EPISODE 431

[INTRODUCTION]

[00:00:00] ANNOUNCER: Welcome to The Real Estate Syndication Show. Whether you are a seasoned investor or building a new real estate business, this is the show for you. Whitney Sewell talks to top experts in the business. Our goal is to help you master real estate syndication.

And now your host, Whitney Sewell.

[INTERVIEW]

[00:00:24] WS: This is your daily Real Estate Syndication Show. I'm your host, Whitney Sewell. Today, our guest is Brian Bradley. Thanks for being on the show, Brian.

[00:00:32] BB: Hey! Thanks, Whitney, for having me on and putting this podcast together. I think we're going to have a pretty interesting topic for everybody, especially those syndicating deals and are looking to grow beyond those LLCs and what to do about it. I just hope that I can add some value to the people listening here on how to protect what you got and have it grow.

[00:00:51] WS: Well, thank you so much, Brian. I want to remind the listeners as well to go to lifebridgecapital.com. Or you can go to the contact us page and connect with me personally. We'll reach out to you.

But a little about Brian, he is a leading educator and asset protection attorney for high risk professionals, entrepreneurs, and investors. He focuses on setting up strategic teams and systems to protect clients' assets. Selected to the Super Lawyers Rising Star list, Lawyer of Distinction list, and nominated to America's Top 100 High Stake Litigators list.

So, Brian, thank you again for you time today. But give the listeners a little more about who you are, what you do, and let's dive in.

[00:01:33] BB: Yeah. No problem. Like I said, I'm an asset protection attorney and I got into asset protection from the litigation side of the law and having people being sued. Their lives is being turned completely upside down, and they all had a false sense of security like, "Oh! I had insurance and I thought they were going to cover everything," or, "I had a revocable living trust. I don't understand why that's not protecting me." They didn't understand that it's the insurance's job to wiggle out and create separation and lawsuits, and a revocable living trust is just there for when you die to pass on your assets to who you designate as a beneficiary. It's like, "I wish I could've done something beforehand." I just got tired of hearing that same old story come through my door and I wanted to be proactive and I always like money and investing myself. I just said, "I need to make a transition of my practice to match my interest with what I see as a client's need and just be proactive." So I started adding the asset protection realm into my practice.

Know it really ties in with your listeners in. As your listeners are investing and they're starting to become accredited investors and syndicators, they're going to eventually outgrow just basic systems and like LLCs. So they need to have a little bit more protection. So what I do is really provide – Well, asset protection is just peace of mind, is what it is. We do this by setting up systems and teams using legal entities like LLCs or asset management, limited partnerships, and different types of trusts and exemptions, which we'll break down later on today. I'll try to keep in mind.

The overall goal really is just lifestyle preservation, peace of mind, and then changing the way predators view you and then separating up ownership and liability. Rich people don't own things in their own personal name, businesses or trust deal. You still want to enjoy them and benefit from them. You just don't want to have all the liability directly attached to your name from them. So clients don't want to be stressed out about their financial security, and that's what you go to asset protection attorneys like me for. Then
my practice specifically focuses on that one million kind of net worth or more clients who we accredited, and you need a little bit higher protection than what you started with when we first started investing.

[00:03:47] WS: All right, Brian. You'd mentioned like asset protection is really peace of mind. But when do we need to be thinking about asset protection? You said – You mentioned in your example of those other people. I wish I could've helped you earlier. I wish I would've known this earlier, those types of things you were hearing. Well, when do we need to be thinking about this?

[00:04:05] BB: I think the second that you decide I'm going to invest in something that can go boom or has a key and someone can get hurt, you can just start thinking about how do I protect myself because, one, you own something. You're going to be viewed as deep pockets. You are renting to somebody. You are going to be viewed as deep pockets. The weird thing is it's always the unknown that can come and bite. That's going to bite you the biggest in the butt or the things that you don't know that you don't know.

