

**EPISODE 460**

[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]

**[0:00:24.1] WS:** This is your daily Real Estate Syndication show. I'm your host Whitney Sewell. Today, our guest is Jeffrey Love. Thanks for being on the show Jeff.

**[0:00:32.1] JL:** Happy to be here, thanks for having me.

**[0:00:33.8] WS:** Jeff is a real estate and corporate attorney. He's partner at Gibbs Giden, focusing on the areas of real estate law and business corporate law. Jeff, won't you give us a little more about your background and where you're located potentially and let's dive in.

**[0:00:46.9] JL:** Sure. I'm located in Century City, Los Angeles, we are a firm of about 40 attorneys who are practicing real estate corporate law, construction law, and I've been doing this for about 10 years now. Always wanted to be involved in real estate, initially maybe as a syndicator or developer, went to law school, became an attorney, started advising and helping others investors, developers, with their legal needs and just kind of fell in love with the legal practice and have been doing it ever since.

**[0:01:18.3] WS:** Nice. Tell me, is there a specialty that you have in the real estate business specifically?

**[0:01:25.8] JL:** I like to refer to myself kind of jokingly as a dirt lawyer, mainly because I love the kind of reactions I get from people when I say you're a dirt lawyer, "What do you do? You do stuff with dirt?" I said, "Well, yes. Real estate transactional attorney so I help developers acquire land and actually entitle it all the way through the construction process, building the property, leasing it out, dealing with the financing and then eventually holding it or selling it."

Recently, I've been helping a lot of new real estate investors and startups as the kind of syndication field has really grown and more people are realizing what a great asset real estate is no matter what the asset class is.

**[0:02:08.1] WS:** For sure. You know, again, I wanted to thank you for your time and just being willing to share your expertise and your experience but you and I talked before the show too, just about the need or the understanding, the lack of understanding that most of us have about entities and entity structuring and when we need those and I know, you're an expert in this and so I'd love for us to get into that and potentially answer a lot of questions that the listeners have.

**[0:02:29.9] JL:** For sure. One of the first questions I normally get as, you know, attorney or real estate attorney is, when should I form a business? When should I incorporate? I've invested with my friend or I'm investing in this duplex and I want to grow. Am I opening myself up to liability, operating as a sole proprietorship?

What I've kind of done is create this five – I'd like to call it the five Ws. Your who, what, when, where, and why as to incorporating your real estate business. New investors can really understand what the incorporation process is like, and to make sure that they're protecting themselves.

**[0:03:04.0] WS:** Okay, that sounds good because I know I wondered that at one time. I know there's listeners as well that wonder, "Should I have an entity right now of some kind." As far as you know, in commercial real estate too, "Okay, I'm wanting to be a syndicator, operator, you know, should I have an entity?" And then maybe we go through your five W's.

**[0:03:22.3] JL:** Yes, really, investors from any size from call it your mom and pop investing and your first duplex to your much larger landlord that may have different entities for various

different projects. What it really comes down to and I can explain it more when gett into the why is liability protection. If there is a risk of a lawsuit or something happening with an investment property, whether it's multi-family, retail, office, just vacant land, by operating as a sole proprietorship or as an individual, you're putting your personal assets at risk. Your home, your car, your bank accounts, that's at risk if something happens with your investment. It really is a good idea to take a step back when you're starting out and say, "Do I need this entity? Do I have deep personal assets at risk or I want to protect that if something were to go wrong in my investment?"

**[0:04:13.9] WS:** Makes sense to me. We want to be protected and we don't want to invest in our own name, that's for sure. Yeah, so who, what, when, where, why. Can you take us through this scenario potentially or keep diving?

**[0:04:25.3] JL:** Some of them are a little more involved than others but you're essentially who we talked about is really anyone that wants to take advantage of the liability protection and the other benefits that an entity, whether a corporation, limited liability company offers. Those are the people that should incorporate.

The when is really the simpler of the five Ws but before you start signing contracts, purchase agreements, leases with tenants, that's really when you want to incorporate because documents that you sign in your own name beforehand, those are going to remain in your own name, even if you were to incorporate later, you want to conform your entity before you start signing the documents.

**[0:05:02.4] WS:** When we're signing those documents, how should we sign them? Should we say like Whitney Sewell for this entity or what should that look like?

**[0:05:08.7] JL:** When you're an individual, just like signing a check, you're signing as your individual – some cases, if you had formed a DBA or doing business as with your local county, you could sign for that entity. But for the most part, for an entity, when you're signing, you know, say for an LLC, if you're the manager of the entity, it would be entity's name and then you would sign your name as your title would be the manager.

