

LEGAL STRATEGIES TO PROTECT YOUR ASSETS

Scott Smith
Royal Legal Solutions, Principal





PROTECT YOUR PROPERTY

Use Legal Strategies to Defend Your Assets

“If you’re a serious real estate investor, the question isn’t *IF* you’ll be sued, it’s **WHEN.**”

— Scott Smith, Principal
Royal Legal Solutions



Overview

01



What Is Asset
Protection?

02



When
Insurance
Isn't
Enough

03



Commonly
Used
Structures

04



The Series
LLC &
Anonymous
Trusts
Explained

05



IRA LLCs
&
Equity
Stripping
Explained

What Is Asset Protection?

The Main Objectives

Principal objectives of any asset protection structure are:

- Anonymity
- Protection from Litigation
 - ✓ Minimize personal liability
 - ✓ Reduce exposure of assets



What Is Asset Protection?

The Main Objectives



Anonymity

- Often prevents a lawsuit before it begins.
- A public record search reveals no assets.
- Dissuades a potential party from bringing suit.



Protection from Litigation

- Create a barrier against personal liability.
- Do not engage in business using individual name.
- Maintain adequate company records.



What Is Asset Protection?

The Main Objectives

Achieving Anonymity

- *Attorneys look for deep pockets when deciding whether to file suit.*
- *When assets are held anonymously – an asset search reveals nothing.*
- *Filing suit is not worth the cost of litigation if a likely result is a judgment against a defendant with no assets.*



What Is Asset Protection?



Achieving Anonymity

- *File in a state that doesn't require public disclosures (Wyoming/Nevada);*
- *Use a "nominee trustee" to file in states that do require public disclosures; or*
- *Structure an (anonymous) agent trust as the owner of the LLC.*



What is Asset Protection?



Achieving Anonymity - **The Anonymous Trust**

- The owner of an LLC is an anonymous trust, for example:
“Investment Agent Trust;”
- The trust is the only name that appears on company filings;
- The organizer and registered agent (me), and law firm address (mine) appear - but nothing to connect the actual owner to the company.



What Is Asset Protection?

Protection from Litigation

Minimize Personal Liability

- Create LLCs to hold assets & perform activities;
- Judgments won't:
 - attach to personal assets or other businesses, or
 - affect credit score.
- Individual names should never be used!



What Is Asset Protection?

Protection from Litigation

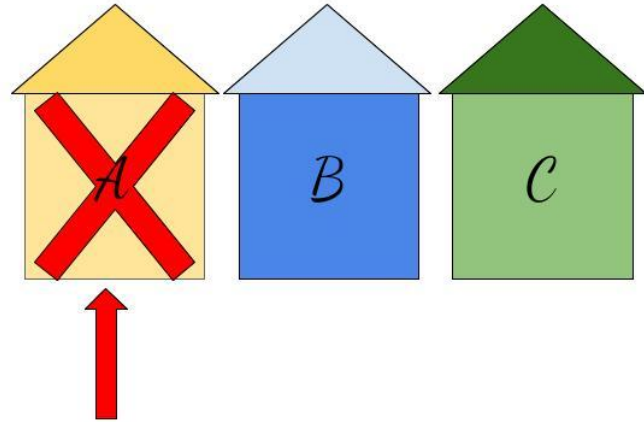
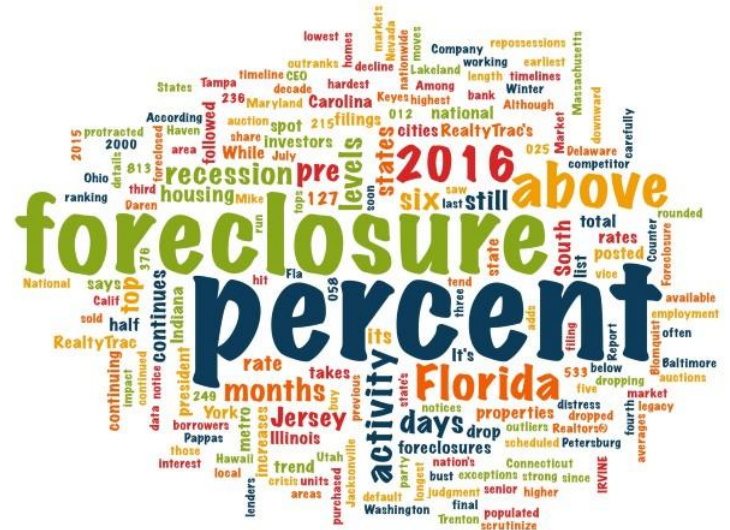


Reduce Exposure of Assets

- Difficult to identify assets.
- Minimize available damages.
- Insulate each property from the others.



What is Asset Protection?



A judgment against property A can attach to properties B and C.

A deficiency judgment will attach to as many properties as necessary until satisfied.

When Insurance Isn't Enough

Insurance companies are in the business of collecting premiums and denying coverage.



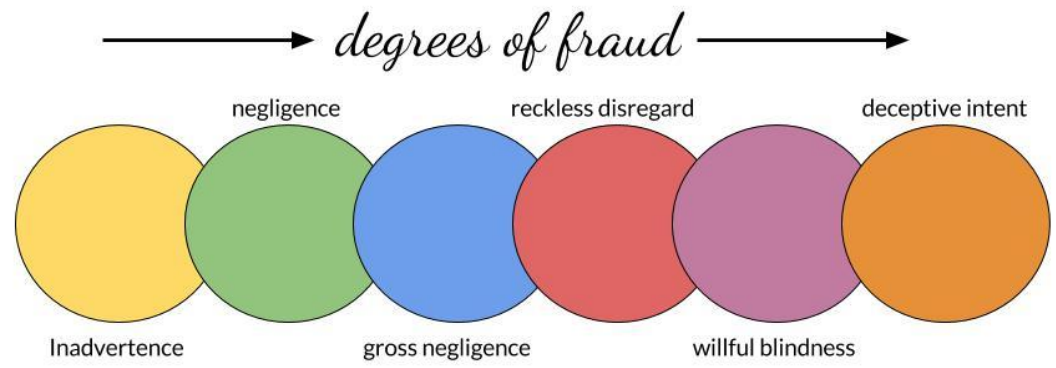
When Insurance Isn't Enough



Insurance companies don't cover "gross negligence" or "fraud," and when the claim is large they will find a way to deny it, if possible.



When Insurance Isn't Enough



Gross negligence and fraud are completely subjective - denial of your claim results in you suing your insurance company (expensive!) with pockets much deeper than yours.

When Insurance Isn't Enough



Being honest doesn't protect you...

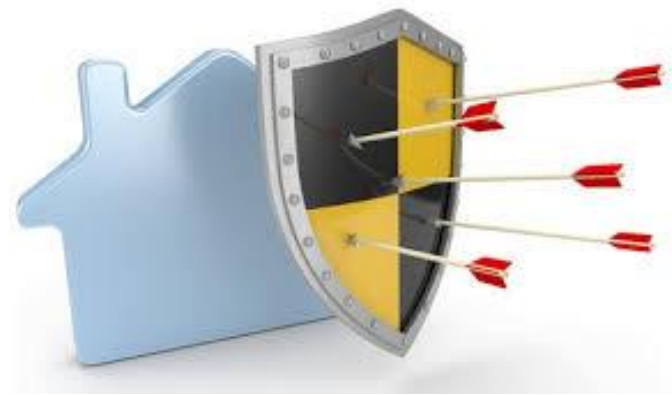


Being careful doesn't protect you...