So as you start investing, you're going to make a lot. Or starting a business. You're going to make a lot of errors in the beginning, and those are the crucial times that people generally don't go seek asset protection or lawyers. They try to do it all themselves and they have really expensive learning experiences. So I would say the second you decide to open up a business or you start having enough money to go buy another property, you need to start thinking about how to protect it. Then I wouldn't say go spend 30 or 100,000 dollars on something to protect one unit. That's crazy, but you can start small and scale up as you go and just realize, "What I start, is it where I'm going to end?"

[00:05:08] WS: Maybe before we're jumping in as an operator or maybe even a limited partner or as a passive investor, what do we need to be thinking about? We're fixing on investing in a deal. What does the passive investor need to be thinking about? You mentioned fixing to invest in something that could go boom or anything like that. What do I need to think about or have in place before I invest?

[00:05:29] BB: Yeah. I would say, like in any business structure, have your business entity set up. So if you're just starting out, money is tight. An LLC is always a good starting point. So create an LLC. There is limitation. Not limitations but it's kind of what we call maybe protection. It's more of deterrence. It says it in its name, limited. So you have limited personal protection from it. Then it depends on state-by-state with charging orders. What can – Assets they can reach through you if pierced.

But that's the great entry point, an LLC. I would say if you're just starting out investing, try to have two LLCs, one to just hold whatever you're investing in and another one to operate out of. That way, you're creating more degrees of separation from yourself. Then as money starts coming in passively and you start getting more and more assets, a common thing that people do is I would add another LLC or another LLC. That eventually can just get crazy and very expensive. So that's when when you hit that 500,000 net worth mark and you're making about $200,000 probably annually, you would start thinking about higher levels of protection that's more streamlined, instead of just adding more and more cost to maintain your protection.

[00:06:41] WS: All right. So thinking about having two LLCs. At least have one to get started. Have one that maybe you operate out of and then another that actually holds the property. So maybe the one that you're operating out of is kind of the business name, the one everybody sees. But there's a different entity that actually holds the properties that you're investing in or purchasing.

[00:07:02] BB: Correct.

[00:07:04] WS: Okay. So then you mentioned, when we get to that 500,000 net worth, there's – We need to be thinking differently then. What does that look like?

[00:07:12] BB: You're going to start seeing money grow a lot faster. So when you hit that 500,000 mark, it's going to be easier to turn it into a million. But one lawsuit can completely wipe you out. So generally, you want to keep the equity in one LLC below. I would say below $500,000. But that's kind of hard nowadays, especially if you live in like California. It's going to be virtually impossible. So you want to try to keep it below a million, and that's where it starts going into splitting up equity, which is your assets into different LLC structures.

But as you start growing, that just gets really expensive. So what I recommend there is you start looking into the – What we do, higher forms of asset protection, which is called an asset management limited partnership. These have split delineations of ownership, and so there is a general partnership ownership and then there's a minority partner ownership. So these allow you to place all of your assets and your LLCs into the general partner ownership piece of it. Then that's what's going to be owning that aspect.

Then you can also put in different assets you have like cash, stock, bonds, and whatever into the AMLP. Then once you turn about that million dollar mark, you can then come back in with what we call a bridge trust, which we'll break down later on. It's an offshore asset protection trust but it's also domestic. Then that comes into the minority ownership share and then that's the asset protection ironclad gold standard throughout the world of, “Go pound sand. We don't care what you do.” So as you start scaling, there is just – If you listen to this podcast, you'll see how I start with an LLC. You know there's an ending point of a potential bridge trust. The middle gap is an AMLP. Then you just synchronize yourself as you grow into it.

[00:08:57] WS: Okay. I would have to schedule a call with you sometime to understand some of that.

[00:09:01] BB: No. We'll break it. We'll break it down really simple and really quick.

[00:09:04] WS: Let's do it.

[00:09:04] BB: Yeah. If you want , I think that – Before we jump into the trust, I think one thing I like to talk about which most people probably never heard of is just called exemptions. So no matter what the own, you're syndicating, you're whatever, there is things called exemptions. If you're looking for asset protection besides going [inaudible 00:09:24], one of the most powerful thing that you can have is an asset that's an exempt from a lawsuit. Think of O.J. Simpson. He was sued civilly, completely wiped out. But he was able to keep his Florida mansion and his NFL pension, because they were state and federally exempt from lawsuits. Same thing with 401(k)s.

