

Combine LLCs & Self Directed IRAs For Maximum Flexibility

When the stock market meltdown began in early 2000, many IRA holders began looking for a way to move some of their IRA assets out of paper and into real estate. That interest continues stronger than ever because of low interest rates. IRAs can invest in real property, but it should always be set up thru a private LLC. Assisting IRA clients with real estate investments greatly enhances your influence over and standing with them. While this is fairly simple to do through NAFEP, your competitors will be completely in the dark. So, pay attention!

Though it is legal for an IRA account to directly hold real estate, there are some major problems: (1) Most IRA custodians will not permit real estate investments, (2) an IRA account cannot put up its remaining assets as loan collateral, and the IRA owner cannot guarantee a loan for the IRA account, and as a result many real estate transactions would be undoable by an IRA account (3) directly holding real estate in an IRA is complicated due to having to work through the custodian, and, (4) maybe worst of all, holding real estate and certain other investments or activities directly in the IRA exposes all the other IRA assets to legal problems which the real estate or other investments may incur. There are other limitations too, but integrating an LLC with a self directed IRA solves all these problems, fully shields the IRA account from outside liabilities and opens up other interesting possibilities as well. These include:

- The LLC may have multiple investors besides the IRA account, which may include the IRA owner directly and includes relatives of the IRA owner
- Multiple IRA accounts may be investor/members of the LLC
- Non-IRA investors/members of the LLC, and the LLC itself, may guarantee loans for the LLC
- The IRA account *owner* may manage the LLC, and may receive a salary for doing so under certain circumstances
- The IRA account owners may manage LLC property, and may even rent it to themselves under certain circumstances
- The LLC is not limited to real estate ownership, virtually any other investment may be made
- The LLC may start or buy a business, and under some circumstance the business may be operated by the IRA account *owner*
- LLC income and capital gains pass thru to IRA account members tax deferred, under the same rules as other IRA income

To avoid many adverse consequences, and for maximum flexibility with the LLC, the following rules need to be observed: (1) The LLC should be formally engaged in the management and/or development of real estate, and to aid in this regard, NAFEP's expertise is needed in the creation of the LLC's governing documents, and (2) a combination of an IRA account, the account owner and closely related, lineal relatives of the account owner should own less than 100% of the LLC (siblings and some other relatives are not considered, not an issue, in this formula).

To implement this technique, the self directed IRA purchases membership units (shares) of a privately held LLC. This is a straightforward procedure. First, find an IRA custodian which allows investment in private companies, then move an existing or open a new IRA account there. Next, order an LLC from NAFEP which is "IRA qualified" (NAFEP qualified LLCs available in all 50 states). This is a standard LLC which is specially designed as a "real estate operating company" and meets other requirements under Department of Labor rules. When the LLC package is received from NAFEP, send the included LLC filing to your Secretary of State, then fill out the IRA custodian's forms for private placement investments. The custodian will write a check or transfer funds to the LLC in exchange for LLC membership units. The LLC is now ready to go.

Strange as it seems, tax laws and IRS rules have limited control or regulation over this arrangement, once Dept. of Labor rules are met. There is no commissionable financial product sale by helping an IRA client set this up, but if it is in the client's best interest, then that's what you should do. Clients shouldn't put all their IRA funds into real estate though, so there should be other funds for financial planners to manage. And, this planning technique allows the planner to offer substantial value to a client which the planner's competitors cannot.

To order an IRA qualified LLC, use NAFEP's standard Corp/LLC order form and attach a note, clearly stating that the LLC is to be "IRA qualified". There will be an additional charge of \$300 over the standard LLC price for this package. An excellent IRA custodian to work with for private placements (LLC owned by the IRA) is PENSICO Trust Company, www.pensico.com. And, you *must* further educate yourself in this practice area. PENSICO makes education easy with a couple of publications located at:

<http://www.pensico.com/Forms/eBook.pdf>
<http://www.pensico.com/forms/InvGuide.pdf>

Chicago Area Professional Conference, 3 Hours Cont Ed Credits

NAFEP is presenting a free, three+ hour conference for Chicago area professionals this month. The invitation is extended to financial planners, CPAs and attorneys. The conference features two topics, the first, 1-1/2 hour topic is "Use Private Annuities To Convert Real Estate To Tax Free Cash" (which then needs investment advisory services), and the other 1-1/2 hour topic is "Learn Powerful Asset Protection Planning". The conference goal is help attendees add powerful estate planning tools to their practices.