When Insurance Isn't Enough

The Series LLC structure is a "stop gap" so that even your worst case scenario is manageable.



When Insurance Isn't Enough



Key Takeaways

- A standard insurance policy will not cover a large judgment.
- Insurance companies don't cover gross negligence or fraud.
- If possible, your insurance company will deny your claim.
- An asset protection plan should be set up well **before** litigation.
- A Series LLC structure makes a lawsuit manageable.

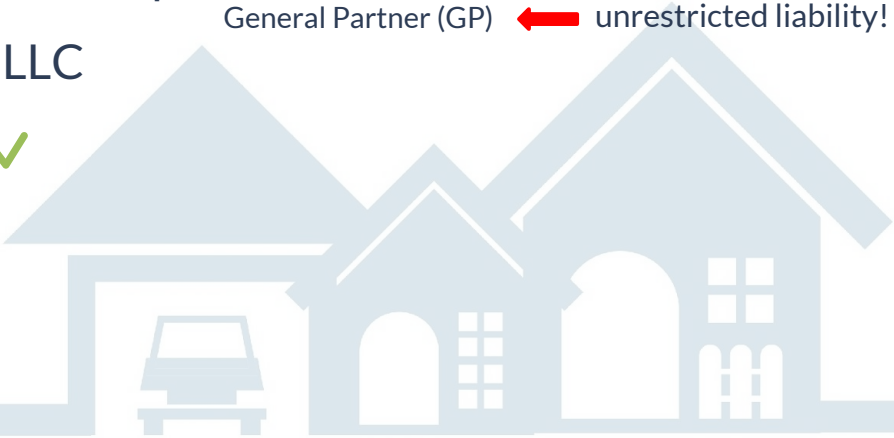


Commonly Used Structures

To Protect Your Assets

❖ Entity Formation

- General Partnership ❌
- Limited Partnership < Limited Partner (LP)
General Partner (GP) ← unrestricted liability!
- Traditional LLC
- Series LLC ✓
- Trust ✓

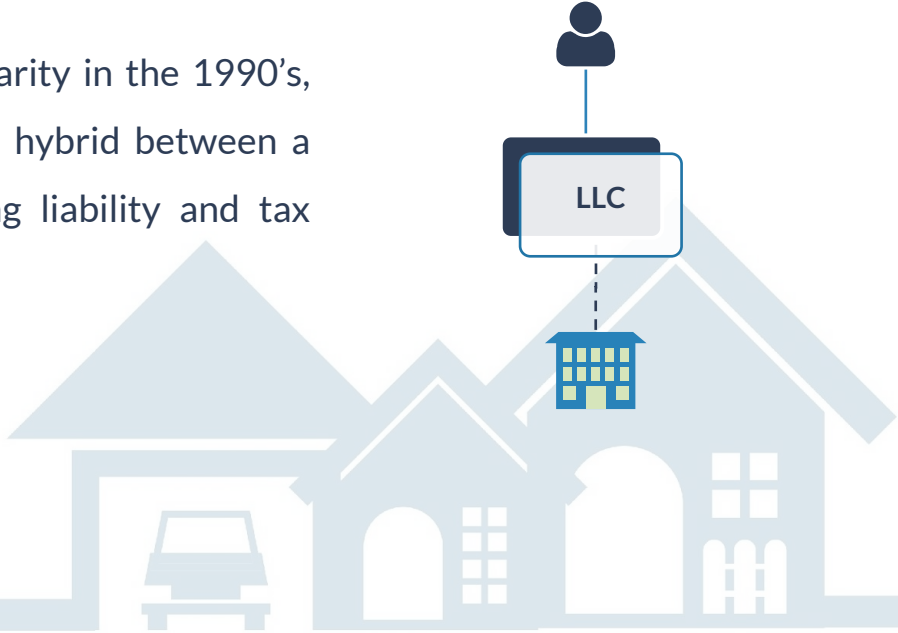


Commonly Used Structures

The Traditional LLC

Defined

Created in 1977 and increasing in popularity in the 1990's, the limited liability company ("LLC") is a hybrid between a corporation and a partnership - offering liability and tax benefits specific to each.



Commonly Used Structures

The Traditional LLC

Formation

- 1. Select a name for your LLC.
- 2. Choose a registered agent (must be a resident).
- 3. File the Certificate of Formation (\$300.00).
- 4. Create/hire a lawyer to draft an Operating Agreement.
- 5. Obtain an Employer Identification Number (EIN).

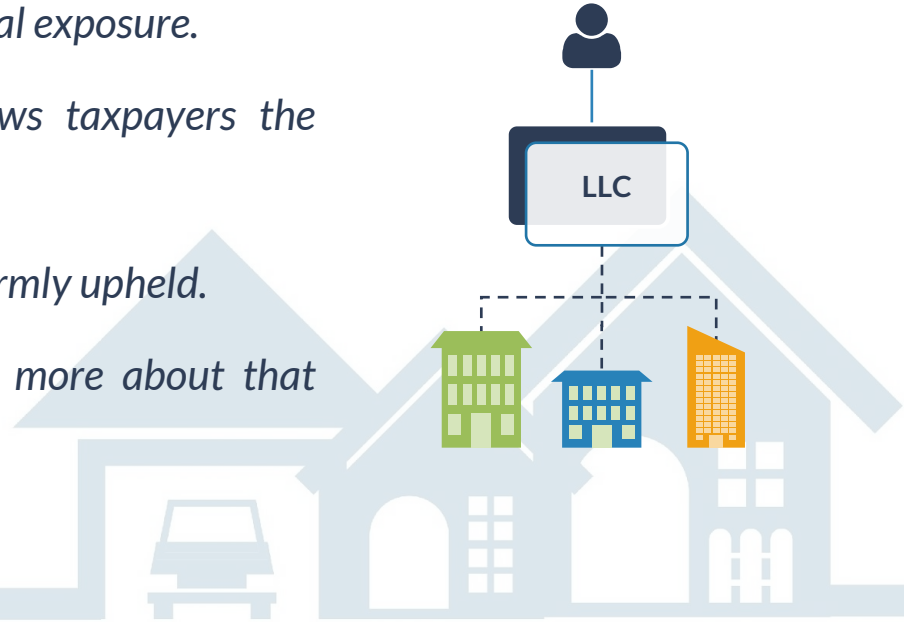


Commonly Used Structures

The Traditional LLC

Benefits

- ✓ *Limits liability and minimizes personal exposure.*
- ✓ *Avoids “double taxation” and allows taxpayers the option to pass through.*
- ✓ *Authorized in all 50 states and uniformly upheld.*
- ✓ *Great for “operating” companies -- more about that later!*