So exemption planning is one of the main staples. But it's the least understood, because they're not used that much, because there's not much money for financial advisors and CPAs to make out of them. They're not taught to them, so they don't know about them on their legal solutions. Lawyers generally try to put everybody into a perfect little cookie-cutter LLC. They're not taught in the law school. So unless they fall into a higher degree level firm that doesn't have protection at a high level, they're not taught to them. Most people don't even know these exemptions exist.

The first reason I like to start with them is it's a state-given legal right. So you always want to claim and then max out those state rights first and your federal rights first. Second, you're starting to see the weakening of out-of-state asset protection trust. For example, there is that California case in Kilker versus Stillman in 2012. It completely disregarded the Nevada Asset Protection Trust for a California resident. So we're seeing this more and more throughout the nation. So we prefer to start with exemptions and maxing out those first and then moving onto using stronger offshore jurisdictions like offer asset protection trust if and when they're needed.

Now, exemptions are going to vary state-by-state, and a few really good examples of are – I just went over a couple with the O.J. Simpson example. Then Florida homestead exemptions. Your home, regardless of its value, is going to be absolutely protected in Florida, regardless of its value if it's within one-fourth of an acre. That's an example of an exemption. Another really huge one for your California listeners, and I'm sure you got a lot of California listeners out there, was called a private retirement plan. California is the only state to grant full exemption protection, and it's full exemption protection for any asset that qualifies for being placed in this private retirement plan, if their purpose is to protect those assets for the retirement.

But generally, that's the main reason why 90% of my people that call in are investing is down the road for their retirement. This specific exemption was codified in the '70s, so for over 40 years ago. So it has a really strong case law history, and you can protect cash, stock, bonds, real estate, life insurance or portfolios, corporate stock, your LLC membership interest. So if you're a California resident, I think that you guys need to look this up and learn about it as CCP section 704.115, because you're not going to hear about it anywhere else, and it's one of the only main exemptions that you have to protect any asset essentially that you have.

[00:12:18] WS: But tell me, how do we – You mentioned CPAs or a lot of attorneys aren't taught these things or exemption planning. How do we find somebody that we know is qualified to help us with something like this?

[00:12:30] BB: It's a good question. It's a hard question to answer, is a lot of attorneys – I spend a lot of my time talking to our continuing legal and teaching continuing legal education courses on exemption planning and things like that. So it's just a matter of getting – Once law students and attorneys start picking up asset protection in their practice, they start learning about them through continuing education saying, “Oh! I didn’t know about that. I didn’t know about this.” That’s why I spend a lot of my time talking about that. For the listeners out there, unless you hear about it, you’re not going to know about it. So it’s one of those really hard things to say, “Hey! What is out there? What’s really strong and what’s not?” I have some clients that are like, “Man! I just created this. I wish I heard your podcast a week ago.” Like, “Yeah, sorry.”

[00:13:17] WS: Maybe reach out to you or we find somebody that can help us through this or can us to plan for some of the exemptions. But that asset protection trust that you were talking about, just elaborate on that a little bit.

[00:13:28] BB: Yes. So let’s jump in. I’m going to start. I’m going to break that down through a talk of jurisdiction. Then the way I want to do it is compare offshore versus domestic, and then is there a way to connect the two together. That way, we get a really good landscape of how the whole piece of the pie works together.

Jurisdiction means the laws and rules that govern you and trust, and business entities are different from one jurisdiction to another, and this means from one state to another or one country to another. Just think of like old crime movies and TV shows where some dead body falls on the ground right at the county lines in. The two counties are fighting over who's the head cop on the job. That’s jurisdiction.

So you have two options when you're picking on a jurisdiction. You can establish these trusts domestically here in the US, for example in Nevada. Or you can set them up offshores, in another country like the Cook Islands. I personally prefer going offshore, if and when it’s ever needed. It’s simply because it's the best home court advantage, especially for your higher-net-worth individuals. It makes lawsuits go away very, very fast and exceptionally quickly, and it resolves them for literally pennies on the dollar, even against what we call super creditors like the IRS and the SEC. So the power of a foreign offshore trust like in the Cook Islands is that it has what’s called statutory nonrecognition of any other jurisdiction court orders. That's what these trusts were specifically drafted for in their Constitution statute drafted for in the ‘80s.

