

Real Estate Strategies From a Legal and Tax Standpoint

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Smart Ownership: Limiting Liability & Maximizing Profit

- I. Choosing your Legal Structure
- II. Understanding Contracts
- III. Proper Insurance
- IV. Know your Duties as a Landlord
- V. Tax Optimization



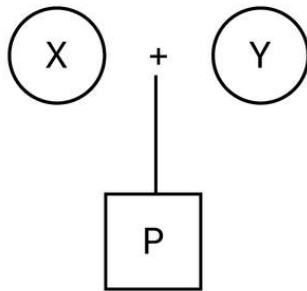
Legal Structures for Holding Real Estate

- Sole Ownership/Joint Ownership
- Tenancy in Common
- Joint Tenancy
- Entities (Limited Liability Company, Corporation, Partnership, etc.)
- Trust

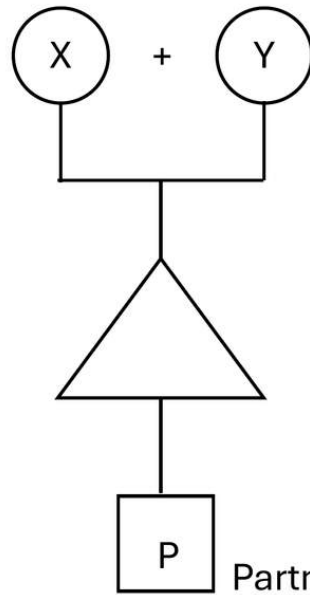
- Considerations for choosing legal structure:
 - a) Tax implications
 - b) Management and control
 - c) Liability Protection

Ownership Structures – Partnerships

Partnership



- Direct
- Tenants in common
- Joint tenancy



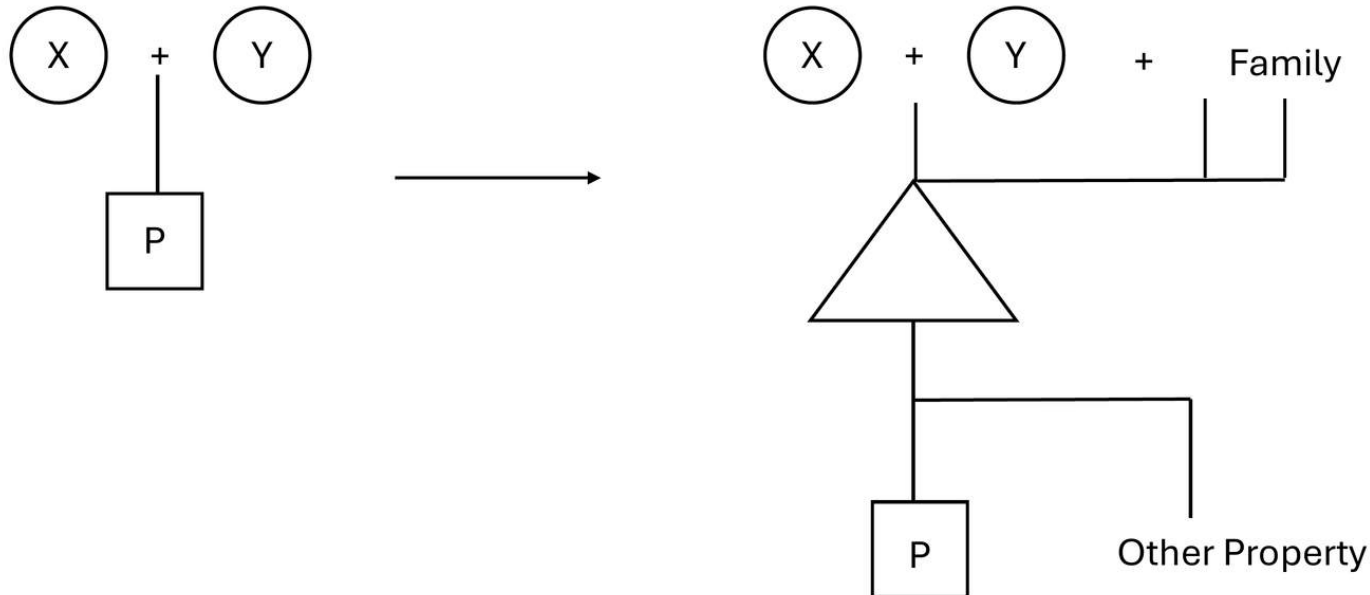
Partnership / LLC

- General Partnership
- Limited Partnership
- LLC Ownership
- Allocation of Profits