Just little variation here for corporation versus partnership LLC, but for the most part, now you have a signature block and you're signing on behalf of that entity rather than your own individual capacity.

**[0:05:42.4] WS:** Okay, all right, now where.

**[0:05:45.1] JL:** Where, that is a good question, one we get a lot. For the most part, you're going to want to form the entity where you're located or where the property's located. It's easier. You're probably more familiar with your state laws but the most important aspect is going to be money.

When you are a foreign entity, everyone likes to talk about Delaware who has a great business climate, Nevada, Wyoming, those are your – even Texas. Four great states that are pro-business and that really give you a benefit when you're forming a company in terms of not talking to account income from other states, being able to remain anonymous.

Really like all four of those but what it comes down to is, I'm in California, so if I were to go form say a Delaware LLC today to invest in property in Los Angeles, not only do I have to pay my franchise taxes in Delaware but I would have to qualify to do business in California, because that's where I'm doing business and now I pays taxes and have to comply with all of California's regulations as well.

So I'm filing two formation documents, two annual reports, two sets of taxes. In that instance, I don't really get the benefits that Delaware or say Nevada would offer. Because I'm subject to California's rules. I would take the easier approach, form the entity in the state of California.

**[0:07:03.8] WS:** Okay, I hear of Wyoming entities and Delaware entities often or all the time.

**[0:07:09.7] JL:** There's good reason. Delaware has easily over a million businesses. People form businesses there every single day and it is an easy process. California, we still use snail mail to send in some corporate documents. Delaware, you can do everything online, it's quicker, it's easier, they're a pro-business climate, they have a special court system that handles just business disputes.

There's a reason why people like Delaware. Wyoming and Nevada, you could remain anonymous. If you were a member of this LLC and you didn't want it to become public, those two states allow you to remain anonymous. Whereas California and certain other states do not. If you're lucky enough to be investing in one of those states, or you locate in one of those states, by all means, I would use those entities, form those entities in those states but it is a calculated question, do I want to form it there if I'm going to be operating somewhere else and having to qualify to do business anyway?

**[0:08:09.1] WS:** If we were trying to remain anonymous, that wouldn't do us much good if we had to register in another state anyway, is that right?

**[0:08:16.4] JL:** That's right. Whitney goes, "I'm going to buy a property outside of Las Vegas, amazing deal, I'm going to form my LLC there, nobody knows it's me, great." But if you're buying a property in California, and you're forming your Nevada LLC, you can remain anonymous in Nevada but now you have to qualify that company in California. Your name becomes public.

Now you've just doubled the paperwork and you didn't really get your goal of be anonymous.

**[0:08:40.6] WS:** All right, the 'why.'

**[0:08:42.0] JL:** The 'why.' Different reasons for different entities that we always get. First and foremost is liability protection. I don't want to put my personal assets at risk. I don't want my home at risk, my kid's college fund, savings. We've worked hard for that, we want to keep separate. I want to invest in this deal to make money but at the same time, I want to shield what I've built so far.

By forming a corporation, a limited partnership, an LLC, the latter two of which we often use and probably the two most used type of entities for syndications, we want the limited liability protection. Second, we're bringing on investors when we're doing syndications. If I'm a sole proprietorship, an investor is not going to necessarily want to just give me the money.

I also want a way to be able to transfer units in an LLC or partnership interest so by forming that entity, we create an ease of transferability where I can bring on investors and essentially break up the pie and sell different pieces to different investors.

**[0:09:41.5] WS:** You mean, as an investor, I could do that?

**[0:09:43.8] JL:** As an investor and a syndicator. You know, if I'm forming the entity, I want to be able to sell a piece to Whitney and sell a piece to John Smith down the street. As an investor, you also may want to invest through an LLC because it gives you another layer of liability protection. As an example, someone is at a party at an apartment building you own. Horrible thing happens, they fall over the balcony and they get severely injured.

They're going to sue the property owner, they're probably going to sue the tenant and anyone else they can find. I'm an investor in that deal. My syndicator's done a good job, he's created a layer of liability protection by forming an LLC so the actual assets of the company aren't at risk. They can't get to me but if I want to be extra – I've got a lot of assets, I want to be extra careful, I don't want any chance that they're going to sue the members of the company too, that being myself personally, so I'm going to create another LLC and I'm investing through that LLC. Now they've got two corporate veils that they've got to pierce and it makes it exceedingly difficult that they'd be able to reach my personal assets.

**[0:10:50.4] WS:** Okay. I think then you were talking about you know, as that investor, but I even wanted to mention as an operator, if I'm investing in my own deals or if I'm an operator, obviously I'm on the general partnership side but if I'm also in the limited partnership side, it goes back to the same thing, right? I mean, I should probably have an entity to invest in that.

