARE

9-ESTATE PLANNING

10-COMPLIANCE

FIVE ACTION ITEM TAKEAWAYS

1-LIABILITY

You probably have insurance to protect yourself in the event of a fire. So why wouldn't you have an insurance policy that defends you in the event of a lawsuit?

- An asset protection plan is designed to reduce your exposure to legal liability. It does this through a combination of legal strategies and business savvy.
- Litigation is time consuming and expensive. People can and do lose everything in court, which is why you should take action now.

LI·A·BIL·I·TY

a legal term used to describe "risk"

Did you know most legal cases are settled on the courthouse steps?

Losing a lawsuit can destroy everything you've achieved in one fell swoop. So why take the risk? Most people would rather endure a little pain from watching greenbacks slip from their pocket than gambling on their future.

Even settlement can be ugly. The first chunk of cash goes toward buying off the attacker and mitigating the risk of judgment. It doesn't include the attorney fees, which can add up shockingly fast.

Believe it or not, the defendant gets stuck footing the bill for both sides. That's right, you actually get to pay for the pleasure of having your money taken away.

Attorney fees add up surprisingly fast. Even a simple case can cost upwards of $10,000, but more substantial cases can spiral into six digits and easily bankrupt the defendant.

Want to protect yourself from legal vultures? Then you need an asset protection plan. An expertly designed plan can prevent a lawsuit before it begins, saving you thousands in payments and fees.

Let's face it, lawyers need to make money. The easier it is to make, the better for them. Most litigation firms only pursue a lawsuit if it looks profitable.

A judgment is really just a piece of paper. It only becomes scary if it can be applied to your assets, such as forcing you to foreclose on a property to satisfy payment for the judgment.

Properly structured asset protection plans can make assets vanish, rendering the judgment powerless over your wealth and future.

2-INSURANCE

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Insurance is necessary but not sufficient.

- Many real estate investors believe their insurance plan is a silver bullet to ward off all evil. It's not. It likely only offers protection in the case of negligence or an accident.
- Insurance is necessary, but it isn't sufficient. It is designed to protect the condition of your property, but it can't protect your ownership.
- Exposing yourself to fraud is easier than you think.
- You may be honest, but an intentional act can get you sued.
- Insurance works to deny claims and may not protect against a lawsuit.

IN·SUR·ANCE

a means of protecting against loss or harm

Investors shouldn't rely on an insurance policy to save the day in the event of a lawsuit. A policy likely only protects you in the case of negligence or accident.

Dollars to donuts says your policy is worthless when it comes to intentional acts. Just check your document or call your agent.

This means all a litigator needs to do is prove you acted intentionally. What does that mean?

How about making a statement about the property condition?

I'm sure you've made an offhand remark about the history of a house, the state of its plumbing, or how it was constructed. It's hard not to talk about the property.

A slip of the tongue with any of those statements could be sufficient to maintain a cause of action–a lawsuit against you–for fraud?

Fraud doesn't mean you are a bad person. It's an allegation that you mislead the other side. How it gets defined will be argued in court and at your expense, regardless of whether you win or lose.

I believe when a client tells me they didn't mean to mislead the other side, but it doesn't matter. If the other side doesn't feel the same way, they can still drag you into court.

Regardless of whether or not you meant to mislead the other party, you made a statement intentionally. Your insurance company can classify this as an intentional act and deny coverage you were counting on to save the day.

Worst of all, you're stuck paying for an attorney either way. Kiss that money goodbye.

3-JUDGMENT

A judgment is a nasty beast that can rear its ugly head and tear down your entire investment village.

- Losing a judgment means a plaintiff could seize your assets.
- Even a modest judgment can lead to losing all your property.
- Don't wait until a lawsuit is filed–protect your assets now.

IF YOU LOSE A LAWSUIT YOU'LL END UP WITH A JUDGMENT AGAINST YOU.

Say you have a modest judgment rendered against you for $50,000 (I've seen numbers this high even in landlord/tenant lawsuits.)

The victor will then attempt to foreclose on your property and take the proceeds of the sale to satisfy the judgment.

For example, let's say your portfolio includes:

- you purchased a $300,000 apartment with 3.5% down because you took advantage of the FHA ($11,500 in equity),
- you bought another condo for $100,000 with 25% down ($25,000 equity),
- and you just finished paying off your car which is now worth $25,000 ($25,000 equity.)

The judgment holder could foreclose and sell all three of these assets, and further be entitled to the attorney fees regarding the seizure and sale, which could be $3000 each (making the total amount of the judgment $59,000.)

