EPISODE 660

[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 David Disraeli. Thanks for being on the show, David.

[00:00:33] DD: Thanks for having me. I appreciate it.

[00:00:35] WS: David is an entity formation expert who is going to explain how to obtain total anonymity. Is that how you say it, David?

[00:00:44] DD: Anonymity and privacy.

[00:00:46] WS: I can't even say that word for some reason. Anyway, it always trips me up but asset protection, using his FlexTrust LLC concept that he developed. David works primarily with real estate investors, brokers, and developers to create customized structures and processes to build and protect wealth. He has over 34 years of experience, and I'm just really looking forward to this conversation. I know this is – It's a very important topic and I feel like it's probably not talked about enough for a lot of people who wait too late in the game to figure out that they should've been thinking about some structuring and what their business looks like long before they do.

But, David, welcome again to the show. Grateful for your time. Give us a little more of your background and your superpower here in the business, and let's dive in.

[00:01:34] DD: Sounds good. I started out 34 years ago in the brokerage business selling securities, insurance, doing financial planning. I migrated over to portfolio management. While I did that, I formed a couple startups and ran those simultaneously and developed a fair amount of business experience and came face-to-face with the whole idea of exposure and risk. That sort of changed. I guess you could call it a pivot point in my career so that when I met clients on the financial advice side, I'm looking for threats. Whether you work for a company and just have a large net worth or you own a construction company where fingers and toes and arms can go missing, everybody has the exposure.

Growing and maintaining wealth and not losing it to some stranger that walks in your business go hand in hand, and that's why I've had this whole asset protection mindset at least for the last 15 years, and I've just continued to hone my skills and to help everybody. Whether they came to me for one product or a different product, I'm always thinking about risk and how to protect it. Now, people, of course, are finding me online, specifically because they want asset protection or they own properties in their own name and they recognize that's not a good idea.

In the last year or so, I've been on BiggerPockets and reading about more complex concerns around privacy. Even if you have properties protected in an LLC, it doesn't take a lot of effort for somebody to get online and find out everything you own, where you live, your net worth in a matter of 15 or 20 minutes. That disturbs a lot of my clients and that led me to develop the Flex-Trust LLC, which in simple terms is merging two different concepts. One is a revocable living trust which has been around for, I guess 200 years in the United States and before that in England and the LLC concept.

By merging the two, you can create an LLC in Texas and I'm sure other places as well where nobody can ever determine who you are, and that's important for a couple reasons: One, if you were out driving around and got in a car wreck and somebody got interested in coming after you, they can go online and find out that you've got 5 or 10 properties and where you live.

With this structure, they can Google until their fingers fall off and they will not find you. The other side of that is if you have a problem associated with one of your investments. It could be an investor. It could be a tenant. It could be somebody mowing the yard. It makes it that much more difficult for them to assess just how attractive a target you are. Or you might just want privacy.

Believe it or not, if you type in Michael Dell into our local appraisal district, you'll find out that he has a $30 million house in plain view. To me, that's just crazy. Why would somebody that's known all over the world let the public know where he lives and how much his house is worth. There's mechanisms, fortunately, in place that suppress that information. Not that it's impossible but the idea is to make it as difficult as possible for someone to ascertain what businesses you own or control, what real estate you own and control, and therefore make you less likely to be a target.

Of course, if you have the right structure in place, the LLC provides almost complete asset protection anyway, assuming it's set up correctly. That's a big assumption. But if it's set up correctly and the LLC is sued, they can't come after the individual owners. They can only go after the assets in the LLC, which is very difficult to go and grab assets and pull them out, especially if there is mortgages on them. It can be done, but at least they can't come after your other personal assets, cash, brokerage accounts, and stuff like that. The LLC has helped I guess put a gate around your other assets.

[00:05:51] WS: Sure. Well, David, a lot of the listeners are operators, so they're doing deals or their passive investors and somebody who already has – Could you just walk us through a little bit I guess of creating something like this? Let's say, if we already have, let's say, numerous entities and already have numerous properties in different entities, how do we then say, "Okay. David, this FlexTrust things sounds pretty good. How do we implement something like that and really have that privacy like you're talking about?"