**[0:11:06.4] JL:** It's always recommended because it's a limited amount of money and time it creates. It gives you peace of mind. When you're investing in real estate, we have ups and downs, we have cycles, it's worth it to know that my assets are segregated and if anything happens, the worst that I'm losing is my investment with this syndicator or as the actual operator and sponsor that if my investors, something was wrong, they're going to sue me personally even as a limited partner, that my assets are protected.

**[0:11:36.2] WS:** Is there a limit to that? Let's say, you know, as a passive investor, maybe I use this entity for two deals or to invest in two deals passively, or five deals or – would they all have to be in the same state?

**[0:11:49.5] JL:** No, there's no limit. You can have all your investments in one LLC or you could create an LLC for each. It really becomes a cost benefit analysis you do or – I'm investing a small amount of money in these two deals. I don't want to spend, whatever the state cost, California is \$800 a year in minimum taxes for these deals, when I am investing maybe five or \$10,000 as a limited investor, but if I was investing in a much larger sum, I may decide to segregate my investments, especially if there was a unique factor, maybe one of the properties had – was an old dry cleaners or car wash and there was an environmental component to it.

I might think that this investment has a little bit extra risk where I don't want to contaminate my other multifamily investments and I think that that's – I run the cost benefit analysis and I think that the cost of creating a new LLC is outweighed by the benefit I get in that particular circumstance.

**[0:12:43.8] WS:** And what about the operator that – or his general partnership/ownership that he has, should he put that in an entity? I mean it is already in an entity but I was just trying to think through that a little bit. You know owning that ownership under an entity as well.

**[0:12:57.5] JL:** Absolutely, so as I said the two entities that we see the most for syndications are limited liability companies and limited partnerships because of the really inherent flexibility, both of those entities to be able to kind of segregate profits and losses and distribute them in accordance with really the investors and sponsors' desires.

But the difference between the two is in a limited partnership, you still have a general partner that is the sponsor running the deal and they don't have limited liability. So in that circumstance, I'd always recommend that the sponsor creates their own entity to act as the general partner whether an LLC, an Escorp, benefits and cons to both, but that way, if the partnership gets sued they are protected whether they are a limited partner or the general partner because they do have that kind of entity, you might have heard, corporate veil, that a claimant would have to pierce to actually get to their assets.

**[0:13:50.6] WS:** So what if it is too late? Like we have already been signing as our self for a property or whatever it might be and we didn't realize this in time and we didn't know about Jeff Love, you know in time, before we started signing those contracts or whatever it might be, what should we do now?

**[0:14:06.2] JL:** It would depend on the circumstances but it is best to create an entity sooner rather than later but it is never too late because you create an entity today, maybe there is a slip and fall or an accident tomorrow, you are protected from that accident going forward. There is also the ability to potentially go back depending on what the contracts say and assign those contracts over from Whitney as an individual to Whitney's LLC and remove that personal liability. So as I said, never too late to protect your assets.

**[0:14:37.2] WS:** And how long does it take to form an entity?

**[0:14:39.8] JL:** It can be done as little as four hours depending on the state. You can pay a rush fee but as I said, Delaware is even quicker. Delaware I think you can do it in two. It is not a long process. You got your articles, you formed it and then you can take a little bit longer and you can do your internal documents to get everything in order.

**[0:14:57.2] WS:** I was thinking about what if we formed that entity but then we realized that, "Well, you know I did those documents myself but I probably should have hired an attorney." Is there anything we should do there or should we contemplate forming a new entity or maybe just having an attorney review the documents from the entity that we already have?

**[0:15:15.0] JL:** It always – I would recommend having them reviewed. There really is no one size fits all and I do get, as many attorneys do, get clients in, "Well, I could form this LLC on LegalZoom where I can pick up documents at my neighborhood office depot and for some circumstances that might work but there really is no one size fits all. Your deal may have a unique aspect based on a property, based on the investors that you are bringing in.

Maybe you have foreign investors and you are thinking about a corporation and maybe that works for that instance, maybe it doesn't. Maybe you have unaccredited versus accredited



investors. So you want to take extra precaution and when you are forming that entity. So it would always be a good course just to run things by your attorney, make sure that you set everything up because I always like to say, you know, rather get everything correct from the get go than deal with the problems later.

**[0:16:06.8] WS:** Or get it corrected now before the problems come if we have already done it.

**[0:16:10.4] JL:** You never know with real estate what is going to happen tomorrow, especially dealing with certain types of assets when you are having a lot of comings and goings, you might have construction. Problems happen and we want to protect ourselves before they do.

