
# The 13 Secrets of the Rich or Informed™ Step-By-Step Blueprint Edition Living Trusts, Plus!

By Rich Rydstrom, Esq. (California Attorney, 33 Years' Experience)
1-877-Win-4-You ™ | Info@Wealth.Attorney ™

Enjoy My Blueprint to Wealth Protection Entitled: "The 13 Secrets of The Rich or Informed", the Blueprint Edition.

I first wrote this article as my personal cheat sheet when I was working as a Beverly Hills Celebrity Business Manager for some of the most famous or informed people in the country. This article grew and grew over the years and now it covers the common and the special devices used in California Estate, Business, Asset, Litigation and Retirement Protections.

This is a non-exhaustive list of devices, and not intended as legal or tax advice. I believe that there is a great value in working with an actual attorney and other professionals, as a Big Team, over any online sales system for many reasons. One, online state default forms do NOT include all options to define your unique disposition plan, and do NOT allow protections from litigation or contest protections. (See Will vs. Living Trust)

When discussing these planning matters the following devices and alternatives should be discussed with your attorney, wealth building and protection team. This list is a non-exhaustive list and only given as a tool to afford easier discussions with your professional team. Your first step in the right direction is to put together a team, which should include an estate, business and asset protection attorney, CPA, insurance agent (re life, disability, buy-sell, long term care, business interruption or income replacement, etc.), CFP (Certified Financial Planner), money manager or investment advisor and a brokerage. This article is not intended as legal, tax, accounting, financial, money management or insurance advice, and as such you may not rely upon same for that purpose. It is recommended that you hire an attorney experienced in this area to plan your business, estate, and protection matters.

I help protect family wealth without fear & anxiety so you can achieve peace of mind! Does peace of mind sound like your objective? Peace of mind, by leaving nothing for chance is certainty, not uncertainty, and that is the ultimate goal:

- Peace of mind in pre-arranging your family and asset disposition affairs.
- Peace of mind in protecting your financial affairs.
- Peace of mind in protecting your wealth.

You can name many more, but you get the idea.

**13 Most Common Business and Estate Protection Planning Tools or Devices!**

1. **Revocable Living Trust (or Living Trust).** The public knows this device as a Living Trust. The Living Trust is most often used to avoid Probate, its costs and delays. In tax circles it is called the Section 671 Trust or disregarded tax entity trust. It is generally a tax-neutral device. However, you may use this trust to invoke maximum estate tax exclusions for the husband and wife, and to add no-contest clause to protect against some third-party challenges, but because its revocable, the Living Trust is not an asset protection device, until the death of the first spouse and the creation or funding of that trust as Irrevocable. With proper business and estate protection planning, the living trust is commonly used to hold 'select' property and all of your (personal) property "interests".

   In larger estates, it is often advisable to put certain assets in various other devices (e.g., LLC, Children's Trusts, Life Insurance Trust, C or S Corporations, Private Retirement Trust, IDIT, Pensions, etc.) for asset and risk protection, as well as for tax reduction reasons. Interests assigned into certain other devices may be assigned to the Living Trust. Contrary to myth, generally it is not intended as an asset protection safeguard, at least during life (while it is revocable). Assets held in your living trust are not protected from the reach of creditors. (Ca. Prob. Code, Sections 18200, 15304 (a), 15304 (b)). However, you can achieve some measure of property "characterization" protection (as separate or community property agreements, etc.) if the husband and wife maintain separate living trusts with property agreements.

Most persons commonly use the living trust in business and estate protection planning as a central planning device or quarterback. It is part of most business and estate protection plans, as it can avoid probate and act as the directing authority for all or most of your property disposition plans, including certain investments. Although certain investment accounts are considered "POD" accounts may avoid probate (or "payable on demand" accounts), you should coordinate PODs consistently with your estate, business and retirement plans, which includes your Living Trust. For some estates, this device alone is not sufficient as a business, estate and asset protection planning solution. To have maximum effectiveness, it should be used with one or more of the other devices or techniques mentioned hereinbelow.

2. **Pour-Over Wills**. This device is used in conjunction with your Living Trust. It directs property disposition to the Living Trust to avoid probate. It is intended to be a "catch-all" over property left out of your Living Trust for one reason or another. Each client will generally use one Pour-Over Will.

3. **California Advanced Health Care Directive (Durable Power of Attorney)**. This document is used primarily to direct your attorney-in-fact on how you wish to be cared for in the event of certain illnesses, incapacity, or disability. It is like the so-called Living Will. Different states have varying rules on such device(s).

