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## **Restaurant Business Protections!**

### **Before You Buy or Sell a Restaurant:**

- 1. Protect from Buy Sell Deal Liability & Operational Liability.**
- 2. Protect Family and Business Assets.**
- 3. Learn How to Lock-Away Profits and Cash Legally!**

**Don't Be a Sitting-Duck!**



# 13 Secrets of the Rich or Informed™

By Rich Rydstrom, Esq. (California Attorney/Accountant,  
33 Years Experience, Rated Superb, 10/10)

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## **Restaurant Business Protections!**

### **1. Protect from Buy Sell Deal Liability & Operational Liability.**

Owners must know how to protect their businesses and personal assets, simply and safely.

Starting with the stereotypical NDA or Look-See Agreement (Non-Disclosure & Confidentiality Agreement), potential liability accrues. Certainly, once you sign a Buy Sell Agreement, whether for the business and entity, or just for select assets, great potential liability attaches.

Industry Jargon: After 33 years of dealmaking and litigation, I can surmise that industry jargon, although generally necessary and helpful, will often reduce visibility into the unknown or known potential liabilities, including successor or imputed liability. It is critical to retain an industry expert such as a buy/sell brokerage firm, and attorney to craft an orderly and practical buy sell agreement, that protects and limits your liability. Sometimes it is important to fashion common-sense language to gain the visibility necessary to avoid such liabilities with certain troubled issues. Although Due Diligence with UCC (Uniform Commercial Code) lien searches are critical, and can be used to safely avoid moving forward, the Buy Sell agreement must foresee such issues, and define a path of fair resolution.

Asset Purchase Myths: Moreover, you must protect against the myth that an 'Asset' Purchase shields the Buyer from Seller successor and creditor liabilities, even if you expressly exclude such related liabilities. Many CPAs have a simplified or practical view on legal issues, unfortunately, successor liabilities may still attach to assets, known and unknown. You must act to protect yourself and your business.

Of course, you must invoke the protections of the Bulk Sales Act in California, or related state act, to gain safe harbor protections. The Buy Sell agreement should also add to industry jargon, the practical steps that the escrow must take to invoke maximum protections, including tasks of promptly and timely obtaining certificates of clearance or

releases and or waivers of potential liabilities from all related creditors and government agencies, including for example in California: California Employment Development Department (“EDD”) for employment, payroll, withholding taxes, and unemployment taxes or penalties, the California State Board of Equalization (“SBE”) (California Department of Tax and Fee Administration), for sales and use taxes owed by Seller, and tax and lien releases from the IRS and Franchise Tax Board (“FTB”), through escrow before Close, if at all possible. A buyer seeking to avoid Seller creditor or attached successor asset liabilities, must obtain such official information prior to Close, but the Buy Sell agreement should also inform on the specific duties and obligations of the parties regarding all such items, even if not paid before Close of escrow.

Operational Liability: To shield certain liabilities, the owner can segregate the Delivery division from the operation proper, into a separate entity and operate that as a separate business unit. This will lessen the legal exposure of the operation. The entity, and contractual structure of the deal and operational entity (ies) can be fashioned to add levels of protection. But entities alone will not protect an owner from full liability exposure. Other than compliance and effective operational systems, liability is always close-by. Thus, the owner must protect family and business assets, and learn how to lock-away profits and cash legally and safely. An entity alone is not sufficient.

## **2. Protect Family and Business Assets.**

One of the most overlooked protection strategies from liability exposure, is the segregation of personal and business activities. Entities alone are almost useless as to personal or family lawsuits or challenges, namely because most lawsuits will allege strict liability, breach of contract and fraud against the entities and the principal individually. If court motions and extrication efforts fail to dismiss the owner personally, total potential exposure becomes real. It is at this point that clients who choose to take the extra step to also protect family assets and business assets, are ready for the court battle, knowing that they have protected a portion of their wealth that will remain intact, even if they lose the lawsuit.

### **Common Family & Business Integration Devices:**

#### **13 Secrets of the Rich or Informed™** **(<https://Rich.Law>)**

I first wrote my 13 Secrets of the Rich or Informed™ as my personal cheat sheet when I was working as a Beverly Hills Celebrity Business & Tax Manager for some of the most famous or informed people in the country. This article grew and grew over the years, and it now covers the common and the special devices used in Estate, Business, Asset, Litigation and Retirement Protections.