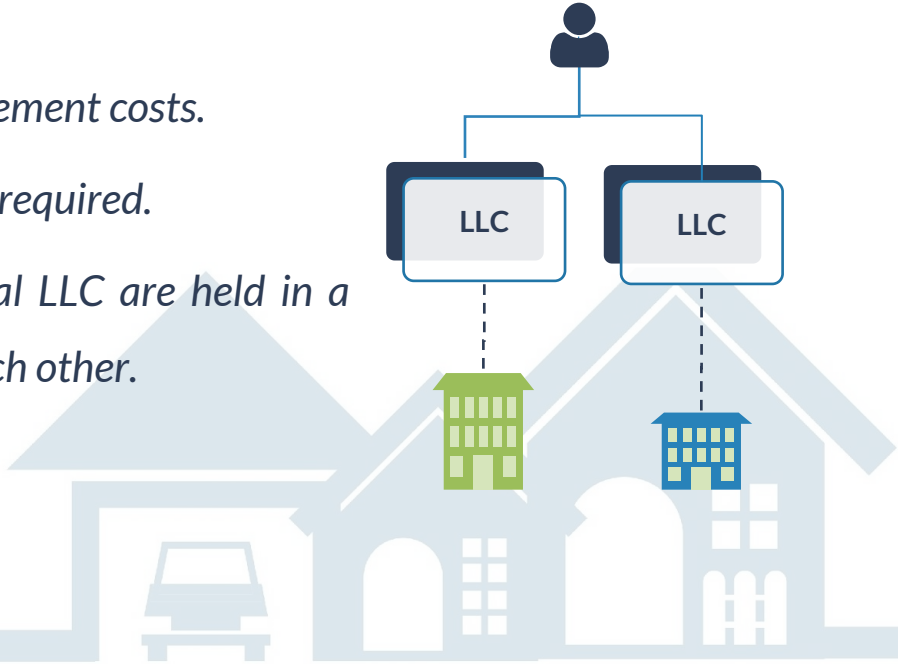


Commonly Used Structures

The Traditional LLC

Risks

- *Each LLC has an annual fee + management costs.*
- *Separate records and tax returns are required.*
- *All properties owned by a traditional LLC are held in a “pool” and are not protected from each other.*



Commonly Used Structures

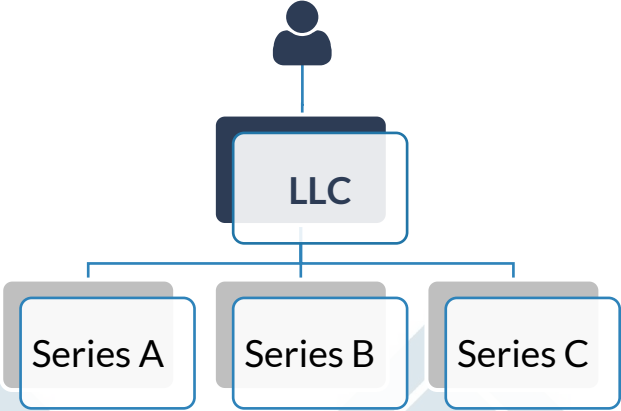
The Series LLC



Defined

A kind of LLC that provides liability protection across multiple "series," each of which is theoretically protected from liabilities arising from the other series.

Example: The "parent" is the LLC - and the "children" are the individual series. Each series is considered its own independent entity and the assets and liabilities of each are separate from those of the other series or "children."



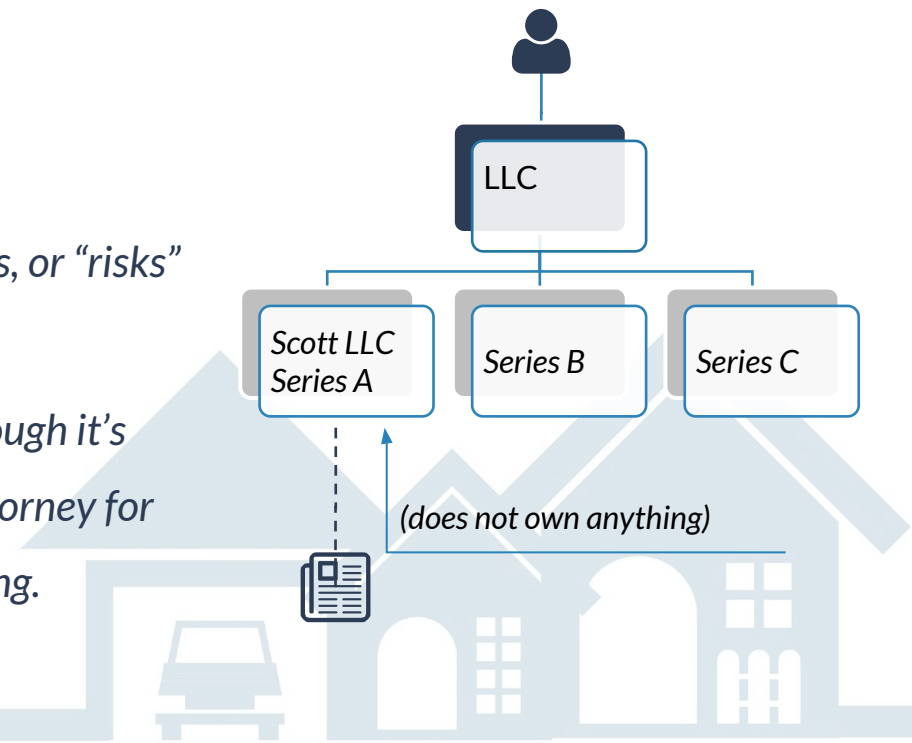
Commonly Used Structures

The Series LLC



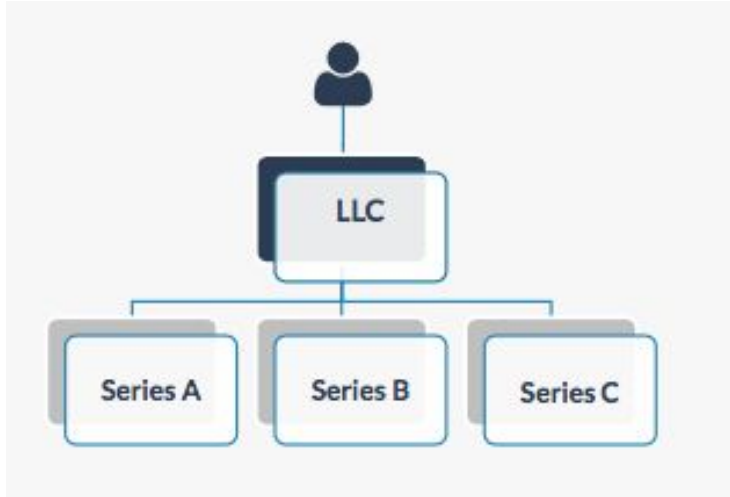
Formation

- *Easy online setup.*
- *Groups similar properties, businesses, or “risks” into each series.*
- *Anyone can setup a Series LLC, although it’s recommended to consult with an attorney for proper structuring and record-keeping.*