First goes your apartment and equity to the judgment holder ($47,500 remaining in the judgment), next goes your condo ($22,500 remaining in the judgment), and then you see your car getting towed away and sold (-$2,500 remaining in the judgment.)

Since the sale of the car was more than the amount of the judgment you'll actually get a check in the mail for $2,500, but that's barely enough to keep you out of tears while you're riding the bus and have nowhere to live.

If only your assets weren't in your name, you'd still be watching your big screen television and not smelling the homeless guy who just got on the bus.

4-ENTITIES

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The most common legal entities include Sole Proprietorships, LLCs and Trusts.

- A sole proprietorship is a common business plan but is risky.
- An LLC can keep someone from filing a lawsuit against you and taking personal property.
- A trust allows you to keep personal information and assets private.
- Legal entities protect real estate property and assets, shield ownership.

DID YOU KNOW?

Sole proprietorship places real estate property and assets at more risk than other legal entities.

When you hold property or an asset in your name, you are holding it in a sole proprietorship.

This is the most risky way to hold any property whatsoever.

If you didn't know better, I'll forgive you but the law won't.

People can easily find your assets by searching your name in public records. Once they find you, they can file suit against you, for any reason related to the property, and take your property if they win the lawsuit.

An LLC offers more protection. The LLC keeps someone from filing a suit against you and taking personal property.

They could only get their hands on the property held in the LLC if the LLC did something wrong.

The difference is seen in the following hypothetical example where you get in a car wreck and have no insurance.

As a sole proprietor where you own property, the plaintiff is entitled to collect against anything you own.

If the property is in an LLC however, you don't own the property, the LLC does. The Plaintiff is limited to collecting against you and your personal assets.

So what type of LLC structure(s) work best?

A single LLC is not sufficient.

We don't want the LLC that is conducting business to own any assets when someone decides to sue.

Multiple LLCs are necessary.

One LLC is an asset holding company for real estate flips, another for buy-and-hold properties, and the last is the operating company.

The first two hold the assets and never conduct any business.

The operating company takes care of all business operations, just as if you had a property manager handling rental houses.

5-SERIES LLC

The best holding company for real estate asset protection is the Series LLC.

- File one tax return for the entire Series LLC structure.
- Maintain legal documentation to ensure corporate protections.
- Litigators know any lawsuit has little chance attacking a Series LLC.

PROTECT YOUR ASSETS

with a Series LLC legal structure

The Series LLC allows you to file one tax return for what is legally treated as separate LLC entities.

This is much simpler than creating a new LLC and tax filing for each of your properties, which is the standard approach.

LLCs and Series LLCs can be complicated because accurate and formal corporate documentation must be maintained regarding taxes, meetings, minutes, stock certificates, operating agreement, etc.

All this compliance is needed to ensure a court will recognize the LLC and allow the legal protections an LLC establishes.

While the Series LLC structure in Texas is relatively new in Texas case law, there are strong indicators that it will be treated the same as it is in other states.

How strong is the Series LLC in Texas?

This legal structure hasn't been challenged in state court cases in more than 20 years.

Even if there was possibly a huge payout in successfully suing a Series LLC, litigators know any lawsuit likely won't survive the legal strength of the Series LLC.

A Series LLC offers essential asset protection for real estate investors.

This legal entity can isolate assets from money-seeking litigators.

The Series LLC company structure is a powerful legal strategy for your real estate business.

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6-MEMBERS

Proactive member structure reinforces corporate protections for an LLC

- An LLC goal is to guard assets by avoiding or withstanding lawsuits and judgments.
- Two-member LLC structure keeps you in control of assets and earnings.

PROPER LLC MEMBER STRUCTURE PROTECTS YOUR COMPANY

Having a two-member LLC is advisable to ensure a court does not view your LLC as a sham and remove the corporate protections you have established.

The goal of an LLC is to protect assets by avoiding or withstanding lawsuits and judgments.

A single member LLC–just you in the LLC–may be viewed by the court as simply an alter ego of yourself using this corporate entity as nothing more than legal self-protection. The court could remove the corporate protections of the LLC and leave your assets vulnerable to judgment.

A two-member LLC is an advisable option to consider. This structure could ensure the corporate protections of the LLC are upheld against legal action.

For example, you could pick your best friend or a relative and give them 1 percent non-voting, non-saleable interest in the company. They would not be entitled to distributions interest.

It may appear you're giving away part of your company, but in reality, this small amount of interest from earnings is a minor price to pay to guard against a court removing LLC protection.