**[0:16:23.0] WS:** Okay, so as far as – are you a real estate investor as well?

**[0:16:26.6] JL:** I am twofold. I have a number of clients that have done local syndications where I just fell in love with the property, the deals that they have done and have asked and been welcome to become an investor in those as well and I have also invested by myself mainly in the multifamily aspect, not quite become a syndicator myself. I am not quite there yet but the more individuals that I help makes me just yearn to jump on the bandwagon and syndicate my first deal as well.

**[0:16:57.3] WS:** Cool, well that's awesome because I like to ask you and especially from your experience working with other operators and also as an investor yourself, I like to ask people how are you preparing for this potential downturn that everyone is talking about?

**[0:17:10.3] JL:** It is really making sure that we have analyzed the risk and like you said, because I have been on both sides of it, I often put on – when I am helping a sponsor, a syndicator put together a deal I will put on my investor hat and say “How would I feel about this provision? Would I invest in these deal under these circumstances?” Counting for the risk and maybe potential downturn is making sure that we have protected the client and the investors as much as we can from potential claims, making sure that the client has underwritten the deal as conservatively as they can.

One of the worst things I have seen many times is a jaded investor where the sponsor has overpromised and under delivered, that investor feels like they were misled and now has got a law suit on their hands. Given the potential for a downturn, it is one thing that I strongly encourage is really make sure you've got your numbers down and that you are confident in what you are presenting in your investors.

**[0:18:07.0] WS:** So what is a way that you have recently improved your business that we could apply to ours?

**[0:18:11.7] JL:** That is a good question. I think it is really being responsive and as an attorney, clients want answers right away. They've got investors that are asking for them so just this year we've implemented our system. We have moved to the Amazon web services so we are now cloud based as a law firm. I can hop on the computer wherever I am from a laptop from even a different country and I have the same workstation that I do at work and that really helps me respond to clients quicker, and help them look better because the quicker I can get them an answer, the quicker my sponsors/syndicators can get back to their investors and then they in turn look good to their investors and makes their reputation even look better and the investors want to continue to invest with them and on future deal.

**[0:18:58.8] WS:** Amazon web services and so is that connecting to your desktop computer in your office and it is actually operating there and communicating back and forth or is it just all in the cloud?

**[0:19:10.0] JL:** I am not going to lie. With my technical expertise, I don't 100% understand where it works but I can tell you from how I do is, I can log on at work where I have my computers, I have my desktop, all of my programs. I can do the same thing from my laptop at home and it will be as I never left. I could have one document up, leave work and go home and pull up the laptop, documents there ready to go.

**[0:19:35.1] WS:** Wow, okay I have to look into that.

**[0:19:37.8] JL:** It's made it so much easier to get to your content when you need it.

**[0:19:40.7] WS:** So what is the number one thing that's contributed to your success?

**[0:19:43.5] JL:** That is another good question. I think putting the client first. I want to make my clients look good and it goes back to I think the responsiveness, is getting back to them quickly, getting answers quickly. If we don't know an answer, going in and finding that answer for the client so that they are able to run their business. Whether it is just a small investor, whether it is a syndicator, getting back to them quickly with organized answers so that they are not able to not spend time devoted to only legal issues but to actually get out there and run the business, which is their expertise.

**[0:20:17.1] WS:** And tell us how you like to give back.

**[0:20:19.4] JL:** I've got two little kids, a two year old and a four year old. So lately every day I think they come home and they have learned something new and it is just amazing to see where I have – I have never taught them this. I have never said these words or coming home and just learning that. So one of the things we do is I have tried to volunteer at his school and then as he grows older, I really want to make education a priority in helping those that aren't able to access the kind of type of education that I am hoping to give to him.

So spending time and resources doing that and from a firm we are really bumping our pro bono not just from the education standpoint but being able to help those that need legal resources that may not be able to afford them.

**[0:21:06.5] WS:** Wow, well thank you for giving back in that way and I appreciate you giving in this, your time being on the show Jeff, having an entity and when and where and what, all of those things. I mean it is so important and it can seem so complicated when you are first getting started but I think you know, you need an entity, right? If we are going to buy real estate but sometimes we need somebody like yourself that can give us some guidance and so tell them how they can get in touch with you?

**[0:21:29.3] JL:** You can reach me by email at [jlove@gibbsgiden.com](mailto:jlove@gibbsgiden.com). You can also feel free to checkout our website. It will have my contact information as well and that's gibbsgiden.com.

**[0:21:39.8] WS:** Awesome Jeff, thank you very much that's a wrap.

**[0:21:42.1] JL:** My pleasure, thank you for having me.

[END OF INTERVIEW]

**[0:21:44.2] 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.

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[OUTRO]

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