4. **Durable Power of Attorney for Asset Management.** This document is used primarily to direct your attorney-in-fact on how to manage, run, control, or dispose of your assets (or certain assets) in the event of certain illnesses, incapacity, or disability. In the event of disability, this document is critical. It will allow you to direct the person(s) of your choice in making business decisions over certain real or personal property (and businesses). It can be very effective for small and family businesses, and landlords (rental properties). For example, per your direction, it could allow for the refinance or sale of real estate.

5. **Family Limited Partnership (FLP)**. This is a very popular business and estate planning instrument (especially before the LLC) used for many purposes, some of which include asset protection, favorable pass-thru taxation, ability to control transferred property (as managing member or per the LLC), reducing estate or income taxes, life insurance ownership, and fractional gifting with use of beneficial "discounts". Charging Order - The family limited partnership will protect its assets from partner creditors. It has the power of the favorable asset protection charging order laws. (Ca.Corp.C 15522, 15673; Fla. Stat. 620.22; Ariz.Rev.Stat.Ann. 29-341; Nev. Rev. Stat. 88.535; NY Partnership Law 111 McKinney; Tex, Code Ann art. 6132a-1 7.03, etc.). However, be aware, in California, effective January 1, 2003 the law changed to allow "foreclosure" of interests. This is a dangerous change and a blow to the asset protection feature of the charging order. Normally a charging order is the exclusive remedy and will only allow the creditor to obtain certain distributions from the entity, if any, and not the assets. However, in such cases, generally the creditor would receive a

taxable event (RevRule 77-137) upon the issuance of a charging order (as constructive income), even if he/she receives no cash or property. This could be a powerful settlement device. It appears that one should consider opening an FLP (or LLC) in a state that does not allow "foreclosure", like Wyoming or Nevada, and then qualify to do business in their own state.

6. **Irrevocable Life Insurance Trust (ILIT)**. Contrary to common myth, life insurance is generally taxable at your death (as it is included in your estate valuation). However, life insurance originated or placed into an irrevocable life insurance trust, is generally not taxable to the deceased estate. The irrevocable life insurance trust is generally non amendable and often used to hold and receive life insurance which removes the value of it from the settlor's estate for estate tax purposes. There are strict rules of compliance and exceptions.

7. **Children's Trust**. Although a creature of many forms, usually it is couched in IRC 2503 (b) or (c). Generally, it is an irrevocable trust used to hold property for the benefit of your children. Parents may gift or sell assets to the children's trust and lease or loan certain assets back. This device does carry a high measure of estate and asset protection from creditors. It can also reduce estate and income taxes.

8. **Charitable Remainder Trust (CRT).** This irrevocable trust is usually used to receive and hold property for the purpose of making charitable gifts, supplying income from such assets for life, achieving current charitable donations, or reducing capital gains tax. It requires the making of a "complete" charitable gift. It may also be used in conjunction with your estate plan including a family Foundation (which are no longer recommended), or "your" own charity. In the most basic sense, your property is transferred to the trust, and the trust sells the property, deferring certain taxes. The trust then invests the sale proceeds, and you receive an income and/or principal payout therefrom (depending upon the device, and factors including the term of the trust and your life expectancy). The trust monies (or res) are protected from most outside liability attacks. Life insurance must also be seriously considered for wealth replacement and also as a wealth creator. Life insurance is effectively used in a CRT to replace any so-called "gift", and often times results in an increase in wealth for your heirs. See you attorney, and life insurance specialists before acting upon such a plan. Also consider a CLT (Charitable Lead Trust).

9. **Limited Liability Company (LLC).** An LLC is a creature of state statute. It varies from state to state. It most often takes the form of a limited partnership for purposes of liability, accounting and taxation. Certain LLC¶s can elect to be taxed as corporations. Most clients will desire the form of a "limited partnership" (not a "corporation"), especially if residential or commercial rental properties or other capital assets are to be held or owned by the LLC.

10. **Will.** Two words: Warning, PROBATE! The old-faithful estate planning tool, the Will, is often times not the appropriate estate planning choice in modern times.

With modern business or estate planning, the Revocable Living Trust (with a Pour-Over-Will) is often the best choice. The historical Will is possibly the simplest document to implement, however, it does not avoid Court Probate. The Will may cost your family great Probate expense (2-10% more or less, of the *gross* value), delay and court battles (with Will challenges and lawsuits). However, the marital deduction provisions often used in Revocable Living Trust may also be used in the Will, but probate, its delay and costs will not be avoided by doing so. Note online default state Will forms do not offer full protections: *the California Statutory Will does NOT include a NO CONTEST CLAUSE*, which may lessen LAWSUITS or fights from third parties against the beneficiaries, because it automatically DISINHERITS that attacker.