[00:06:21] DD: That's a great question, Whitney. I'm glad you asked it because as useful as it is, if you've already got LLCs in place or even a whole entire estate structure in place with all the different documents, you might be reluctant to go back and start over because you name I already out there.

So, there's two different approaches to implementing this. One is to stop buying things in your LLC and start a brand new one. Keep what you have and start a brand new one because even if we change the ownership of an LLC from an individual to a trust, all you have to do is pull the original formation document and find out who that person was anyway. The only way this really works completely is to form a brand new one in the name of the trust where the individuals' names are never disclosed.

The two approaches would be from this day forward I'm going to do it using all the different privacy features available or you could – It's really not that difficult to do a text because we have something called a series LLC where you can have 10 or 20 different properties or more, and really there's no limit in one LLC. But for legal purposes, they're all in legally distinct silos or series. I think 14, 15 states now offer that. Texas is one of them, so you can start a brand-new series LLC using the trust as the only member and move all of your existing properties into that LLC. The only way somebody will know what happened with those particular properties is to go to the actual deed records and see that John Jones LLC deeded it over to a different LLC. When they find out who owns it, which is a trust, they're pretty at a loss at that point. They can only assume it's the same person but they have no way of really knowing that.

Now, any future properties won't have a paper trail at all because they were actually transferred or purchased by the brand-new LLC that has no history at all, so the two approaches are too, from this day forward, do it differently or go back and retitle everything. It just depends on the person's risk tolerance and their attitude towards it as to which one because one is going to be more expensive than the other.

[00:08:44] WS: We need the FlexTrust first ultimately. Then we would title any new entities under that FlexTrust. Is that correct?

[00:08:55] DD: There is – By the way, I made up the word FlexTrust. There is no such thing. It's really a revocable trust that is not identifying who – Like a lot of people put the John and Mary Jones living trust because they're trying to avoid probate. That's their main goal. That doesn't hide anything because the John and Mary Jones Trust is owned by or operated by John and Mary Jones. What my clients do is they just make up a name, and there's no way to find out who they are because the trust is never filed anywhere. That's true in every state in the country. They're private documents. There's no probate. Even when they die, that document does not have to be submitted to a probate court, so it's always going to be at a public records.

But, yes, you have to start with the trust and then you can form entities underneath it, you're your house over to it or whatever you want to do. But the FlexTrust is really just a way of saying this is the most flexible type of trust on the planet. It's designed that way and it operates that way, so I named it the FlexTrust.

[00:10:00] WS: I've heard a lot of people say you need a living trust for the probate issues and things like that. Would this serve that same purpose?

[00:10:08] DD: Absolutely. Yes, it would. In Texas, we don't have a super difficult probate system that can be navigated by a relatively intelligent businessperson. They don't have to hire an attorney. But any time you invoke the probate laws even with a perfectly executed will, you're still committing yourself to some administrative overhead, time and money, and public disclosure of who you are and who got what. A lot of people don't like that. A probate is not a huge problem here like it is in California where people in their 30s are forming living trusts because they just hate the idea of having to go through probate.

In Texas, it's a little bit easier to streamline but the living trust avoids it altogether. The second part of that is if you probate a will and put people on notice, which you're required to do, there's a 60-day waiting period where disinherited heirs, love child relationships, or love children whatever you want to call them can show up and say, "Hey! Daddy or grandpa was supposed to have included me and apparently, he didn't," and they can apply to the court to challenge the will. With a living trust, the transfer from one generation to the next is seamless, instantaneous. Just like a life insurance policy or an IRA, it gets paid out directly to the beneficiary without any court action at all. It's literally I would say impossible to challenge a living trust. But since the assets have already been transferred, the challenge would be against those beneficiaries and no attorney is going to take that case without a $30,000 retainer, and the odds of winning are very remote.

