

THE #1 TOOL EVERY REAL ESTATE INVESTOR NEEDS



ANDERSON

LEGAL, BUSINESS & TAX ADVISORS

Contents

The #1 Tool Every Real Estate Investor Needs	1
The Invisible Investor	1
The LLC	2
Nominee	2
Management Structure	2
Registered Agent	3
Disappearing Act	3
The Land Trust	5
The Perfect Relationship: Land Trusts and LLCs	6
Wholesalers	7
Real Estate Investors	8
Flippers	9
Conclusion	10

The #1 Tool Every Real Estate Investor Needs

Hi! My name is Clint Coons with Anderson Business Advisors. Growing up, other than being an indentured servant, I watched what my father did with his real estate investing. Just like anyone, my father was concerned about protecting his assets and rental properties from the liabilities that are often encountered in the rental real estate industry. At the time he didn't use business entities, but he did approach his business from the point of view that you don't want your tenants to know how much you have.

One day I came into the kitchen before I left to work on one of the rental properties and my father wanted me to change out of my "good clothes". His concern was he didn't want to make it appear to his tenants we had assets. So, he adopted this approach that whenever you deal with your tenants, whenever you go to your property, you appear as if you don't own anything. So then you don't become an attractive target.

Unfortunately, my dad didn't have good legal advice. In fact, my grandfather was an attorney and he never once sat down with my father and told him there are other ways to protect your assets. You don't need to appear as if you're a pauper every time you deal with your tenants. Because more important than the clothes you wear is what someone would find if they did a search on you. If you are protecting yourself and your real estate correctly, they wouldn't find any assets in your name. This is what we call a 'need to know, not a need to show' basis, or being an invisible investor.

The Invisible Investor

Being an invisible investor is about buying real estate and not alerting anyone to the fact that you own it. Now there are a lot of different strategies we can use here, and we will discuss some of those strategies Anderson has used for years to ensure our clients' assets remain protected and, more importantly, invisible.

Think about it, do you want to sue somebody that has no assets? You would be hardpressed to even find an attorney to take your case if the person you were suing had (or appeared to have) no assets because they usually get paid based on what they collect. As an attorney, I would look for a client

who is going to sue someone who has a lot of assets and they're easily discoverable.

And that is exactly what this ebook is about – how to appear as if you have nothing so you are completely undesirable as the victim of a lawsuit. We will discuss how to protect the assets you currently own and future assets with strategies that include how take your name off title and buying real estate and owning assets anonymously. Let's first start by talking about your business.

The LLC

Most real estate investors have heard about protecting your rental real estate by using a Limited Liability Company (LLC). There is more than one way to do this, but not every way protects you. What most people do when they're setting up an LLC is they'll set up the LLC where the property is located. If you bought property in Texas, you're going to set up a Texas LLC. Then you're going to transfer your real estate into that Texas LLC. If you buy property in Georgia, you're going to do the same thing in Georgia.

The problem is, an LLC by itself does not guarantee you protection because the manager or member of the LLC (you) might be visible on the state's website. That's not a very good foundation for an invisible investor strategy, especially for real estate investors who own multiple entities. If somebody wanted to run your name through the Secretary of State's website, they could see all the businesses you own and the assumption could be made that you're very successful in what you do.

The best structure is one where when you file these an entity in the state when you have or are purchasing a property, your information doesn't become listed on the Secretary of State's website. Now this begins with an anonymity compliant limited liability company. What that implies is you create an LLC, you create your foundation that is, in a state that doesn't require your information to be listed so we can protect your privacy.

Nominee

As an investor planning to purchase property in multiple states, you will want to begin with a Nevada or Wyoming LLC. Not only do these states top the list as the best states for asset protection, but they also allow the use of a nominee. A nominee is someone who serves as your initial manager for filing purposes only so your personal information is not disclosed. Once the entity is filed this person resigns and you are appointed the manager of your LLC. If anyone were to look up your LLC on the Secretary of State's website, they wouldn't see you. All they would see is the name of your nominee. This LLC with nominee protection becomes the base of your structure, one of the key components.