Attendance at the full session qualifies for 3 hours of Illinois continuing ed for life insurance. Conference speakers will be: (1) Jim Flanagan, CEA, a NAFEP Advanced Sales Consultant in the Chicago Area, and (2) Mike Janko, CEA, NAFEP Executive Director. Information on the Certified Estate Advisor™ (CEA™) training and designation, and NAFEP selling Associate membership will be available to any who are interested. Professional guests are invited to bring their questions on any client estate planning problem for a free consultation with Jim or Mike.

The conference date is July 27th from 1:00 to 4:00 PM, with a repeat session from 9:00 AM to 12:00 noon on the 28th. Both sessions are located at the Wyndham Hotel, 3000 Warrenville Rd., Lisle, Il. Advance reservations are recommended, contact: (630) 505-8374 or e-mail carol@bentron.com.

Private Annuity News

1. On Line Illustration Request Form. NAFEP just implemented an on-line form for private annuity illustration requests. This form will speed up the preparation of illustrations and eliminate many errors and misunderstandings which occur in filling out the paper form. The new e-form simplifies the process of ordering the illustration. The resulting illustration does not generate an automated response, yet, but that is the next step in this technical development. Use of the on-line form will be limited to current, NAFEP selling Associates. CEAs™ will not be able to use this service, and in fact will be referred to a regional NAFEP Sales Consultant (high level NAFEP selling Associate) for all private annuity interest and needs. To reach the on-line form, go to www.nafep.com, select "Prof Info Center", then select "Private Annuity Illustration Request". Selling Associates should check the e-form out right away, and they must begin to use this form by August 15, 2004.

2. New Private Annuity Legal Pack. On 6/23/04, NAFEP published an abbreviated legal package, about 2/3 the length of the old package. (Its title is *Private Annuity Legal Pack, Abbreviated*.) The new abbreviated version should become your first choice in educating clients and their tax and legal counsel. In addition to being shorter, it details additional court cases and two important new IRS rulings. The entire focus of this version is on the view of the IRS and the courts regarding the legitimacy of private annuity trusts, with little detail on the mechanics and taxation of private annuities. But what the clients and their counsel primarily want to know is what the IRS and the courts have to say, and that is what this publication gives them. NAFEP

selling Associates can download both this package and the old one (which was updated simultaneously) from the Member Log In area of nafep.com.

3. Still Another WSJ Article. In the last issue of this newsletter, we reported two Wall Street Journal articles which were published about private annuities and NAFEP as the source for this technique. Since those articles were published, WSJ published a third article, this time on-line, which is the most favorable and most pro-NAFEP yet. You can see and/or print this article for yourself at: http://homes.wsj.com/columnists_com/buildingvalueqa/20040204-smith.html.

4. Current Capital Gains Rates Set to Expire. The lowered, maximum capital gains tax rate of 15%, created by congress in May of 2003, is not permanent. This and other provisions of that tax act are set to expire at the end of 2008. Unless the law is specifically extended by the government, we will go back to the 20% maximum rate starting in 2009. The two reductions we had in capital gains rates over the last few years did not seem to impact private annuity business one way or the other. It is anybody's guess what this sunset provision will do to private annuity sales, if anything. (Thanks to selling Associate Mark Foster of Pierre, SD for pointing the sunset provision out to us.)

Asset Protection/Life Estate Trust News

1. New Asset Protection Legal Package. We reported this last issue, but it bears repeating here. On 1/29/04, NAFEP published a new version of the *Asset Protection Legal Package*. The new version completely supersedes the old version, and is vastly superior. This is a powerful tool which should eliminate the legitimacy concerns of almost any legal counsel which a client employs to review the life estate trust, asset protection planning technique. It will also provide the legal theories and arguments that a client's counsel would use to defend a trust against legal attacks. Selling Associates may download this publication from the Member Log In section of nafep.com, or order it from ashley@nafep.com. Refer to this item as the "Asset Protection Legal Pack".

2. Asset Protection PowerPoint Presentation. Previously, the only PowerPoint presentation for asset protection was NAFEP's *Answers To Life's Financial Risks*, which covers basic estate planning, living trusts and the life estate trust. As of 6/15/04, NAFEP published a PowerPoint presentation which focuses on asset protection. The title of the presentation is: *Asset Protection, FLP vs. Trust*. This presentation starts off by explaining why family limited partnerships (FLP), limited liability companies (LLC) and revocable living trust offer virtually no asset protection at all. In the case of the FLP and LLC, this information is contrary to the claims made by many promoters and attorneys, but nevertheless the information is true,

convincing and supported by legal research in this presentation. Next, the presentation covers the basic concepts of asset protection and the mechanics of the NAFEP Premier II Life Estate Trust. If desired, the presenter can skip over the FLP/LLC/living trust part, and just go right into the asset protection, Premier II part of the presentation. Only selling Associates may obtain this presentation only by downloading it from the Member Log In section of nafep.com. It is too large to e-mail. Refer to this item as "Asset Protection, FLP vs. Trust". For a complementary publication, see the next topic.