What happens in probate as you go and make enough fuss, the other beneficiaries say, "What is it you want to get you out of my life?" They settle because it can drag on for months or years. Now, living trust doesn't work that way. It's instant, so it's after the fact that a disgruntled heir, a disinherited heir or whomever says, "Hey, I want to make a claim." Now, they have to just basically file a lawsuit against the beneficiary. They can't use the probate court because it's not even in the probate court. It’s just a private cause of action just like any other lawsuit. The living trust performs those two vital functions. One is avoiding probate at all or any kind public disclosure of what you left, and it helps minimize the chances of somebody could actually challenge it in.

Having been doing this as long as I have, I’ve seen the worst in people, and it’s always blood relatives that fight with each other. It’s awful to watch and to hear and to see and is avoidable. Whenever I've talk to a new client right now, one of the first things I do is I put on my social worker hat, which I have no training in by the way, and ask, “Hey, tell me about the family.”

They’ll tell you, “Well, we’ve got two kids that are married and stable and one that’s a problem child,” or, “All three are great,” or, “All four are bad.” I had one client tell me that there wasn’t a – He had four siblings because I was asking who could be your executor. He said none of them. They’re all either – They’ve got health challenges, mental challenges, alcohol challenges or they haven't spoken in 20 years, so we had to hire a bank to do it. That happens too. Some of the worst disputes in the whole entire country are between blood relatives, and it’s really sad.

[00:13:38] WS: Someone who already has, let’s say, a living trust and they did name it the John and Rebecca Jones, I’m just making that up, Living Trust, similar to like you were talking about. Is there a way to change that or a way to getting that privacy like you're talking about or create the FlexTrust like you’ve created?

[00:13:57] DD: That is a great question and I want to tell your listeners I did not pay you in advance to ask that question because that is a fantastic question. Because a living trust is revocable, that means you can amend any terms in the trust, including the name of the trust. If you wanted to change only the name, you would do what’s called amend and restate where you simply sign a brand-new one by changing the name, saying this replaces the old one. Nobody has access to the terms and conditions that are listed out in that trust, only the name of the trust. If you go to a bank, a title company, and use the name of a trust, they don't have access to what it was called before or who the beneficiaries are. Now, the bank is going to want to know who the trustee is, but that's not public record. They can't disclose that to an individual without a court order.

While we’re on that subject, all of this goes out the window if you get sued. If you get sued, someone can perform something called discovery and compel disclosure of who you are. Now, there are some hurdles and challenges to doing that, and it's expensive. But, yes, it can be done. You cannot just disappear into thin air. I don't want anybody getting the impression that nobody can find out your identity. It's more of we have a dog barking. We have the floodlights come on. When you step on the property, we’ve got the little alarm light inside the window, blinking on and off. We got a fence around the property. Does that mean you can't get in that house no matter how determined you are? No. But is it easier to go next door? Yes. Does that make sense?

[00:15:41] WS: It does. That's a great analogy. It’s more preventative really than anything, deterring somebody like that from the beginning before you’re sued as opposed to after you’re sued.

[00:15:53] DD: I would agree with that. It is a deterrent, and in some cases it's just going to make it too difficult for somebody to decide they want to file an action. Using the car wreck example, if they go Googling your name or they even subscribe to a database property ownership, they simply won't find anything. If they sue you and their attorney is a smart and the insurance company for their auto policy is not going to pay whatever their claim is, if they go through all those hurdles, they can force disclosure of all your assets that there is lots of hurdles before they get to that point.

But to your point, the less exposure you have, the less likely they're going to be to want to spend the money and investigate who you are and what you’ve got. From that standpoint, it just makes you I guess a less viable target, and it is a deterrent for that reason. But still it's not a cure-all, for sure.

[00:16:56] WS: Okay. David, well, anything else about the FlexTrust or, I mean, that specifically or why we should have this before we have to move on to a few final questions?