At Anderson, we use an individual named A.T. Mathis as our nominee. Mr. Mathis is an attorney with our firm and he has been acting as the nominee for our clients for 17 years. As a result, there are around 15,000 entities filed with his name on them. That's a lot of people that are utilizing this asset protection technique throughout this country.

Management Structure

An LLC is the most flexible entity type there is, as it is able to have different management structures and take on any tax status. Most states will ask you if your LLC is manager-managed or

member-managed when you file the formation articles. In addition, they will ask who the involved parties are based on this structure. What this means is that a manager-managed LLC will list the manager when they file with the Secretary of State and a member-managed LLC will list the member.

Managers and members play specific roles within the LLC, so this decision is not something that should be taken lightly. The members are the ones that own the LLC while the managers control it. In a member-managed LLC, the members hold the role of both the owner and the controller of the business. If you are purchasing a property in Florida and you form a Florida LLC for that property, utilizing a member-managed management structure for your Florida LLC in combination with your nominee-protected Nevada or Wyoming LLC creates a layer of protection between you and potential creditors that you would not have without the Florida LLC alone.

Registered Agent

Now, if the manager or member was the only place your information would be connected with the entity that owns your rental property, you would be set. However, there are a few more things to consider. One of them is the registered agent, or RA. Every state requires every entity to have a registered agent with a legal street address in the state of formation to accept service of process on behalf of the entity. Up to this point, you have gone to great lengths to keep your name off of record in relation to your entity, so even if you are eligible you do not want to act as your own RA. This is where you would enlist the services of a commercial registered agent service, like Anderson provides in all 50 states, to act on your behalf.

Creating a business structure consisting of an anonymity compliant LLC, additional LLCs for your rental properties, and the right combination of nominee protection, appropriate management structure, and a commercial registered agent is the basis of the invisible investor strategy. It allows you to conduct business without anybody knowing you have these businesses. Now let's take the business structure we've created and take it to a whole new level. In addition to keeping your names off of the entities, let's also create a situation where the equity in these properties disappears. Yes, you can do that.

Disappearing Act

Think about this from a creditor's standpoint. If a tenant is considering suing the LLC that owns this rental property for any reason, the tenant's attorney is going to see if he can find out how many assets are held inside of this liability company to determine the value of the case. What he might do is run the LLC's name through one of his databases or LexisNexis to find out what this LLC owns. And let's say, for this example, he finds out the LLC owns three properties.

He'll then pull the information on those individual properties. Let's say property number 1 has \$200,000 in equity, property number 2 has \$115,000 in equity, and property number 3 has \$75,000 in equity. Total, we have \$390,000 in equity that is exposed because all three properties are held in the same LLC.

Now, this is an attractive situation for an attorney because he will be able to collect against the equity in those houses. As a result, he may take the case. Well, what I want to do is create a situation

that will make him turn away because this equity would not be there. To create this situation we will use the base structure we've initially created for you with the anonymity compliant limited liability company. How do we utilize this to protect the equity in your property, you might ask?

Again, you're not listed as the owner, so we don't know it's you. Your anonymity compliant LLC can file a lien against your properties, either one lien against each property or do cross-collateralization and file a larger lien against each individual property.

This strategy is called our friendly lien strategy. That is, we have an entity you own and control, enter into a line of credit agreement with this LLC, wherein it agrees to loan that LLC up to \$500,000 upon demand. In exchange, it's going to treat that loan just like any bank corp. That is, we're going to ask for collateral in exchange for entering into this loan agreement, and we expect the LLC to provide us that collateral.

The collateral the LLC has is three properties. So now we've secured the equity and the properties with this LLC. For any creditor or attorney looking at the limited liability company, his comment to the potential tenant or litigant is going to be, "I'm sorry, I can't take this case. There's nothing there for me to collect on. You will not be paid at the end of the day because the person is fully encumbered. He has a first position with Wells Fargo, and he has a second with this LLC in Nevada. And I don't know who owns that, but there's a debt there, and so there's no equity for us to collect against."