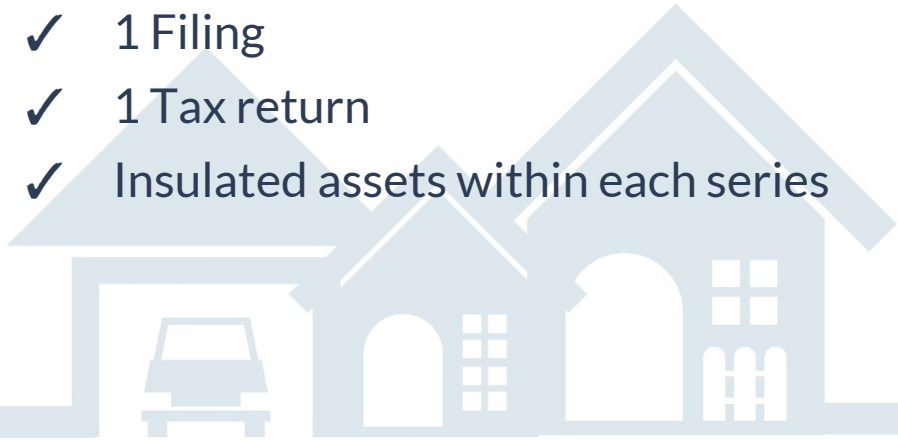
Commonly Used Structures

The Series LLC



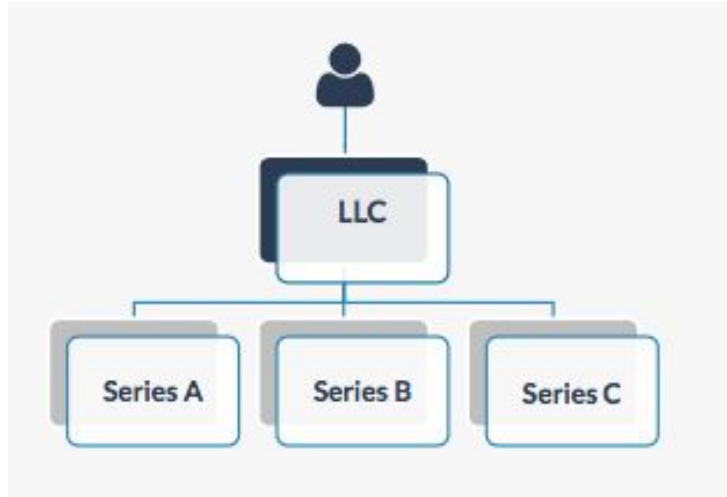
Benefits

- ✓ 1 EIN
- ✓ 1 Operating Agreement
- ✓ 1 Filing
- ✓ 1 Tax return
- ✓ Insulated assets within each series



Commonly Used Structures

The Series LLC

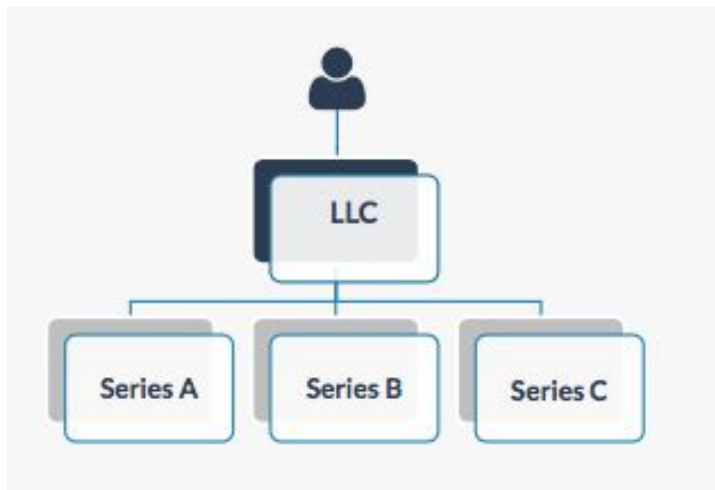


Taxation

- ✓ Keeps your tax preparation and filing exactly how it is now
- ✓ Take all the business and personal deductions since you will have both
- ✓ Filing is easy: You/You + Spouse as owners of LLC are "disregarded"
- ✓ Disregarded entity = Report on Schedule E of Personal Filing. No LLC Filing required
- ✓ You + Partner = Partnership Return and issue K-1's
- ✓ All money gets distributed each year - no expensive LLC business taxes!

Commonly Used Structures

The Series LLC



Risks

- A lesser known structure
- Currently authorized in only 13 states (more about this later!)
- Still exposes the name of the owner of the LLC on public records... *unless...*

