

How You Can Prevent a Financial Catastrophe

By C. Keila Nakasaka, Esquire

A lawsuit is sometimes a matter of “when” and not “if” for an investor. Property owners being sued for even frivolous matters are common place in this litigious society. It is entirely possible to lose everything that you worked hard for by a single event. Failure to plan is truly a plan to fail. Wealth building absolutely requires a sound tax strategy as well as implementing asset protection measures. Estate planning should also be taken into consideration in creating a blueprint that would best serve you.

Surprisingly, even the seasoned real estate investors hold title to their properties in their own name. With a very few exceptions, it’s a dangerous proposition to hold title to **investment properties** in your own name. It’s also an unwise method of managing investment properties, as you’re probably paying too much in taxes.

There are a number of ways to hold title to your real property: as an individual; joint tenancy with the right of survivorship; tenancy in common; and community property. You can also take title under a trust or an entity as discussed below.

Corporation

A corporation is a legal person, albeit not a natural person. If set up properly, it is considered separate and apart from its shareholders; hence, it can act as a shield to protect your interests. It is also a powerful tax strategy tool.

A corporation consists of shareholders, who are the owners of the corporation. It also has directors and officers. The shareholders vote directors, and the directors designate the officers, who manage the daily affairs of the corporation. Although these positions are separate, they can all be occupied by one person.

Limited Liability Company

A limited liability company (LLC) is a hybrid between a corporation and a partnership. Its rules are more flexible than that of a corporation. It also affords protection. It is a pass-through entity, and unlike the subchapter “S” corporation, its members can be non-U.S. residents. In addition to protection of personal liability, a limited liability company can provide excellent tax benefits.

Limited Partnership

A limited partnership (LP) consists of a general partner and a limited partner. The general partner runs the business and has unlimited liability. A limited partner, however, takes no part in its daily affairs; and his/her liability is limited to his/her interest in the partnership. It is worth mentioning, however, that a limited partner who takes an active role of managing a partnership can be defined as a general partner; and hence, have unlimited liability.

Intervivos Trust

An intervivos trust (Living Trust) consists of a trustor, trustee, and the beneficiary. The trustor is the creator of the trust. The trustee is the person who manages the trust. The beneficiary is the person who will receive from the trust. A revocable living trust can be changed by the trustor during his/her life time. Thereafter, the trust becomes

irrevocable. An intervivos trust is used primarily to avoid probate and tax strategies. It's not an effective means to protect one's assets.

Land Trust

Although land trust, in and of itself, does not afford the best asset protection, it is a powerful tool nevertheless because it provides anonymity of ownership. Hence, it becomes extremely challenging to locate it under a personal asset search. As in an intervivos trust, a land trust consists of a grantor, trustee and a beneficiary. However, in a land trust, the beneficiary retains full control over its property while the title remains with the trustee. It is also a means to avoid probate.

Depending on each investor's circumstances, various entities and trusts can be layered to protect his/her assets; create a tax strategy; and to implement estate planning. There are other trusts unmentioned in this article that can also act to create the most benefit for each investor.

Most investors understand the risk of holding title to their investment properties in their own name, yet only a minority will take action to prevent a financial calamity. We all have daily tasks that compete for our time and attention. Since we don't see the immediate necessity, it's easy for us to procrastinate. By the time it becomes obvious to us that we should have addressed this issue, it's often too late to effectively implement asset protection strategies. It's like an auto insurance that should be purchased before an accident.

C. "Keila" Nakasaka, Esq. is with the Law Offices of Nakasaka, PC. Keila Nakasaka is an attorney, a real estate investor, and more recently, the founder of the 354 Billionaires Club. For questions or more information: keilan@pacbell.net. (213) 631-2631 (direct) or (310) 860-5677 (Beverly Hills Office).