The anonymity compliant LLC has many different uses when it comes to real estate investing. Primarily, it's used to keep your affairs private. The problem with this structure just relying upon the LLC strategy is that people know these properties in the LLC. That is, all I can do is run the LLC and I can see that it owns three properties. Yes, we can show they're encumbered, but the fact of the matter is I don't want anyone to know what my LLC owns. I don't want them to be able to put that name into a database and, all of a sudden, up pops three or four properties in the name of this one LLC because that may encourage someone to bring a lawsuit.

Think about it if you're in the attorney's shoes. LLC owns four properties, or it owns one property. Which one you want to go after? You want to go after the LLC that owns four properties because there's four times the potential for recovery there than there is against the LLC that it owns one.

How do we then make it appear as if that LLC doesn't own anything? Well, that's part two in our anonymity compliant strategy here for the invisible investor, and the way we do that is by utilizing land trust. All right? We utilize land trust to protect the properties that are held in the LLC.

You have a Nevada LLC with nominee protection, Big Property, LLC. You have three rental properties each in an LLC, Real Estate 1, LLC in Texas, Real Estate 2, LLC in Georgia, and Real Estate 3, LLC in Arizona. Big Property, LLC files a \$200,000 lien on the property in Texas, a \$150,000 lien on the property in Georgia, and a \$75,000 lien on the property in Arizona. Or we'll file for even more. We can do cross-collateralization. File \$500,000 against each individual property.

The Land Trust

The land trust is a tool recognized in all 50 states. If you encounter a local attorney, CPA, or a mortgage broker who tells you it's not recognized in your state, that's a good sign you're dealing with the wrong professional because they are not experts on the subject.

Many times I tell people that you may have a competent local attorney and a CPA who understands taxes, but the question is, "Do they understand real estate investing, especially from an anonymity compliant standpoint?" More likely than not, they are not personally or professionally familiar with these strategies. At Anderson, this is what we do. In fact, I'm a real estate investor, and the strategies that I'm sharing with you are the exact same strategies I use to protect my own properties.

When creating a land trust you can set it up with you as the trustee and, of course, the beneficiary. Just like any grantor trust, the beneficiary is the owner. That is, you own the trust and whatever the trust owns, you own. The beneficiary is the one that essentially controls the trust.

I set up a land trust for a client recently who was not concerned with anonymity, so her husband was listed as the trustee and she and her husband were listed as the beneficiaries. She was concerned that her husband would have full control and therefore be able to sell the property without her consent. Anderson drafts their land trusts specific to the client's needs, and our trusts do not allow the trustee to have control over the property owned by the land trust unless the client requests this. Typically, the trustee is there for title holding purposes only. Those are the key words: title holding purposes. What that implies is whoever is listed as trustee will be listed on title and therefore when the deed is prepared, it will be recorded in the trustee's name. The power to sell, the power to buy, and the power to borrow all rests with the land trust beneficiaries, not with the trustee.

John Doe owned the property originally and deeds it into his own name as trustee of a trust he set up, it doesn't provide much anonymity for him, does it? So, how do we obtain anonymity? Simple. John Doe does not serve as the trustee of his trust. We already know the trustee will not have control over the property, and they do not own it, because the beneficiary owns it. In his place as trustee we will use a trusted person. I commonly act as the initial trustee for my clients who understand the importance of being an invisible investor to provide anonymity. Therefore, if someone were to do an asset search to find out what John owns, he will no longer be listed on title as owning this property.

After the deed has been recorded, I can resign as initial trustee and appoint John Doe, the rightful trustee, as the new trustee of his land trust with a simple letter of resignation. This transfer is not recorded anywhere. When I resign, we don't go down to the county recorders and file my resignation. It's not sent out in public notice to anyone. This is a private document. So, for title holding purposes, everybody will still see the trustee as Clint Coons.

Below is an example I encountered which explains the relationship between myself as initial trustee and my client as the trustee after I resigned.

Sarah owned an apartment in New York which she rented out on a short term basis (for transient uses, as the Environmental Control Board in the State of New York referred to it). Her apartment was owned by a land trust for which I acted as the initial trustee for title holding purposes. She was fined by the ECB because she was not allowed to rent her apartment in this manner. When they issued the fine, they contacted me via a certified letter because I was on the title. I then forwarded the letter to Sarah, my client, and she handled the payment of the fine.