[00:17:07] DD: I think it's important to point out. You can do the LLC by itself. You can do the trust by itself or you can do the combo. But in either of those cases or all three cases I should say, they are tax-neutral, which means if they’re set up by a family, there are no tax consequences to this transaction, which means whatever income and expenses you are reporting before you did this, you're going to report the same way, so you're not – It's important for the listener to know that there's no adverse administrative or other consequences to setting this up from a tax standpoint because the IRS sees the LLC and the trust as a pass-through entity. They don't file returns and they don't pay taxes on their own. That's very important. It's 100% tax-neutral.

[00:18:05] WS: Wow. I appreciate you bringing that up, David. Great information. No doubt about it. We're all trying to protect our hard work as much as we can from those who are seeking to do things like that or sue us. But, David, what's a way that you've recently improved your business that we could apply to ours?

[00:18:23] DD: Well, actually the most significant thing I've done is I've gotten clients to do video testimonials and podcasting. I have a YouTube channel and I've gotten more views than I ever have, and it allows people to see me and hear me at the same time and have someone like you asking hard questions. Why do I care? Why does it matter? Allows me an opportunity to address those questions and try to articulate fairly complicated concepts in everyday language.

Podcasts, I think, are the way of the future, especially when you add other channels and other [inaudible 00:19:03], audio only, audio and video like YouTube. Then they're going to be on my website and they're going to –

Any time somebody says, "Hey, how does this work?" I say watch a two-minute video and you'll answer all your questions. If you have more, just write them down. Podcasting is I think the most significant thing that I've done in the last three months actually.

[00:19:23] WS: What's the number one thing that's contributed to your success?

[00:19:27] DD: Product knowledge and study, learning the ins and outs of entity like S corp, c corp, partnership, general partnership, limited partnership, family partnership, LLCs, taxation, just reading and reading and reading. Some people play golf or watch television. I read. I do watch television by the way but I love this stuff, and it's become a passion. When people meet me, they see that. It's something that I'm really, really excited about and very passionate about.

My success has come from – I mean, there are no courses you can take to figure all this stuff out. It's all been just brute force sitting down with attorneys and CPAs, insurance people. We haven't gotten into insurance and banking and titling and all that other stuff because that's probably three other podcasts. But there's a lot. There's a lot to learn, and it takes time. I just applied myself to know to reading and studying and asking the questions, and I'm always learning, so I don't have it all figured out yet. But just being open to what I don't know has been a huge asset and allowed me to dig in and acquire the skills and the information that I have.

[00:20:51] WS: David, how do you like to give back?

[00:20:53] DD: I give back by offering a certain amount of counsel for free. There's engagements, I guess. You could call it limited engagements where someone either doesn't need or can't afford all my services. It could be somebody who's just struggling to get out of debt or a single mom that can't pay their bills. I give money away like tithing and I give time away.

Obviously, I have to limit it because I still have to pay my bills but I enjoy helping people, and sometimes I don't get paid, and that's fine as long as it's limited to a certain number of hours per month. I enjoy that tremendously and I don't charge by the phone call. I charge – Even the clients that have paid me can call me for the rest of their lives. As long as it's not a new engagement, they're not going to get charged with the call or the email or the question. They like that. That's just the way I operate. Then hopefully, that means I'm going to see more referrals my way.

[00:21:52] WS: Well, David, I'm grateful to have met you and had you on the show. I'm grateful for you're just sharing your knowledge. I love how you just look at learning and that you're continually learning and you understand you don't know it off. That's a great place for us all to stay in and understanding that we don't know everything because you just have to continue learning and just sharing how you developed the FlexTrust and what that could do for us and why it's important. I'm grateful for that. Tell the listeners how they can get in touch with you and learn more about you.

[00:22:20] DD: Well, I have a new website. Actually, I have two. My main website is PCFO.

That's the name of my company, the personalcfo.net., pcfo.net. The new one that's about to launch and I'm sure will be up and running when the podcast is released is theflextrust.com. We'll have all the videos, all the explanations, all the information in one place. My phone number is 512-464-1110.

[END OF INTERVIEW]

[00:22:48] 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]

[00:23:29] 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.

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