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Asset Protection in California: What Works and What Does Not

Written for California rental owners and small business owners. Focused on practical risk reduction, not gimmicks

Many people ask if they can "wrap everything" in a holding company, LLCs, and a trust to protect against lawsuits. In California, that idea needs a reset.

1. **A California revocable living trust is not a lawsuit shield for you.** If you keep the power to revoke and control the assets, those assets are generally reachable by your creditors. A living trust is primarily used to avoid probate, maintain privacy, and enable smoother management if you become incapacitated.
2. **LLCs help most with "inside liability."** Inside liability refers to a claim arising from a specific property or business, such as a tenant's injury at a rental or a customer's claim against an operating company. If each risky activity is held in its own properly run entity, you reduce the chance that a problem in one place takes down everything you own.
3. **LLCs are not a guarantee against your personal lawsuits.** If you personally get sued, a creditor can pursue your LLC ownership interest. California's charging order statute allows a lien on the debtor-member's transferable interest and directs distributions to the creditor. In some cases, the court can go further and foreclose on that transferable interest.
4. **The entity "paper" is not enough.** If an LLC is run like a personal bank account, a court may allow remedies that reach LLC assets. California's *Curci* decision is a clear warning for single-owner, closely controlled LLCs.
5. **Insurance is the first line of defense.** The best structures pair clean entities with strong liability coverage, umbrella coverage, and good contracts. Structure reduces exposure. Insurance funds the defense and settlement.
6. **Timing matters.** Asset protection planning must be done before a claim exists or is reasonably anticipated. Transfers made after trouble starts can create separate legal problems.

If you want a plan that complies with California law and still provides real protection, the most practical approach is: separate risky assets into well-run LLCs, maintain strong insurance, and use your living trust to avoid probate by owning the LLC interests (not to block creditors during your lifetime).

Menu of common structures for CA clients

Option 1: "Clean baseline" (suitable for most families)

Best for: W-2 or professional income, primary residence, investment accounts, minimal business risk.
Structure:

- Revocable living trust for estate planning.
- Proper titling of accounts and beneficiary designations.
- Strong auto, homeowners, and umbrella insurance.
  Strengths: Simple, cost-effective, excellent probate and incapacity planning.
  Limits: Does not change creditor exposure during life just because assets are in the trust.

Option 2: "One rental property LLC."

Best for: One California rental with meaningful tenant exposure.
Structure:

- Rental titled in a dedicated LLC.
- Separate bank account, bookkeeping, lease forms, and insurance for the LLC/property.
- Your living trust owns the LLC membership interest (probate avoidance).
  Strengths: Strong inside-liability compartmentalization.
  Limits: Personal lawsuits can still reach your LLC's interest through charging order remedies.

Option 3: "Multiple rentals" (liability silos + management)

Best for: 2+ rentals or higher-risk properties.
Structure:

- One LLC per property (or per small cluster with similar risk, if cost is a factor).
- Separate "management" company (LLC or corporation) that signs vendor contracts and provides standardized operations.
- A living trust owns the holding interests for estate planning and continuity.
  Strengths: Limits cross-contamination between properties; cleaner operations.
  Limits: More admin, more tax filings, more banking, more formalities. Also, poor separation can undermine the benefit.

Important note for mortgaged rentals (due-on-sale risk)

If your rental has a mortgage, transferring title to an LLC can trigger the loan's **due-on-sale** clause. The lender may have the right to call the loan, even if they do not always enforce it.

Before any deed transfer:

- Review the note/deed of trust and confirm who owns the loan (servicer vs. investor).
- Get **written approval or a written waiver** from the servicer if possible.
- If approval is not available, consider keeping the title as-is and relying on **strong insurance and umbrella coverage**.
- If an LLC title is a must, the clean solution is often an **LLC-friendly refinance** (pricing and terms may differ). An LLC-friendly refinance is simply a new loan that is structured from day one to allow LLC ownership, so you are not relying on your current lender to ignore or waive the due-on-sale clause.

Note: The common "transfer to trust" safe harbor often ties to owner occupancy, so it may not fit non-owner-occupied rentals.

Option 4: "Operating business + separate asset holder"

Best for: Service or retail businesses that generate lawsuit risk, plus valuable equipment, IP, or real estate.
Structure:

- Operating entity: takes revenue, employs workers, signs customer contracts, and carries higher liability.
- Asset-holding entity: owns equipment, IP, or real estate and leases to the operating company under written agreements at market terms.
- A living trust owns entity interests for estate planning.
  Strengths: Keeps valuable assets away from day-to-day operating risk when done correctly.
  Limits: Needs real documentation and real money flow. Sloppy intercompany conduct raises alter ego arguments.

Option 5: "Holding company" (valuable for governance, not a force field)

Best for: Multiple entities where the client wants centralized control and succession planning.
Structure:

- A parent entity owns membership interests of sub-LLCs (properties and/or operating entities).
- Parent receives distributions; subs hold risk.
- A living trust can own the parent company interest for estate planning.
  Strengths: Centralizes management, reporting, and succession.
  Limits: A holding company does not automatically protect you from personal creditors, and it can get pulled into disputes if it guarantees debts, signs the wrong contracts, or is run as the client's alter ego.

References

Trusts and creditor access (California)

- **Cal. Prob. Code § 18200** (revocable trust assets subject to settlor's creditors during life)
- **Cal. Prob. Code § 15304** (self-settled spendthrift restraints are invalid against the settlor's creditors)

LLC creditor remedies (California)

- **Cal. Corp. Code § 17705.03** (charging order; lien on transferable interest; potential foreclosure of transferable interest)

Fraudulent transfer and timing risk (California)

- **Cal. Civ. Code § 3439.04** (actual intent and certain constructive theories under the UVTA)
- **Cal. Civ. Code § 3439.05** (constructive voidable transfer for existing creditors in specified circumstances)

Key California cases to cite for the LLC "not a force field" point

- **Curci Investments, LLC v. Baldwin (2017) 14 Cal.App.5th 214** (outside reverse veil piercing permitted against an LLC on the facts presented)
- **Postal Instant Press, Inc. v. Kaswa Corp. (2008) 162 Cal.App.4th 1510** (outside reverse veil piercing rejected in the corporate context; helpful as background because *Curci* distinguishes it)

Exemptions

- **Cal. Civ. Proc. Code § 704.730** (homestead exemption framework)
- **Cal. Civ. Proc. Code § 704.115** (private retirement plan exemption rules, including "extent necessary" language in some contexts)

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