The Environmental Control Board did not know I have no interest in this trust because all they looked at is what is on the public record, and my name happened to be there. Using a nominee trustee for your land trust to take your name off public record is similar to using A.T. Mathis as the nominee manager for a limited liability company.

Through the land trust, if set up properly, you can ensure that your privacy is protected. But it is important to also keep privacy in mind when noting where you want your tax statements to be sent. Here's is why putting your own name and your personal address does not work.

Dennis Hastert, former Speaker of the House, tried to pull a fast one on the federal government and bought multiple pieces of property in Illinois all in land trusts with a nominee trustee as the initial trustee. He then tried to push a freeway project through there and have the government buy this land from him. But an individual was able to unravel this whole scam because on one of the land trusts that Dennis used, even though he used a nominee trustee, had his personal address for the tax statements.

The Perfect Relationship: Land Trusts and LLCs

Once you have your land trusts set up and your property each held inside of their own trust (you don't want to have multiple properties per trust because again, if I pull the land trust name, I'll see that it owns multiple properties), then you place your land trusts into your LLC by making it the beneficiary.

If one of your tenants decides they want to sue for toxic mold their attorney will look up the property address and see it is held by a land trust but have no knowledge of the LLC because only the trustee of the land trust is recorded on the county website, not the beneficiary. They also do not know your other land trusts exist because those are not recorded anywhere in relation to the land trust they are researching. That's within your private documents.

If you are concerned about a claim being brought onto one of your land trusts, and as you know if they sue the land trust the beneficiary, your LLC, is liable for any claims levied against the trust, you can move your other two land trusts into a new, separate LLC. When the lawsuit hits, the only asset remaining in there is the one land trust that holds the potentially dangerous property being sued for toxic mold contamination.

There is no traceable record of these transfers because beneficiary changes are not recorded. There isn't a document that gets filed anywhere public. All this is, is just two pieces of paper. You assign the interest from the LLC to you, and then you assign the interest to your new LLC. There isn't a new tax statement that has to be filed. There isn't a deed that has to be filed. Nothing is recorded

publically.

This is a prime example of how the land trust allows you to move properties around without alerting potential creditors to the fact that that LLC previously owned additional assets.

Wholesalers

A land trust is a handy tool for real estate investors who wholesale properties. Often, the wholesaler will find an owner who is motivated to sell their property and then pair them with an investor who wants to purchase it. So if you, the wholesaler, finds an investor who's willing to step into your shoes and close on the property, you will give the buyer the right to close on that contract for a fee. Now if you did this deal in a typical fashion, where you tied it up under your own name and the contract is not assignable, then what will happen is you'll have to engage in a double close. That is, you'll have to come to the table and close, and you'll turn around and flip it to the investor.

Another option is to purchase the property with an LLC. You will set up an LLC and it'll get a contract on the property being purchased, and then you'll flip the LLC to the investor for that agreed upon fee. You start as the owner of the LLC when the property is purchased, and then the investor will own the LLC, which subsequently owns the property, after the deal.

The issue with using an LLC is the state filing fees you have to pay to set up the LLC and the lengthy process to ensure all the paperwork is in order. First you have to transfer the ownership to the investor, then update the state as to who the new owner is, which is often an additional fee. Then potentially, if you got an EIN number for it, you have to change the information with the Internal Revenue Service. On top of all that, you have to make sure you're moving it the right way and you haven't violated state law.

Why do you want to put yourself through this? I prefer to avoid the LLCs when it comes to wholesaling properties unless you are buying a HUD home. This strategy works really well if you're buying HUD homes because HUD doesn't allow for the assignment of their agreements either. Here's my land trust. And then my land trust contracts to buy the house. And maybe it's contracting me with HUD. Maybe it's contracting with a bank. Maybe it's contracting with a homeowner.