Everything needs to be in writing.

Your friend or relative would need to agree to be bound by the corporation with all obligations, rights and ownership clearly understood by all parties. This would require them to sign the operating agreement, receive stock, etc., to ensure the court does not regard the interest distribution as a legal charade.

With this two-member LLC structure, you'll still be in full control of assets and earnings.

7-ANONYMITY

This advanced strategy is used to hide your assets whereas prior business structures we talked about served to protect the assets from lawsuits.

- Anonymity hides personal information and assets using a trust.
- Anyone with a lawsuit judgment will be frustrated trying to find assets protected by a trust.
- Real estate deeds and other property can be placed in a trust.
- A trust guards against prying eyes of litigators.

DID YOU REALIZE?

Judgment holders can't collect against assets if they can't find the public records.

Anonymity is defined by hiding personal information and assets from public sources.

The legal entity used to achieve anonymity is a trust. Trust documents–along with the trust owners & beneficiaries–are private and do not require public disclosure in Texas.

Someone searching for the owner or beneficiary of a trust can't discover this information in public records.

Anonymity provided by a trust confounds any judgment holder seeking to find assets they want to collect against.

Enforcing a judgment against assets held in a trust is an uphill battle. Trusts in Texas do not have to be registered with the state unless they are conducting business, thus information in public filings is obscured since nobody will know anything more than the name of the trust.

Names of people associated with the trust are kept hidden.

The deed to real estate or other property can be placed in a trust.

Combine a trust with an LLC (the anonymous trust would own the LLC) and you've created a wall of anonymity to ward off creditors.

When developing an asset protection strategy, a trust plays the keystone role in achieving anonymity. Real estate investors can be confident a trust guards against prying eyes of litigators.

8-DELAWARE

A Delaware Statutory Trust (DST) provides flexible asset protection & federal income tax advantages.

- This legal entity for real estate investors rivals an offshore account.
- Anonymity, lawsuit protection, flexible ownership and tax advantages let you operate like "the big boys."
- Initial cost is higher, but legal protection is arguably greater.

DELAWARE STATUTORY TRUST ESTABLISHES STRONG LEGAL PROTECTIONS

Like a series LLC, a Delaware Statutory Trust (DST) allows you to establish a series of investments inside this legal entity.

A DST can have single or multiple member ownership structure just like an LLC. It is structured to allow owners to have beneficial interest in the DST for federal income tax purposes.

Using a DST for real estate asset protection is as good as an offshore account in many respects.

Along with considerable protections and anonymity, the DST provides fluid control of investments.

Instead of owning property directly, investors own a percentage interest in the DST itself.

Since you don't have to own an entire house, you can diversify more easily.

The DST also allows 1031 exchanges (selling one property then buying another "like-kind property" while deferring capital gains taxes.)

How attractive is a DST to owners and investors?

A DST is a legal structure that the "big boys" are exercising to their advantage because it allows for anonymity, lawsuit protection and tax advantages.

Up-front costs for a DST are higher than an LLC.

The costs are offset by arguably greater asset protections & the ability to work with investors.

The added benefit of being able to exercise 1031 exchange transactions makes this an attractive option for your asset protection strategy.

9-ESTATE PLANNING

If you don't have an estate plan, some greedy relative or probate court could bleed your estate dry.

- A rock-solid estate plan gives you and your heirs peace of mind.
- Everyone needs a will.
- Proactive estate planning protects assets in the event of a lawsuit.
- An estate plan that includes a living trust keeps probate court out of your family business.

ESTATE PLANNING

control assets in life and death

Your estate plan needs to be rock-solid to make sure your wishes are met after your pass on. Most people believe a will is enough to handle everything once they die. It's not, and a will can be almost as bad as passing away with no instructions about your estate.

Even with a will, final directions for your estate could be contested. Probate court always has something to say about your assets after death, will or no will.

Make the decision to establish an estate plan that includes a living trust. With a living trust the people you select take immediate control of your estate after you pass away. A living trust, sometimes called a "revocable trust," is a legal document that controls a client's assets while living and after death.

During the client's lifetime the living trust establishes the client as trustee–the person who controls the trust. The living trust contains the client's will, called a "pour over will." This pour over will contains all directions instructing the trustee how to administer the living trust.

The client is the beneficiary and receives all benefits from the living trust. After death, a successor trustee is responsible for ensuring assets are distributed to all beneficiaries or heirs according to the directions of the living trust.