Ownership Structures – Family Limited Partnership

Family Limited Partnership

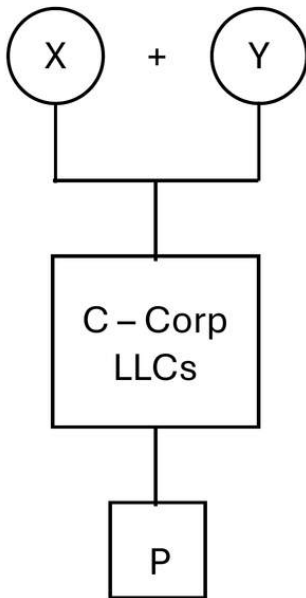


- Estate and gift tax discounting
- Asset protection – charging order limitation



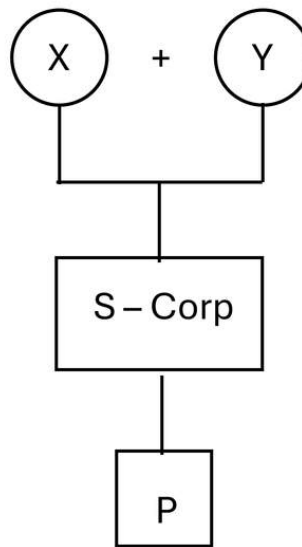
Corporate Ownership

C-Corporation



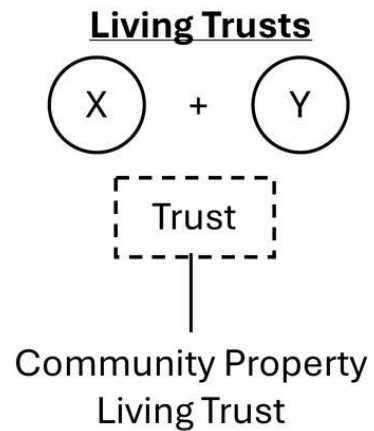
- Taxed at Corp. – 21% Federal and 8.9%
- C-Corp - Taxed on dividends – 20% (3.8% NIIT & 13.3% CA)
- S-Corp, taxed on allocated profits, individual rates

S-Corporation



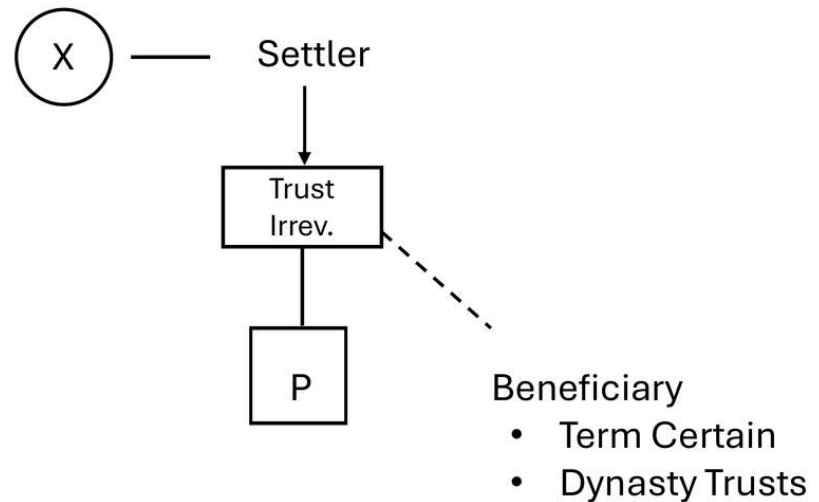
- Pass-through tax
- Profit / loss allocated by share ownership
- Minimum costs – no corporate tax
- Tax disadvantages
 - Debt inside corporation: basis in hands of shareholder in question
 - Tax – limit of losses to tax basis
 - Tax problems when distribution out appreciated property (split-ups)

Trust Ownership



- Living trust – transparent for tax
- Avoids probate
- Estate tax step up
- Separate property considerations

Irrevocable Trust



Real Estate Contracts

- Review contracts thoroughly: such as purchase agreements, lease agreements, property management agreements, financing agreements, partnership agreements, etc.
- Retain legal counsel to review , negotiate, and draft contracts
- Understand your rights and responsibilities
- Common real estate lawsuits: breach of contract, breach of fiduciary duty, evictions (UD/Wrongful Evictions), boundary & easement disputes, title and ownership disputes (quiet title, partition action), construction defects, and more
- Over 600,000 civil lawsuits were filed in the CA Superior Court in 2023.