11. **The Corporation: "C" Corporation.** The "C" corporation is often the best entity for front line business operations that can afford maximum tax write-offs (however, the SubChapter S is getting closer, year after year). Corporations are often used to operate a business with limited liability, and to divide up your business activities for creditor and lawsuit protection reasons. It is often beneficial to segment your "risky" business activity (or assets) from your "safer" activity (or assets), or to have certain corporation(s) act as partner(s) to other devices. The "C" or "S" corporation may be used to as your front-line business entity, which in this day and age, is expected to be sued. **"S" Corporation**. Like the "C", the "S" is often used to achieve the same level of limited liability protection, but with less fringe benefit tax deductions. However, the "S" comes with pass-through taxation, which is often advantageous to many clients who expect (some) losses in the first years of operation or use the "S" with other devices named herein, etcetera. The tax attributes of income, deduction, credit and loss are passed through to the shareholders personal tax return. The "S" corporation does have several limitations that you must be aware of, including but not limited to (a) limited loss deductions when debt is in excess of basis, (b) the lack of increase in basis due to entity level debt (whereas the LLC and FLP (LP) does not have such limitations), etc. For example, for basis reasons, an S owner should consider getting a loan personally (not the S itself) as opposed to the LLC (or FLP) which can have the entity itself get the loan and benefit from that increase in basis adjustment.

12. **The Business or Land Trust**. The business trust is often used as an alternative to the other business devices to operate a business and add a level of privacy and potential creditor protection; or used to hold rental real estate. The trustee may be a person not owning the beneficial interests therein. Often family members may be effective holders of the generally "private" beneficial interests of the business trust. Warning - the beneficial interests may be attachable by creditors.

13. **Advanced Devices**: Other Devices or Secrets. Other devices used include the Grantor Retained Annuity Trust (GRAT, GRUT, GRIT), Qualified Personal Residence Trust (QPRT), Self-Canceling Installment Note (SCIN), Private Retirement Trust (PRT), selling to a Intentionally Defective Irrevocable Trust (IDIT), SOs, Pools, 1031 exchanges, 1031- TICs, Cost Segregation Depreciation on

Real Estate, etc. **Converting Non-Exempt Assets to Exempt Assets**. In addition to homestead exemptions which have limited but effective value, one of the most powerful asset protection methods is converting the non-exempt assets to exempt status. This can be done is various ways including by trusts, pensions and (marital or separate) property or transmutation agreements. For example: a. Private Retirement Trust (PRT). The PRT is one of the most powerful devices used to enhance an estate and business plan which protects the wealth, equity or assets transferred into this irrevocable trust for purposes of retirement. The authority of such a trust is a create of local state statute, which varies state to state. For example, in California, under its Code of Civil Procedure Section 704.115(b), all amounts held, controlled, or even distributed by a private retirement plan are exempt. This means that you could even transfer certain assets to a PRT during litigation or after a judgment. The term private retirement plan´ is not defined in the state code however, typically, the retirement plan would be sponsored by an employer (LLC), in writing pursuant to an actuarial calculation based upon numerous retirement factors including age. *All amounts held, controlled, or in process of distribution by a private retirement plan, for the payment of benefits as an annuity, pension, retirement allowance, disability payment, or death benefit from a private retirement plan are exempt*. This differs greatly from other exemption codes in California such as California Codes Code Of Civil Procedure Section 704.010-704.210. or the Individual Retirement Accounts (IRAs). IRAs are <u>not</u> fully protected under the asset protection laws found in federal ERISA protections. However, some states have enacted special but restrictive protections of IRA plans *protecting the funds and distributions only to the extent necessary* for the support of the debtor, his/her spouse and dependents. **Qualified ERISA Plans.** ERISA (Employee Retirement Income Security Act of 1974) supplies very effective asset protection over pension funds. The federal law overrides state law to the contrary and protects 401k, profit sharing and pension plans that prohibit involuntary assignment of plan benefits to any creditors. Assets may be transferred into such a plan with known creditors, lawsuits or judgments. However, ERISA will not protect such assets from the IRS or subject to court order in divorce court (Qualified Domestic Relations Order). ERISA plans protect employees not owner-only plan participants. If the plan¶s only participants are the owner and his family (spouse or dependents), then ERISA will not apply to protect the funds.