The living trust stops probate court from ruining your estate planning. As an example, if you died owning a rental real estate property and you had a will–or no will–then your estate would be placed in probate court. Delays from the court could leave the property in limbo with no one to collect rent, maintain insurance, or pay the mortgage.

In contrast, if you have a living trust at the time of death, your designated successor trustee immediately takes over management of the rental property. The living trust ensures benefits from assets are distributed to heirs as you decided. The court must accept the living trust as a legal document and follow its instructions.

Combine a living trust in an asset protection plan, such as the Series LLC, to maintain and protect your personal and business legacy.

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10-COMPLIANCE

Legal compliance is a necessary pain for your business.

- Your business must follow state, federal and tax laws.
- Don't do this on your own– let qualified professionals manage requirements.
- Time is money.

FACE REALITY

compliance is required or lose legal protections

Real estate investors need to face the facts: if you don't maintain compliance for your entity, such as an LLC, you will lose the legal protection it grants. The pain of legal compliance is an ongoing struggle but failing to follow regulations can cause asset protection to crumble in court.

Fortunately, you can offload the pains of compliance and let a third party track all necessary details. Removing this burden frees your time and energy so you can pursue valuable ventures such as real estate investing.

Compliance means following state and federal laws, and IRS rules.

If your legal plan doesn't keep up, you and your valuable assets can be at risk. There is little point in having an asset protection strategy if it crumbles because of noncompliance.

Experienced professionals can help manage all requirements.

Attorneys and certified public accountants must constantly update their knowledge on the various legal requirements for your real estate business. These professionals play a vital role in guaranteeing that your assets are well-defended from the threat of lawsuits.

Your compliance plan is an investment in your real estate business and should be defended like any other investment.

Time is money, my friends. It's your most limited resource and you need to invest it wisely. Is learning the nitty-gritty details of compliance really how you want to spend your most valuable asset?

Wise investors enjoy the world of real estate and leave the compliance craziness to the professionals.

Tasks that could take you too many hours, such as figuring out the appropriate amount of franchise tax due and how to file it, can be done much faster by an experienced attorney. This service–which once was only available to those rich enough to have an entire "office" of attorneys–is now affordable to our clients for only the cost of a few billable hours. That leaves more time for you.

For your asset protection plan, let the professionals handle compliance and other legal paperwork.

FIVE ACTION ITEM TAKEAWAYS

Below are the top 5 action items that you should take to ensure protection of your assets.

1. If you're not insured, get insured. Insurance provides valuable protection against frivolous litigation.

2. Use multiple LLCs (or a Series LLC) to develop a holding company for flips; a holding company for buy and holds; and an operating company for contracts, property purchases, collecting rent, etc.

3. NEVER hold assets in your name. Wealthy people don't own property, they control it. Think like the wealthy to build wealth.

4. Comply with all regulations and laws. If your corporate paperwork and formalities aren't maintained correctly, it doesn't matter what legal strategies you use. Compliance ensures your asset protection plan will actually protect you.

5. Cost of an asset protection plan is far less than attorney fees for a single lawsuit. Real estate is the highest litigated industry. In this business it's not a matter of IF you will get sued, but WHEN. Being "nice" and "honest" won't keep people from suing you.

INTRODUCING ROYAL LEGAL SOLUTIONS

Royal Legal Solutions is a boutique law firm focused on protecting real estate assets of clients throughout the United States & Canada.

Founding attorney Scott Smith is a real estate investor himself and has learned that keeping wealth is just as important as building wealth.

All our clients are real estate investors, and everything we do focuses on protecting their hard-earned assets.

Before opening Royal Legal Solutions, founder Scott Smith was an aggressive litigator who sued major insurance companies.

He knows firsthand the tactics plaintiffs' attorneys use to win lawsuits.

Scott brings this knowledge to bear when setting up business structures to protect assets.

Royal Legal Solutions analyzes your individual situation and develops nuanced legal strategies to protect your property to the greatest extent possible while saving money in taxes and state fees.

You don't need to be a millionaire to benefit from the right asset protection system for acquiring property and guarding assets.

Our clients range from first-time investors to seasoned real estate professionals with a broad portfolio of properties.

READY TO SAFEGUARD YOUR ASSETS FROM LITIGATION? WE'RE HERE TO HELP.

At Royal Legal Solutions we take every investor's asset protection very seriously and we'd love to speak to you about your needs.

Visit our website to learn more and schedule your initial consultation with our expert staff.

royallegalsolutions.com

YOUR LEGAL AUTHORITY FOR AGGRESSIVE, CUTTING-EDGE WEALTH PRESERVATION

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