Insurance for Homeowners/Landlord

- Insurance coverage gaps: over 75% of landlords are underinsured
- Review and understand your coverage: property damage exclusions (e.g. floods and earthquake), landlord/tenant coverage (e.g., wrongful eviction, personal injury), etc.
- Maintain regular property inspections: identify maintenance issues to prevent potential claims



Duties of a Landlord

- Approximately 40% of small landlords will face a lawsuit at some point, typically due to tenant disputes, habitability issues, or conflicts over contract terms.
- Habitability of the Property: defined in California Civil Code § 1941.1
- Quiet enjoyment: proper noticed to tenants
- Anti-Discrimination laws
- Handle repairs and complaints promptly
- Rent control and eviction control (just cause eviction)

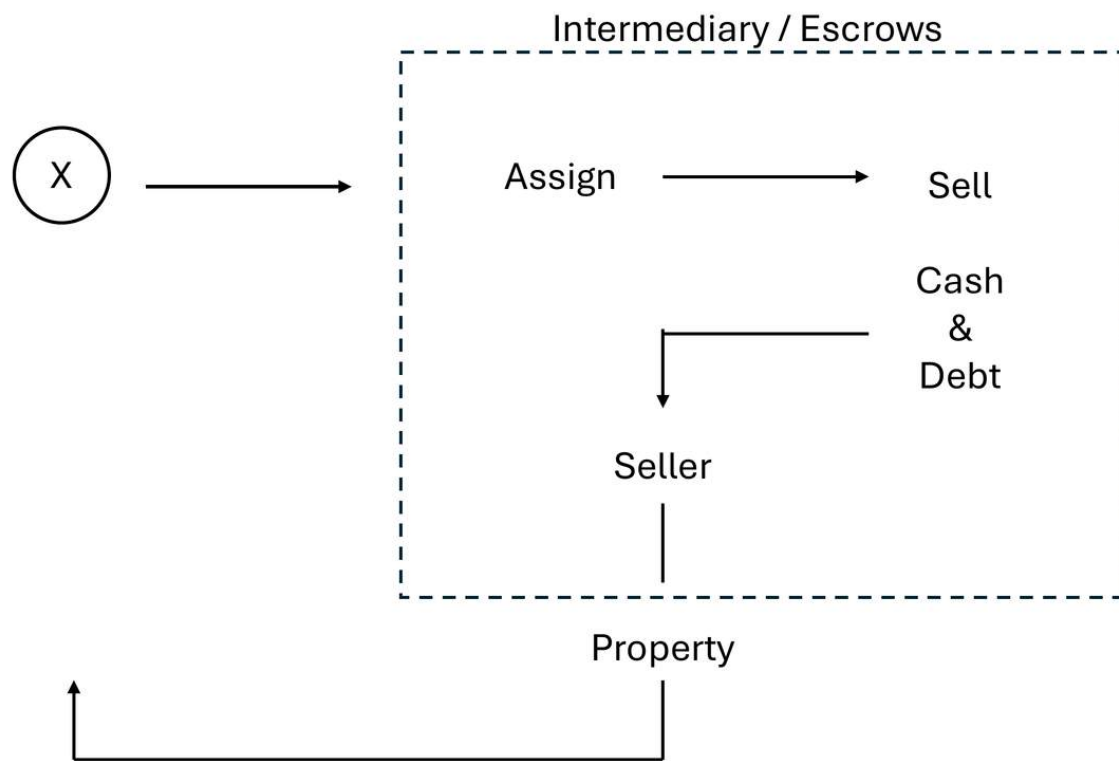


Income Tax - Tax Losses Limited

- Tax Losses
 - Rental Losses – Limited
 - Real Estate Professionals Not Limited
 - Active Losses (Trade or Business) (750 hours)
 - Investments, e.g. partnership
 - Losses Limited Tax Basis in Investment
 - Using Qualified Debt as Additional Basis
- Gains & Losses
 - Capital Losses (Stock) can offset real estate capital gains, limited to \$3,000, offset of ordinary income
 - Real estate losses if ordinary, can offset ordinary income, without limitation
 - Losses as a limited partnership are generally passive losses



Tax Deferred Exchanged – Third Party Escrow



Not tax if:

- No receipt of cash
- No decrease in debt



Tax Deferred Exchanges – Section 1031, Definition

- No gain or loss recognized on exchange for property
- Held for productive use in a trade or business or for investment
- Not applicable for property held primarily for sale
- Property must be identified within 45 days of sale
- Completed exchange in not more than 180 days or due date of return, including extension

Tax Deferred Exchanges – Types of Property

Types of Property

Home	N
Vacation property	N
Dealer property	N
Flipper property	N
Partnership interest	N
Land / Vacant property	Y
Rental property	Y
Multiunit residential rental	Y
Commercial property (office)	Y
Can property change status?	Y
Documenting status	