I am the beneficiary of this trust. That means I own the trust that has the right to close on that property. What I'm going to do now is find an investor and then make him the beneficiary for my \$15,000. He steps into my shoes. He now owns the trust. He can buy the property for \$120,000. The property is then closed in the name of the trust controlled by the investor. I take my money and leave, and he gets to go out there and rehab the property, and then he can flip it or rent it or do whatever he wants to do.

This does not cost anything for you because you can create a land trust in your home, in your office. It's a very simple document. Once you have a good foundation and understand how documents operate, you can go out there and put a bunch of deals together like this if you wanted to wholesale property.

Jan is a wholesaler who met Frank, a homeowner who wants to sell his home. Jan offers Frank \$120,000 for his home and they write up a purchase sale agreement. Now Jan finds an investor, Bob, who would like to step into the deal and be the one who purchases the home. Jan forms a land trust and uses it to purchase the home from Frank. Jan is the beneficiary of the land trust, because she now owns the home. When she is ready to sell the home to Bob, her attorney prepares assignment paperwork to make Bob the beneficiary of the land trust.

Real Estate Investors

If you have a fairly low interest rate right now, there is a good chance that rates will be higher in the future. It would be in your lenders best interest force you into refinancing at a higher interest rate. One way you can be forced into a refinance situation like this is if you trip the due-on-sale clause in your note or loan. This clause becomes a concern when you transfer the title of real estate. One of the biggest benefits of a land trust is that you are able to avoid the due-on-sale clause.

When you set up a land trust and you deed your property into that land trust, the transfer is covered under the Garn-St. Germain Act. According to the Act, a lender may not exercise the due-on-sale clause if the property is transferred into a trust in which borrower remains a beneficiary. In short, the trust stops the lender from accelerating your note on transfer.

What the lender will not see is the fact that you're going to take your land trust and put the land trust in an LLC for asset protection, as discussed previously. This is a private transaction hidden from the prying eyes of the lender because this transfer isn't recorded anywhere. No one knows about it. Essentially, you're eliminating the do-one-sale clause risk, and gaining ease of transferability because you're able to move the asset, into the LLC through an assignment rather than a deed.

If, as an investor, you encounter a homeowners association (HOA) which restricts the ownership of properties to individuals, grants, and trusts, a land trust can help in this situation too. Many HOAs do not want tenants in the properties which they manage, so if you attempted to purchase a property with an LLC in a neighborhood like this, you could raise red flags with the HOA. A land trust is of great benefit in this situation. If you have restrictions on ownership in the association or in the area in which you're looking to invest, set up a land trust and either buy the property directly in the name of the land trust or buy it in your own name, transfer it in, then move the land trust to your LLC. The HOA, knowing nothing of the LLC, will think you set up a trust for estate planning purposes.

Although it is not as common because many states offer protection for personal residences, you can use a land trust to keep the ownership of your personal residence private as well. It works for rental real estate, and it works for your personal residence.

If you have a judgment brought against you, it's really easy for a creditor to collect any assets in your own name. Savings accounts in your own name makes it easy for a creditor to obtain a bank garnishment. These types of assets should be held in your anonymity compliant LLC which gives you charging order protections. But with real estate, a creditor does not attack the properties through a garnishment proceeding. Instead, they file a judgment in the county in which your name shows up on real property. If I know that you live in Pierce County, Washington, what I would do is take that judgment and record it in Pierce County. That's going to stop you from being able to sell or refi-

nance your property until you pay off me, your creditor. A land trust, as you already know, can take the property out of your own name and protect you from judgments like this.

Yet another benefit of a land trust is the avoidance of transfer taxes. For example, you used to be able to transfer property in and out of an LLC in Clark County, Nevada, without incurring any transfer taxes. However, when the mortgage crisis struck in 2010, they added a transfer tax when a property was pulled out of an LLC. This was a regular occurrence for investors who wanted to refinance their properties. Lenders are reluctant to loan against properties held in LLCs, so the investor would pull the property out, refinance, pull some cash out, and then they would want to put it back into their LLC for asset protection. And that is when they would encounter the transfer tax.