So what this means is that your US judgment is going to be completely worthless in the Cook Islands. You’d have to go and start your case all over from scratch, facing the highest legal standard in the world and the murder standard, which is beyond a reasonable doubt. On the plaintiff, it's going to have to front all the court costs and find a judge from New Zealand, and you can't bring the US attorneys with you there. If you lose, they pay. So when they're trying to prove the case beyond a reasonable doubt, they're most likely going to lose, and there's only a one-year statute of limitations there. So by the time they even realize they had to sue you in the Cook Islands, they have most likely already missed the chance to swing at the ball.

But there's pros and cons to everything. I don't think that you can always just paint a rosy picture. So if you're purely foreign, meaning offshore like in the Cook Islands, it's going to be very effective. I mean, five out of five stars. Nothing really gets better than statutory nonrecognition. But on the other three factors that clients want, control, cost, and compliance, it's going to fall a little bit short. So for a foreign asset protection trust to work, you got to be out of control and subject to a foreign trustee. The annual maintenance costs are going to be really high. We've seen up to like $10,000. If you're purely foreign, you also have a lot of IRS reporting and disclosures to file like forms 3520s and 3538s.

So we only have about 5% of our clients that have to go purely foreign. It's just really extreme. But if you compare this to the domestic side, purely domestic asset protection trusts are going to be less expensive. The cost is going to be less. The maintenance fees are going to be less. But they fail in effectiveness and control. They fail because of those, the foundation of asset protection, and the foundation is to just not recognize another jurisdictional court orders with the hallmark of our legal system in the US as a Constitution, and we have the full faith in credit clause. Meaning you can't run from judgments in the US.

So what we're seeing now also is a pattern of domestic asset protection trust being pierced, like I mentioned before. So we have high-profile cases like [inaudible 00:17:01] 2013, Dale versus Dale 2015, Toni 1 Versus Wacker, and more. Of course, just completely disregarding clients using domestic asset protection trust or going to other states like California, residents using Nevada asset protection trust. They're just ignoring the choice of law clause. So when we look at the landscape now, the power of offshore with the cost, the risk of lack of power and strength, the cost efficiency domestically, which do I pick?

So if you're one of my clients or my affiliates' clients, we just say neither. We use what's called a bridge trust, and it's a hybrid and it's a domestic and a foreign asset protection trust. We're just combining the best the both worlds. It was created over 30 years ago, and we're just using the word bridge to demonstrate conceptually how we're using a foreign trust in another island, connecting two countries together. We just cross the bridge when we need to you when you're under a state address. For your CPAs and lawyer listeners out there who really like to geek out or other people who like to geek out on some of the details of it, the bridge trust is a grantor trust. What this means is that you, the creator of the trust, retain some the power for it and like all asset protection trust or self-settled spendthrift trust. What this means is this has created by you, for you don't have as as your own beneficiary.

The win-win here for purposes and for the IRS is that you don't have as many of the disclosures. Your bridge trust is actually going to be considered domestic, not foreign, and that's because we drafted them to specifically comply with U.S.C. section 7701. So what this means is that you don't have all of those specific tax disclosures that you have to do in IRS reportings. So what this means also is that you get the simplicity of a domestic asset protection trust with the strength and power of the Cook Islands foreign trust in your back pocket, if and when you ever need it.

[00:19:00] WS: Tell me about the – Setting something like this up is not something that's done for, I would say, most people every day. But until you're looking at investing, maybe you have a – You've gained some higher-net-worth or it's growing. But tell me about the relationship between somebody like yourself that's helping us set the stuff up, but then also like with our CPA or – When we're thinking about setting these types of things up, is the same CPA going to work for us?