3. New Asset Protection Handout Publication. To accompany the above presentation, or to use by itself, NAFEP developed an 8 page publication entitled, *Estate Planning With Asset Protection*. This publication parallels the Premier II Trust part of the above PowerPoint presentation, but provides more detail, all in laymen's terms. This publication can be used as the study guide to give out at asset protection seminars, or as a direct client handout. Many selling Associates report that they "require" prospective asset protection clients to read either this (or the above mentioned *Answers* booklet) as a preliminary step before making a sales presentation and close. This technique eliminates a lot of the Associate's time requirement in educating prospective clients regarding this planning technique, and allows a presentation and close to be made in one meeting. This technique also makes a better prospect, because they are educated in advance of the selling step. Selling Associates may download this publication from the Member Log In section of nafep.com, or order it from ashley@nafep.com. Refer to this item as the "Asset Protection, Estate Planning booklet".

4. New Asset Protection Mailers and Flyers. NAFEP has a new series of advertising pieces for promotion of asset protection. These include a flyer or newspaper stuffer, a direct mail piece with built in return mail postcard, a direct mail postcard, and a seminar promo mailer. The headline of each piece is, *If You Are Sued and Lose, What Could Be Taken From You?* This is followed by the subheading, *Everything You Own!* This set of promos is provided in Microsoft Word, so each is editable with local name, photo and contact information. Selling Associates may download this advertising series as one file from the Member Log In section of nafep.com, or order it from ashley@nafep.com. Refer to this item as the "sued and lose" advertising promo.

All Clients Urgently Need New Medical Documents

Over the past few years, many states have updated their living wills (advanced medical directives) and medical powers of attorney. Then, things got more complicated with the HIPAA federal law (Health Insurance Portability and Accountability Act). Under the privacy rules of HIPAA,

medical providers are prohibited from disclosing medical information to anyone who is not legally authorized to receive that information, and non-authorized persons are prohibited from receiving or requesting medical information on someone else. This means that almost all existing medical powers of attorney and advance medical directives are in direct conflict with these privacy rules. The medical power holder cannot make medical decisions for the power giver, medical patient, without receiving relevant medical records and/or information. But the privacy rules prevent the physician from giving that information to the medical power holder, and the power holder is prohibited from receiving that information. The power giver, the medical patient, can give permission to pass the information to the power holder, but explicit written authority is required from the medical patient. That person is typically unable to communicate this permission at precisely the moment that the power holder needs the medical information. As a result, a lot of physicians, hospitals and clinics are balking at giving out medical records and other information to family members who need the information and who are entitled to it under old medical powers.

The solution to this dilemma is for clients to use medical directives and powers of attorney which contain a "HIPAA release clause". The release clause is the written authorization which allows the necessary disclosure of medical information without violating the HIPAA privacy rules. NAFEP began incorporating HIPAA release clauses in all medical documents produced since approximately 9/1/03. (You can easily determine if a specific medical document has the clause by looking for a HIPAA notice on the first page of the document.) Every adult, whether they are a NAFEP client or not, and whether they have existing estate planning documents or not, needs medical documents with the HIPAA release clause.

NAFEP just developed a simple program for ordering a document package which consists of: Medical power of attorney, advance medical directive (many states now incorporate these into one document) and a durable power of attorney (needed to handle financial and legal matters for an incapacitated or unavailable power giver). These documents are state specific where applicable, not all states have a statutory version of all documents. Any CEA or NAFEP selling Associate can order this package for any adult, whether or not that adult has other estate planning in place. Since ordering this document package only requires filling out a form with names, cities and states, there is no practice of law issue in obtaining these documents for a client. No legal opinion or document creation is required by the Associate or CEA. The legal language is created or honored by state law.

The NAFEP fee for producing a document package for an individual adult is \$50.00, \$75.00 for a married couple (two unmarried adults will be charged \$50.00 each). To further avoid practice of law issues, we recommend that CEAs and Associates do not mark this price up, though you can easily justify a separately specified fee for consulting, education, etc. But, you cannot charge a large enough fee to be truly significant to you, so you should probably view this as a prime reason and opportunity to contact all your old clients, and to provide an added value service to everyone else you come into contact with. This could also be a great "loss leader", even a give away, to offer at seminars and in other promotions you do.

For CEAs to order this package, go to nafep.com, select "Professional Info Center", then select "Power Pack Orders". This leads you to the CEA, log-in dialog box, then to a pdf (Acrobat) order form, with ordering instructions and credit card billing information. NAFEP selling Associates may do the same thing, or they may obtain the order form from the Member Log In area of nafep.com.



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