There's a workaround, and we've been talking about it. It's the land trust. By assigning the beneficial interest to yourself, the county is not notified of the transfer and therefore no transfer taxes are due. Then once you are the owner of the land trust, you would deed the property into your own name. The bank will be happy the property is in your own name and not associated with your LLC. Once you have refinanced and you are ready to put the property back into your LLC, you would just reverse this process.

Deeding property in and out of a trust is a non-taxable event in the majority of jurisdictions. Maryland and Pennsylvania are the only two states an investor might have issues with, but at Anderson we have a special workaround for those states.

Flippers

We've talked about wholesalers, we've talked about investors, but what about the people that like to buy and sell? How can a land trust benefit you if you're buying and selling property?

Well, number one, let's say you buy a property that limits your ability to sell it for a certain period of time, such as with certain bank owned homes. If you purchase a property and are told you can't sell it for a year, buy it in a land trust. Your land trust will be owned by your corporation that does your flips and when you are ready to sell the flipped property, you will sell your land trust, not the property itself. The bank never finds out about this and the court never finds out about this because the property stays in the trust. The property is not transferred.

Another reason why land trusts are important for people who flip real estate has to do with seasoning. Seasoning refers to the amount of time someone has owned a home before they try to sell it. As a flipper, you typically do not hold on to a property for an extended period of time, because that is just the name of the game. But a recent HUD law was enacted to prevent people from flipping homes and reselling for a quick profit. A lender will look to see if the home has been owned for at least 90 days when determining financing.

Now from a lender's perspective, they're looking to a potential buyer for a flipped property money to buy a house. Let's say they look back through the chain of title and see the initial purchase price was \$90,000. You purchased it for \$125,000, did some work, and now you're trying to sell for \$200,000. That is a big swing - within a few months time, the price of the property has gone up over \$100,000. Lenders are going to be very reluctant to loan on that property, concerned that the value has been inflated artificially.

This situation is remedied the same way as with the bank owned home previously discussed. You purchase the property in the name of your land trust, the land trust is owned by the corporation you use to do your flips, and when you are ready to sell the property, you sell the land trust to the buyer.

A final situation where a land trust will benefit you as a flipper is when investing in a “subject to” deal, meaning you’re going to take that property subject to it’s existing financing. If the lender discovers the fact that homeowner sold you the property and it was deeded into your name, they can accelerate the note while you’re trying to do the rehab work (this is another example of the due-on-sale clause we were discussing earlier). You can avoid having to obtain your own financing to buy it by using a land trust.

In this case, the homeowner would transfer their house into a land trust you created. When this land trust is created, the homeowner is the beneficiary and the trustee, and you as the flipper would also be listed as the trustee.

You then ask the homeowner to assign you the beneficial interest in this land trust making you the owner of the trust. Maybe you’re going to pay them a little bit for this transfer as well. From the bank’s standpoint, again, they do not see this transfer. All they see is homeowner put the property into a trust with another trustee.

Nothing triggers the acceleration clause in the underlying mortgage, so you can go in and rehab the property. You would pay the mortgage just like you would if you owned the property out right and you had financing on it. You can flip it then sell it to another individual.

When the property gets sold, the original lien on the property is paid off and then you or your land trust collects the remaining proceeds, the profit on the deal. There isn’t a better tool out there to put together a “subject to” deal to keep these transfers private from the bank.

But I will counsel you on this: If you’re going to engage in any type of “subject to” transactions, make sure the homeowner has their attorney look over the substance of the deal, and then bless it. The last thing you want is somebody coming after you down the road because they feel like they have been ripped off. The seller should have their own attorney explain to them the nature of the transaction and what they’re giving up before you complete the deal.

Conclusion

As you can see, there are a lot of different ways you can use land trust for your real estate investing. The most important thing to know is that by utilizing them in the appropriate manner and utilizing LLCs (especially in states that are anonymity compliant) you can protect your identity. If these entities are set up properly, you can be anonymity compliant and ensure your assets remain protected from prying eyes. At Anderson, we make it our number one goal to ensure that our clients’ assets are protected from creditors and other threats.

Speak with an advisor today to understand how land trusts and anonymity compliant LLCs can benefit your specific situation.