[00:19:28 BB: It may. It may not. Sometimes, we have to actually work with the CPA, and one thing they understand is any asset protection is tax-neutral. So it's really actually when you're creating these asset protection trusts, the offshore ones, you actually have less tax filings than you would – If you didn't have it. So actually, it simplifies your life a lot more. But we work with the CPAs. Sometimes, CPAs are just really passive and have no idea what's going on, and they don't want to know. So as you grow, you may outgrow your CPA. I outgrew one of my CPAs. I have a great business CPA, but he's not really good at real estate investment, so I had to go find one that's good with my law practice and my business, plus real estate investing. That's just part of life.

So we have a great network of CPAs and financial advisors that will help along the route there. Some people come in without having a CPA, and that's part of building the team and the system is, "Hey! You can't do this on your own. Let's get you in. You get a good CPA, get a good financial advisor. Start making your money and make money. Find missing dollars, missing tax credits, missing tax benefits. Just get a better protection system, and that's just part of the game."

[00:20:39] WS: Thinking more about our estate planning and things like that, help me to – I guess give us a – Before we run out of time, give us just a few tips about our estate planning and protecting our assets for better taxes, planning, and things like that.

[00:20:54] BB: Yeah. Just don't do it alone. Time is short. So when you're looking for anything, especially in the asset protection realm, think of acronym ECCM; effectiveness, cost control, maintenance. Effectiveness, you want it to work. Cost, you can't outspend your budget but it has to be able to be flexible and then grow with it. Maintenance fees have to be the same. So when you start filtering through what you're going to do through ECCM, you're going to be like, "Okay. Is this effective? Is it cost-reasonable? Am I going to have some sort of control over my investments? Yes, yes, yes. Maintenance fees fits in. Okay, great." You're going to probably end up a lot better. Then you start looking through eyes of is this full protection or maybe protection. Where am I now on the balancing? One spectrum may end up higher than the other on another time. Just realize, as you grow, what you have may not be where you end.

Then the other part of it I would say is don't think you can even possibly DIY this on your own. Don't even try to, "I'm going to create an LLC and I can create it for $100 online on my own." Well, you know how many times I've pierced through those when I had to go sue somebody? It's a joke, because you're not creating them properly. They're not created to protect you. The proper clauses aren't in there. They're just general templates. So don't think just because you did a good Google search, you're going to be able to create something properly. Same thing with your CPAs. If you have a CPA, great. Find one that works with your life. Say a financial advisor. If you don't, get one. Don't manage your own taxes. Work with your professionals. Make more money.

[00:22:30] WS: So what happens? I know a lot of the listeners right now are thinking, "Oh, no! I've already created my LLC." What do we do?

[00:22:38] BB: You may end up not using it and just creating another one. It just depends. I might be able to just fix some of the operating agreements. It just depends on what went wrong. Articles of incorporations, we can always like refile. Or if you're like, "I just created this, I created it on my own." Sometimes, you may just have to let that entity go. Write it off as a tax loss and then recreate one properly, and the great thing is when you 'redoing asset protection, it is also a business expense. So you can get a good percentage of that written off on your taxes.

[00:23:12] WS: The most important – I mean, you hit the nail on the head when you said work with professionals. You're going to make more money by working with professionals and somebody that's an expert in tax and somebody that's expert in asset protection just like yourself. No doubt about it. I mean, there's no way that I have time to become an expert in asset protection, and that's' why I'm going to rely on somebody like yourself.

[00:23:31] BB: I think the hardest thing of it is the mindset is – Probably a lot of these are self-built people. So you're used to relying and learning on yourself and doing your thing on your own. But if you keep doing all this on your own, you're taking away from the time of what you're good at. So what you're good at. Go find deals. Go close deals. Do your day job. If you're a doctor and you're investing, go be a good doctor and go to find good deals. Let your team – Find a good team. Sometimes, you'll have to replace team members, but that's part of being a business owner. Let the tax guys handle your taxes. Let the protection guys protect you, create the systems, and you're going to end up taking a dollar a lot farther.

[00:24:09] WS: Brian, just a few more questions before we run out of time. But what's a way that you have recently improved your business that we could apply to ours?