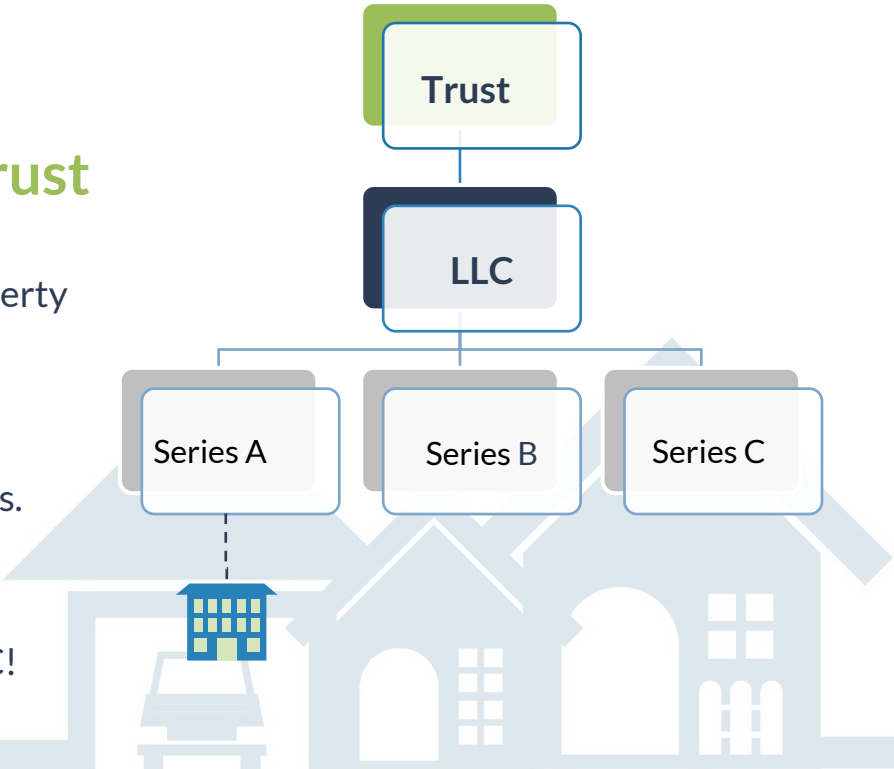
Commonly Used Structures

The Series LLC + Anonymous Trust



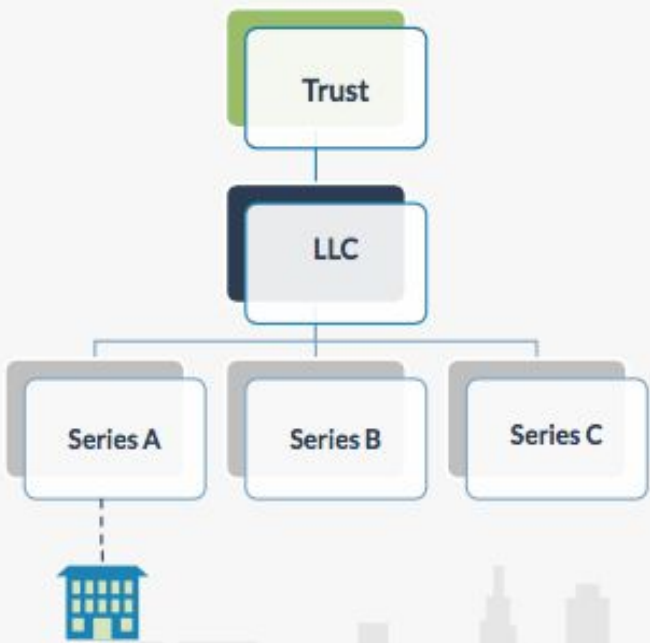
Series LLC + Anonymous Trust

- A trust is “a relationship whereby property is held by one party for the benefit of another.”
- A trust is created by private documents.
- If an Anonymous Trust owns the LLC - there are **NO** ties to the owner or LLC!



Commonly Used Structures

The Series LLC + Anonymous Trust



Series LLC + Anonymous Trust

- A public records search reveals Investment Properties LLC is owned by Investment Properties LLC Agent Trust. **This tells the inquirer nothing!**
- True anonymity is achieved.



The Series LLC + Anonymous Trusts

The Series LLC + Anonymous Trusts = *Maximum Asset Protection*

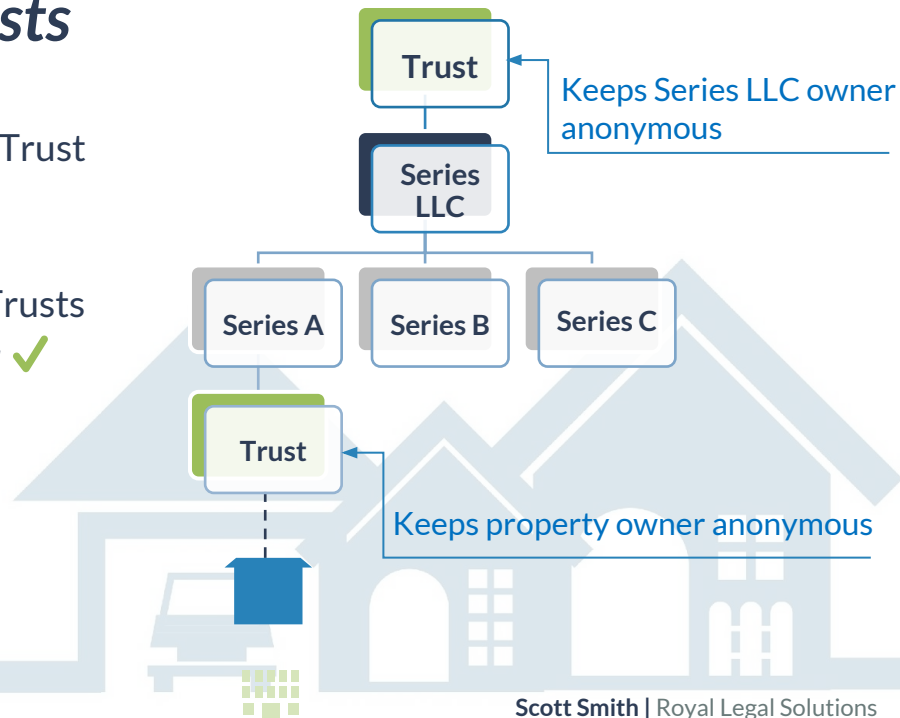


Series LLC + multiple trusts

- Series LLC is owned by an Anonymous Trust
 - Anonymity of LLC owner ✓

- Properties are owned by Anonymous Trusts
 - Anonymity of property owner ✓

- Complete anonymity!



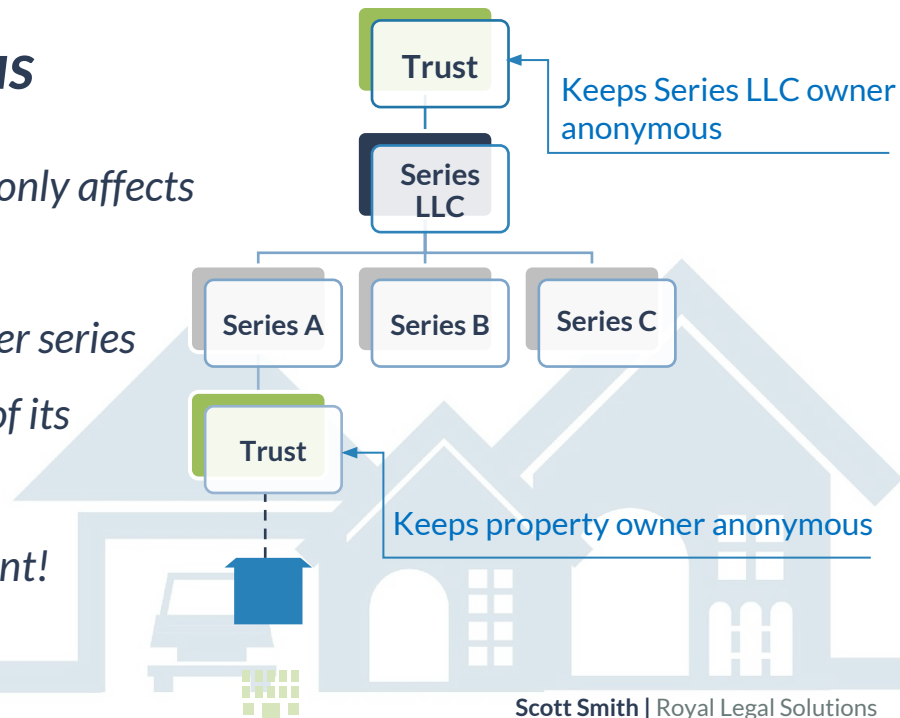
The Series LLC + Anonymous Trusts

The Series LLC + Anonymous Trusts = *Maximum Asset Protection*



Series LLC + Anonymous Trusts

- A judgment against one property only affects the individual series
- NO liability is imposed on the other series
- The lack of case law is indicative of its strength.
- Record keeping/coding is important!