Gift & Estate Tax

Citizens & Residents

Gift Tax Exclusion

Lifetime Gift Tax Exemption

Estate Tax Exemption

Per Person

\$16,000

\$13.9mm

\$13.9mm

Example

- Gifts of 1mm x 3 years
- Death, 20mm, remain estate

Estate Value

\$20,000,000

Lifetime Exemption

\$13,900,000

Used Exemptions

\$ 2,952,000

(1mm – 16,000) x 3

Available Exemption

\$10,948,000

Net Taxable Estate

\$ 9,052,000



Tax Deferred Exchanges - Types of Property

Nonresidents / Foreign Nationals

Gift Tax Exemptions

Tangible assets *

Intangible assets

Per Person

\$16,000

Taxable

Nontaxable

Estate Tax on US Situs Assets

Exemption

\$60,000 (NOT \$13.9mm)

Overall Advice

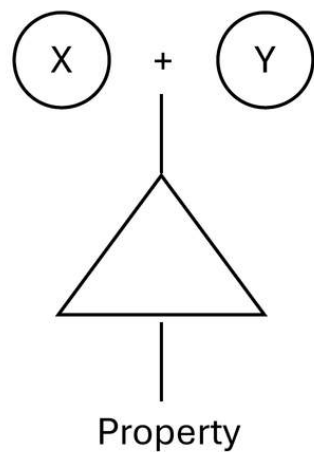
Hold U.S. Assets in a Foreign Company (eliminates estate tax)

How to move assets from older gen: Contribute assets into a US corporation or partnership, then give the ownership of company shares or partnership interest to younger gen (no gift tax when giving intangibles)

* Real Estate, Car, Art, Jewelry situated in U.S. are taxable

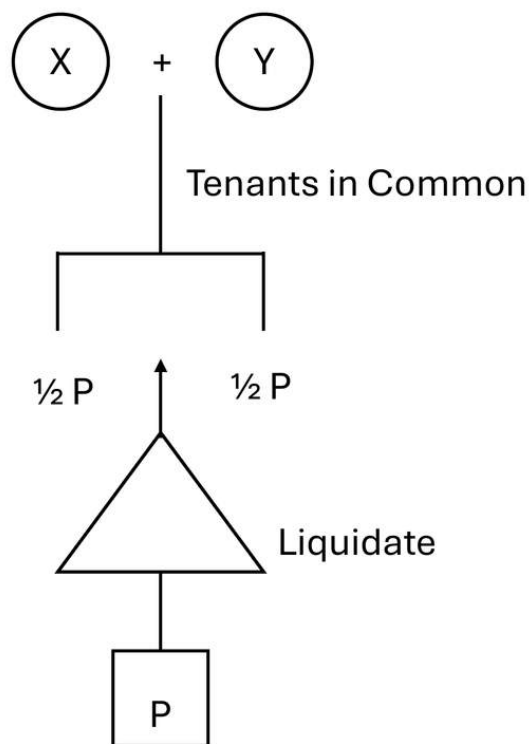


Annual Reassessment - Property Tax

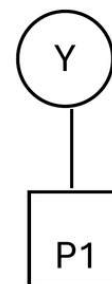


- Gifting by X of 50% of LLC
- Ownership in LLC triggers reassessment

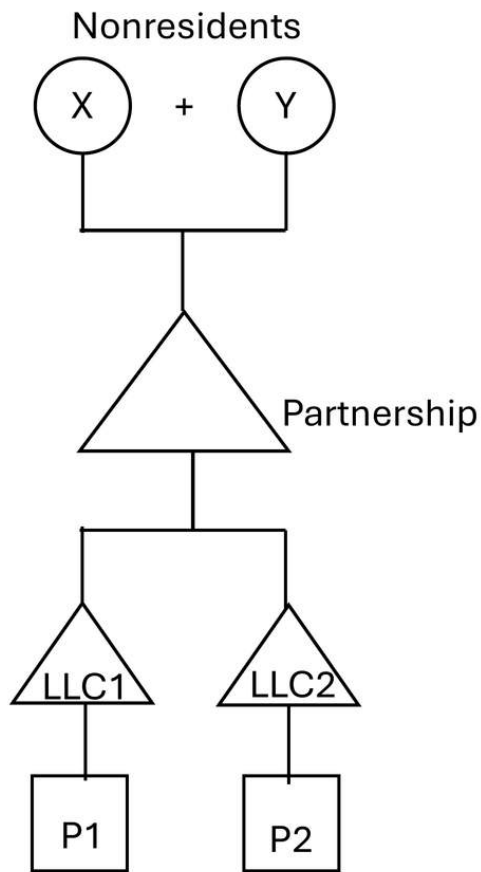
Change Structures



Then X can gift TC to Y



Nonresidents: California Tax Strategy



- Alternative A
 - Sale of Property
 - Gain Flows up to X and Y
- Alternative B
 - Sale of LLC by partnership
 - Sale of intangible assets
 - NRs not taxed on the sale of an intangible assets
 - Advanced planning required
 - Buyer considerations on cost of dealing with LLC ownership