[00:24:16] BB: I got away from the old way of how law firms do business. I don't have employee like – What's it? Like associate employees full-time that I have to pay somebody annually for. So I actually – I am very entrepreneurial. I came out of law school during the worst recession besides the Great Depression when there was no money and no jobs. So I had to learn how to make a dollar go a lot farther, and I realized I can have more business-minded attorneys come in and work for me and hire them on a project basis. So I think that's a great way to start people expanding capital if you're in business, and that's what I did was I affiliate with other large firms for the production documents side who've been around for 100 years and do really good work. I just do what I'm good at, going to court and talking about the law and when people do get sued or I'm going to court representing them. So I just learned I don't need to have a physical location unless I have to go into court. But I also don't need to be subject to a massive payroll.

[00:25:21] WS: Tell me the one thing that's contributed your success.

[00:25:25] BB: The one item I think is my drive. I'm not afraid of failing at all. I just look at failure as the sooner I fail, the quicker I'll learn from it. I stick my neck out. If I get punched in the face, great. Learn the duck and dodge and move and pivot and just keep going.

[00:25:45] WS: I love that. Yup. I'm similar in that way, yeah. The quicker you get punched in the face, the quicker you don't get punched the next time.

[00:25:52] BB: I think that people get stuck in analysis paralysis like, "I need to read one more book. I need to do one more thing. I have to. I have to. I have to." Eventually, it's like all the books are the same. You're not going to read anything different. The next thing is just jump in, and life experience is going to teach you the most.

[00:26:08] WS: All right, Brian. Well, how do you like to give back?

[00:26:11] BB: I really like to give back to my community. I represent a lot of people for free. Coming out of law school from that time, I actually had to work for free for three years just to get into court. I mean, I was knocking on every state organization where like, "I'll represent your clients for free." It's just something I never lost. I just like the faces that want to say like, "We're going to – What?" I'm like, "No. I like your case and I like you and I know money might be tight." I'm not going to say you're going to call me and like, "Yeah. I'm going to represent everybody for free." But I just look at who needs help. I call up different organizations to see what cases I like, who needs what. Then I'll say, "All right. You cover the court costs, and I'm going to go in and represent you."

[00:26:50] WS: Well, Brian, it's been great show. I know you've definitely gone in depth on things that I haven't thought about enough about. That's really pushing me to think more about who's helping me with my asset protection, and I hope the listeners are thinking the same way. Who's on your team? That's somebody like Brian. Tell them how they get in touch with somebody like yourself or you.

[00:27:10] BB: Yeah. Thanks. So you can jump on my website, www.btblegal.com. I have a lot of educational information on there and videos and smart calculators. I do free consultations for clients, especially like your listeners here. I just rather have people jump on, do the calculations, talk to me, and see what my thoughts are. Even if you go somewhere else and find someone to do what I say cheaper, great. I's rather have you have you accurate information and not be afraid to pick up a phone and talk to a lawyer, because you're afraid of the consultation fee. I just have always said, "Come and call, email. When I can get to you, I'll talk to you." Jump on my website. Go through all the education. Email me and I'm on LinkedIn.

[END OF INTERVIEW]

[00:27:54] WS: Don't go yet. Thank you for listening to today's episode. I would love it if you would go to iTunes right now and leave a rating and written review. I want to hear your feedback. It makes a big difference in getting the podcast out there. You can also go to the Real Estate Syndication Show on Facebook, so you can connect with me and we can also receive feedback and your questions there that you want me to answer on the show. Subscribe too, so you can get the latest episodes. Lastly, I want to keep you updated. So head over to lifebridgecapital.com and sign up for the newsletter. If you're interested in partnering with me, sign up on the contact us page, so you can talk to me directly. Have a blessed day, and I will talk to you tomorrow.

[OUTRO]

[00:28:34] ANNOUNCER: Thank you for listening to The Real Estate Syndication Show, brought to you by Life Bridge Capital. Life Bridge Capital works with investors nationwide to invest in real estate while also donating 50% of its profits to assist parents who are committing to adoption. Life Bridge Capital, making a difference one investor and one child at a time. Connect online at www.LifeBridgeCapital.com for free material and videos to further your success.

[END]