Commonly Used Structures

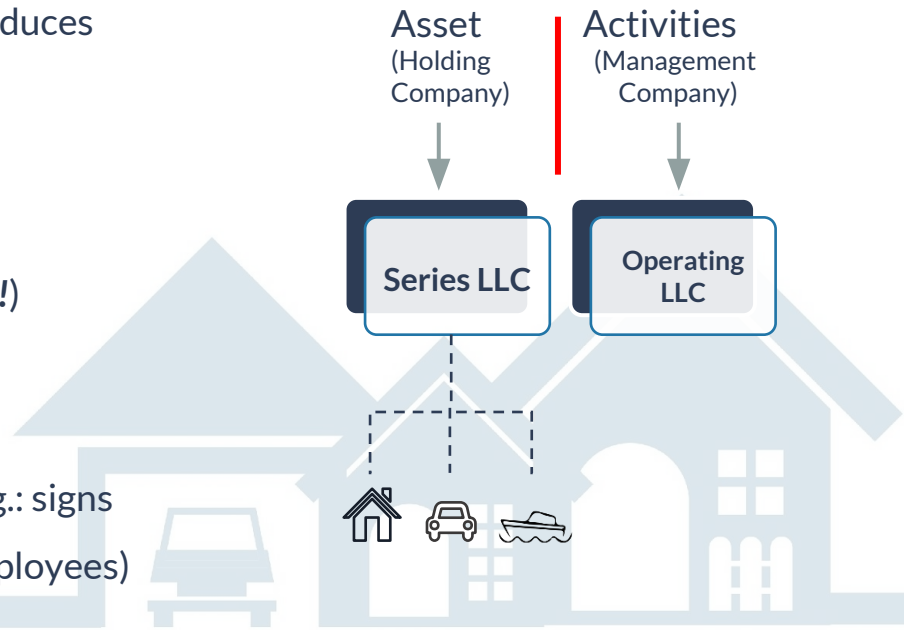
The Two-Company Structure



Two Companies = Assets | Activities

Separating assets and activities greatly reduces exposure to liability.

- **Series LLC (Concealed!)**
 - Holds the assets
- **Operating LLC (Public - owns no assets!)**
 - Can be a traditional LLC
 - Holds **no** assets
 - Does business with the public (e.g.: signs contracts, collects rents, pays employees)



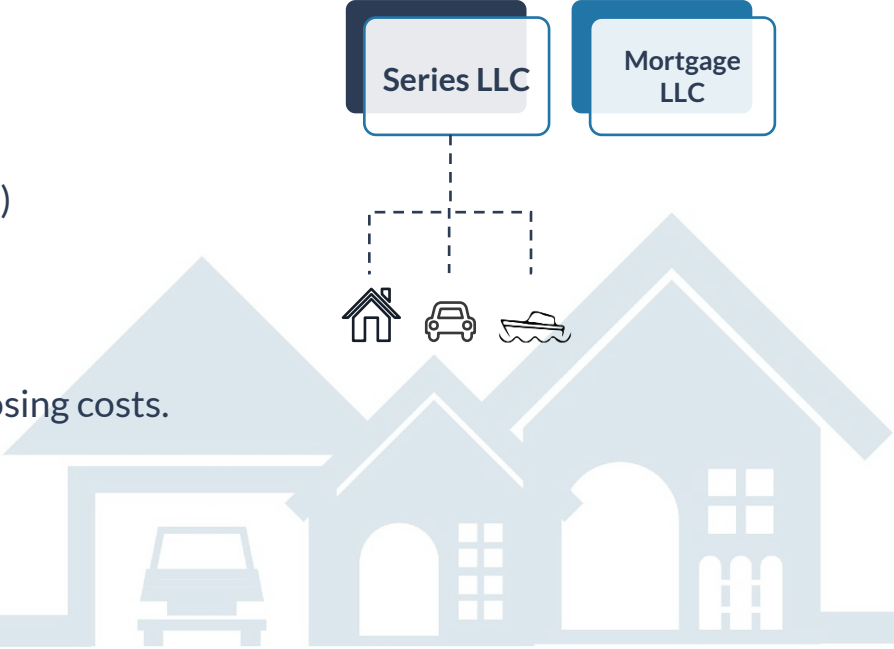
Commonly Used Structures

Equity Stripping



3 Options:

1. Conventional mortgage
 - Interest + Closing costs
2. Home Equity Line of Credit (“HELOC”)
 - Closing costs
3. Setup mortgage company
 - No interest, no payment, no closing costs.
 - Priority!



Commonly Used Structures

Estate Planning Introduction

Two Main Components



Living trust

AKA "inter vivos" or "revocable" trust

A written legal document through which your assets are placed into a trust for your benefit during your lifetime and then transferred to designated beneficiaries at your death by your chosen representative



Pour-over will

Under the terms of a pour-over will, all property that passes through the will at your death is transferred to (poured into) your trust.



Commonly Used Structures

Estate Planning



Living trust

- Immediate control
- Immediate transfer upon death
- Avoids probate
(often a lengthy, drawn out process)

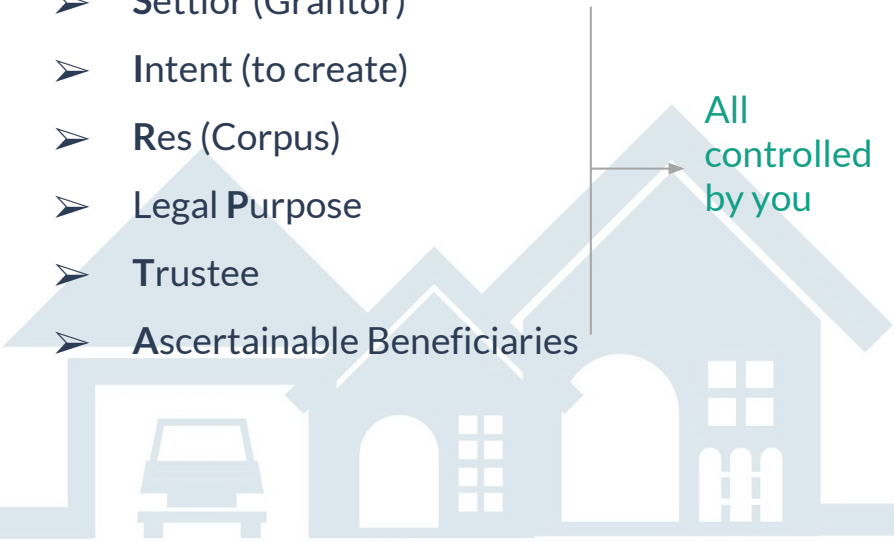


Living trust requirements

<SIRPTA>

- Settlor (Grantor)
- Intent (to create)
- Res (Corpus)
- Legal Purpose
- Trustee
- Ascertainable Beneficiaries