Foreign Investment in U.S. Real Property (USRP)

Direct and Indirect Ownership ^(a)

- (1) Foreign Person
- (2) U.S. or Foreign LLC
- (3) U.S. or Foreign Partnership
- (4) U.S. or Foreign Trust

(1)
NR



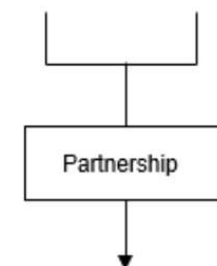
USRP

(2)
NR



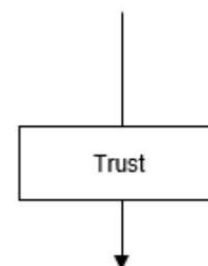
USRP

(3)
NR-1 NR-2



USRP

(4)
NR

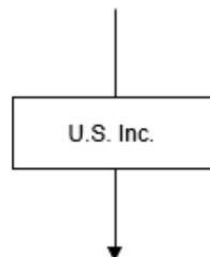


USRP

Corporate Ownership ^(b)

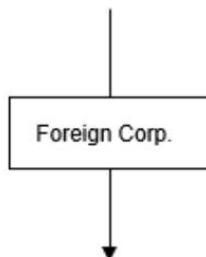
- (5) U.S. Corporation
- (6) Foreign Corporation
- (7) Foreign / U.S. Corporation
- (8) Hybrid Structure

(5)
NR



USRP

(6)
NR



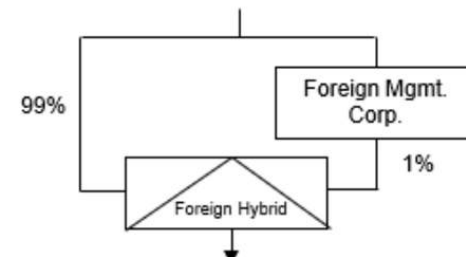
USRP

(7)
NR



USRP

(8)
NR



USRP

- (a) For nonresident individuals and high net worth families.
- (b) For corporate and institution investors.

No distribution of profits

(for 99% owner)
Annual distribution of profits

Tax Laws Changing, or Not

	<u>Prior</u>	<u>(Trump) Post 2017</u>	<u>Proposed</u>
<u>Tax Information</u>			
Individual	39.6%	37%	0
Corporate	35.0%	21%	20%
<u>Tax Deductions</u>			
Miscellaneous Business Itemized	Allowed	Not Allowed	0
State Tax Deductions	Allowed	Limited to \$10,000 *	?
Office in Home Deductions	0		
Miscellaneous Deduction			
Schedule E, Trade or bust	Allowed	Not Allowed	0
	Allowed	Allowed	0



* Hurts people in high tax states (CA, NJ & NY)

Guest Profiles



Darius Chan

Mr. Chan is the founding partner of CCD Law Group, P.C. located in San Francisco, CA. With 20 years of legal experience as an attorney, Mr. Chan has managed a diverse range of cases and legal challenges, overseeing more than a thousand litigation and transactional matters. His primary focus is on real estate and business law, where he has successfully advised numerous property owners, developers, entrepreneurs, and companies—both domestic and international. He takes pride in his extensive experience in both transactional and litigation work, coupled with a deep understanding of business principles and practical goals for his clients. Mr. Chan is also a licensed real estate broker in California, actively participating in the industry as an attorney, broker, and investor.



Brian Rowbotham

Mr. Rowbotham has been advising individuals and businesses for over 40 years with domestic and international tax planning. He previously headed the Global Private Client Services practice in San Francisco for a national accounting firm. He advises U.S. and international based companies in a range of technology areas, foreign and domestic, and assists companies and individuals with complex transactions including cross border mergers and acquisitions. Current engagements include blockchain enterprises, esports businesses, international real estate, investment funds, and compensation planning for US executives of public and private companies. He has advised local and large multinational investors in US real property transactions since 1980. He also represents individuals and companies in federal and state income tax audits.

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