All controlled by you

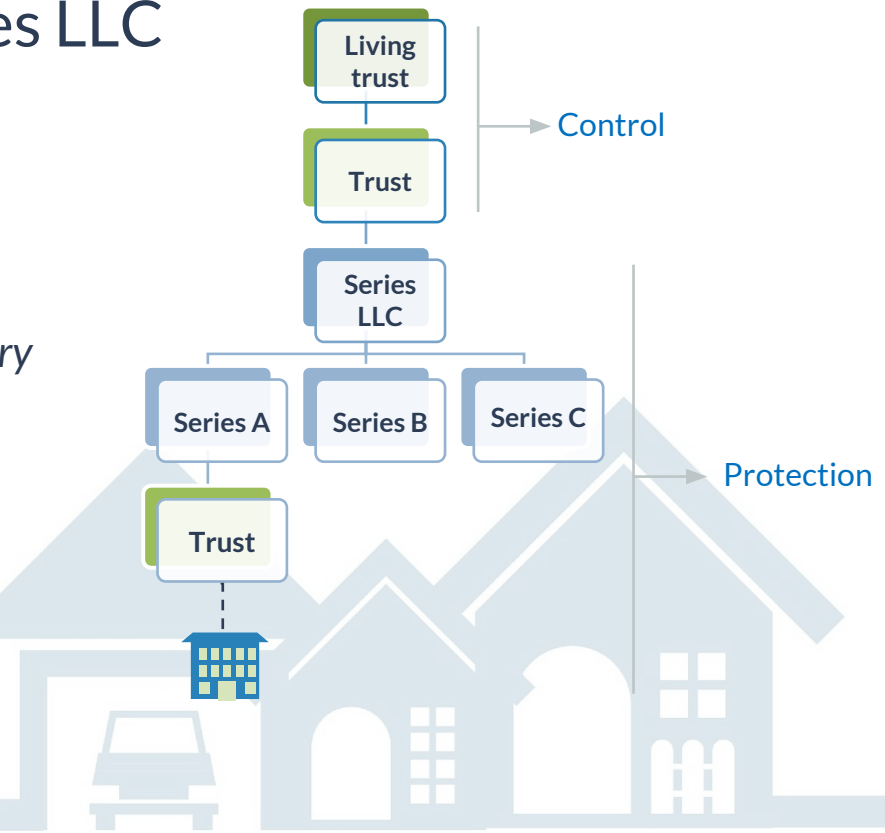


Estate Planning + The Series LLC



Living Trust

- You are beneficiary during life, then at death, named person becomes beneficiary
- Living trust contains the Series LLC
- Living trust has power over all assets
- Complete anonymity is achieved via the Secretary of State & public records



Commonly Used Structures

Estate Planning



Pour-over will

- Catch-all for all assets in personal name
- Flexible - easier to modify the trust
- Creates a “safety net” for any assets outside of the trust at the time of death
- Maintains privacy when used in conjunction with a living trust



Commonly Used Structures

Self-Directed IRA

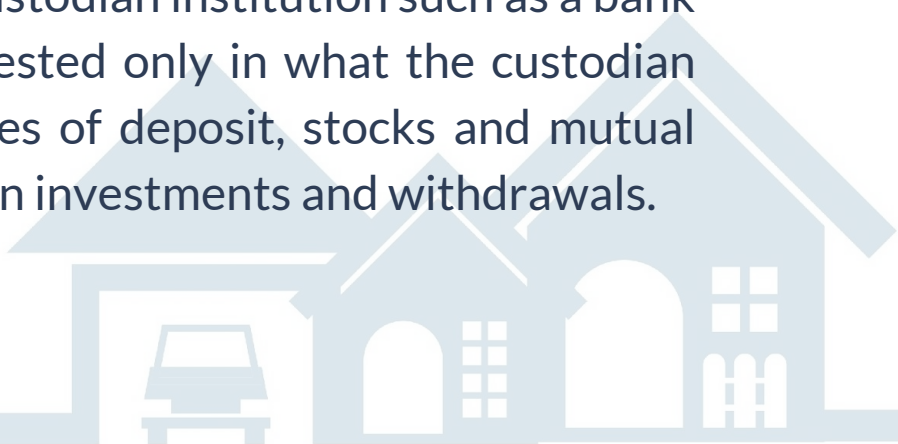


Definition

- ❖ A **self-directed IRA** is an individual retirement account that gives you complete control over your investment choices.

COMPARED TO

- ❖ A **traditional IRA** is held at a custodian institution such as a bank or brokerage, and may be invested only in what the custodian allows (for example, certificates of deposit, stocks and mutual funds). There are restrictions on investments and withdrawals.



Commonly Used Structures

Self-Directed IRA LLC



Formation

1. Set up a Self-Directed IRA LLC
2. Tax-Free Transfer of Retirement Funds to Self-Directed IRA LLC
3. Open IRA LLC Bank Account
4. Tax-Free Transfer of Funds to LLC Bank Account
5. "Checkbook Control"
6. Tax-Free Investing with complete control!



Note

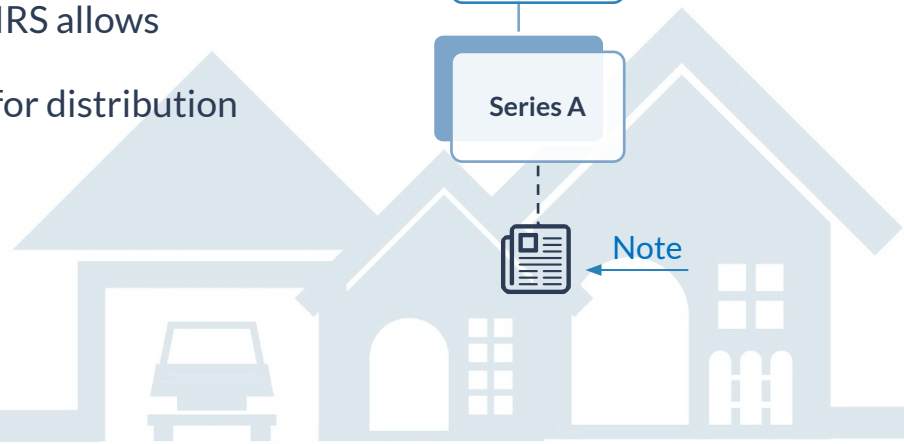
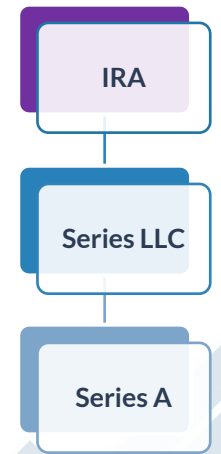


Commonly Used Structures

Self-Directed IRA LLC with Checkbook Control

Benefits

- Immediate access to IRA funds
- Low IRA provider fees
- Ability to invest in any asset that the IRS allows
- Easily transfer LLC assets to the IRA for distribution



Commonly Used Structures

Self-Directed IRA LLC with Checkbook Control

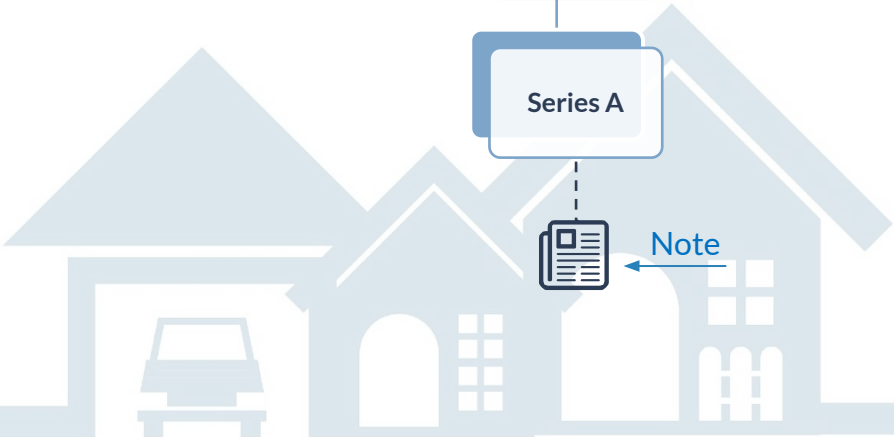


Risks

- Must adhere to the IRS rules regarding your self-directed IRA
- Increased responsibility for the legality of LLC's actions



Note

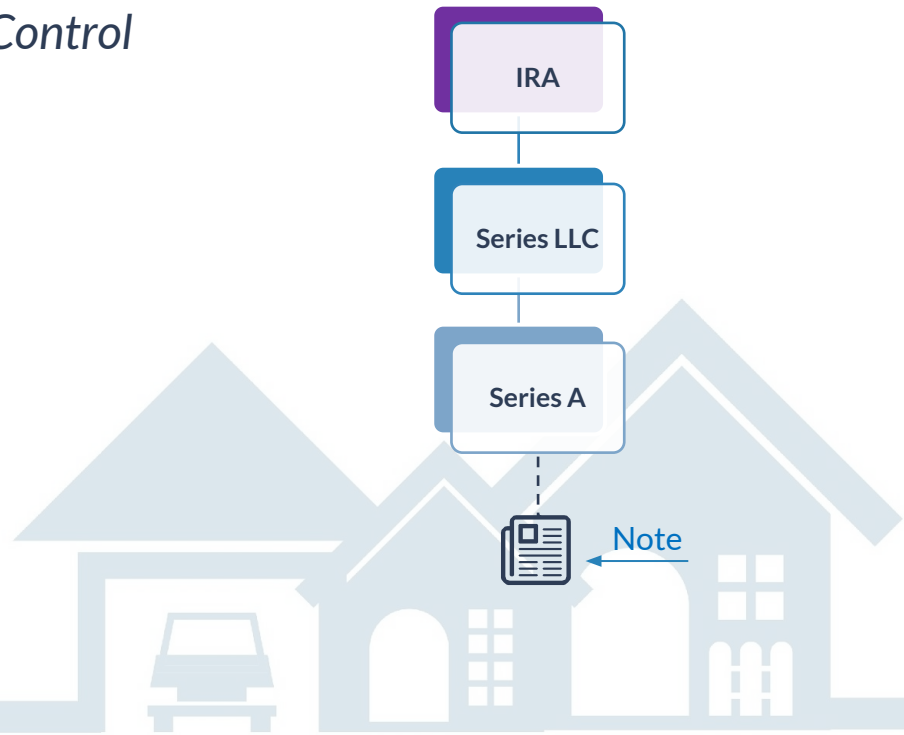


Self-Directed IRA LLC & Checkbook Control

Maximum Autonomy over Investment Decisions

Self-Directed IRA LLC & Checkbook Control

- Protection of an LLC
- Freedom of a self-directed IRA
- ONE asset maintenance fee
- Expedience in investing



Asset Protection

The Main Objectives

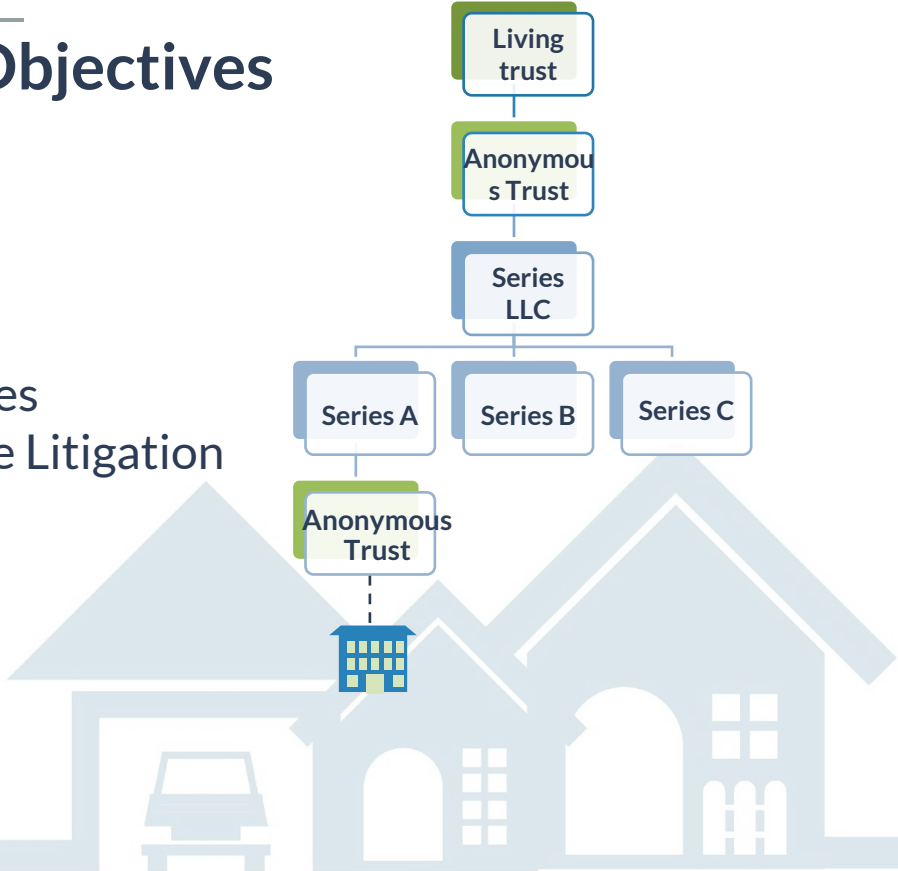


Anonymity







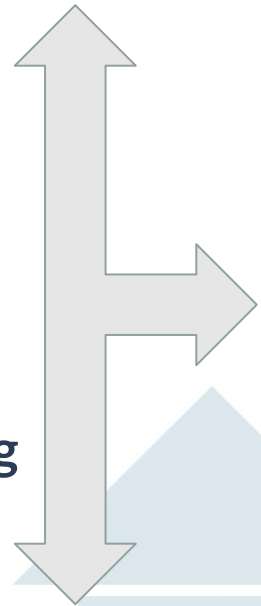
Protection from Litigation

- Insulate Assets
- Separate Assets from Activities
- Setup Asset Protection before Litigation
- Minimize Available Recovery



How Much Is *Peace of Mind* Worth?

-  **Anonymity**
-  **Reduce Exposure of Assets**
-  **Minimize Personal Liability**
-  **Control over Tax Free Investing**



**Trad'l LLC +
Series LLC +
Anonymous Trusts**
\$2,950 - \$4,000
(depending on # of properties)

**IRA LLC +
Checkbook Control**
\$1,500



Thanks for watching!

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