In this article I point out the difference between Wills and Living Trusts and conclude that Living Trust and Health and Property Directives, although not an asset protection device per se, are the preferred quarterback for your family and business life to avoid probate and its delays and expenses. ***But alone, the Living Trust documents will cause loss of assets in the event of certain lawsuits, judgments, and taxation claims.***

The rich or informed client will also add certain entities and trusts to avoid loss, but the most important overarching principle is to structure your personal, business and retirement assets and liabilities by compartmentalization. This is the process of separating risky assets or lines of business from less-risky assets and lines of business, and transferring each to its own entity or trust, and smartly defining the relationship among same by contract or device. Some of the most common trusts or devices include: "C" Corporation, "S" Corporation, Business or Land Trust with Parent Protection, Family Limited Partnership (FLP), Family Limited Liability Company (FLLC), Irrevocable Life Insurance Trust (ILIT), Children's Trust, Charitable Remainder Trust (CRT), Grantor Retained Annuity Trust or its cousins (GRAT, GRUT, GRIT), Qualified Personal Residence Trust (QPSST), Self-Canceling Installment Note (SCIN), Intentionally Defective Irrevocable Trust (IDIT), and the Safe Silo Retirement Trust™.

### **3. Learn How to Lock-Away Profits and Cash Legally!**

It takes specialized legal knowledge to implement a separate Safe Silo Retirement Trust™. This trust holds assets that cannot be subject to creditor attachment from lawsuits, judgments, or even government and taxation claims. The Assets are designed as Exempt assets under select black-letter law in California. Other states may or may not have similar but different protections.

Lawsuits, taxation or regulations impair or cripple the success of your small business, restaurant or franchise. You must learn how to protect your family nest egg, and business. Most business owners and executives are not legally protected. Having money in a private banking account or on deposit in investment funds, offer no protection in the event of judgments, government, or taxation challenges. Most owners don't realize that Living Trusts do not offer asset protection. In fact, Living Trusts act as an initial list of assets and homes to be seized in such events. Bankruptcy is not a protective device, it may effectively act as a government liquidator.

Can you protect yourself, your family nest egg, and your business? How?

Legal structures, trusts and devices can protect business owners from varying threats, such as lawsuits, and endless government regulation and tax over-reach. Step one is to set up such asset and business protections prior to any claims.

## **The Stand-Out: The Safe Silo Retirement Trust™**

However, there is one device that is not offered in each state, and varies when it is, that stands out as one of the most powerful devices to lock-away assets including cash, and property, even in the event of lawsuits, judgments, personal and business liabilities, and bankruptcy. That is the Safe Silo Retirement Trust™.

Although California may be one of the worst asset protection states, with one of the most intrusive bodies of law and taxation, the California Safe Silo Retirement Trust™ or the private retirement statutory trust best illustrates the end-goal for protection for small business owners. This is true because this trust invokes the black-letter law transforming or converting **Non-Exempt Assets to Exempt Assets**. The law defines Exempt Assets as not reachable by creditors. Moreover, it protects those assets from creditors or attachment, even on distribution from the trust to the judgment debtor. The purpose is to protect assets, funds and property appropriate for retirement.

This can be accomplished through a retirement plan and trust sponsored by your own business entity, along with pensions and (marital or separate) property or transmutation agreements. The private Silo trust is one of the most powerful devices used to enhance an estate and business plan which protects the wealth, equity or assets transferred into this irrevocable trust for purposes of retirement.

In California, under its Code of Civil Procedure Section 704, all amounts held, controlled, or even distributed by a private retirement plan are exempt. This means that you could even transfer certain assets to a (pre-existing) Silo trust during litigation or after a judgment. The term private retirement plan is not defined in the state code however, typically, the retirement plan would be sponsored by an employer (LLC), in writing pursuant to an actuarial calculation based upon numerous retirement factors including age. All amounts held, controlled, or in process of distribution by a private retirement plan, for the payment of benefits as an annuity, pension, retirement allowance, disability payment, or death benefit from a private retirement plan are exempt.

### **IRAs Have Limited Protection:**

This differs greatly from other exemption codes in California such as California Codes Code of Civil Procedure Section 704.010-704.210. or the Individual Retirement Accounts (IRAs). IRAs are not fully protected under the asset protection laws found in federal ERISA protections. However, some states have enacted special but restrictive protections of IRA plans protecting the funds and distributions only to the extent necessary for the support of the debtor, his/her spouse and dependents.

### **Qualified ERISA Plans:**

ERISA (Employee Retirement Income Security Act of 1974) supplies very effective asset protection over pension funds. The federal law overrides state law to the contrary and protects 401k, profit sharing and pension plans that prohibit involuntary assignment of plan benefits to any creditors. Assets may be transferred into such a plan with known

creditors, lawsuits or judgments. However, ERISA will not protect such assets from the IRS or subject to court order in divorce court (Qualified Domestic Relations Order). ERISA plans protect employees not owner-only plan participants. If the plans only participants are the owner and his family (spouse or dependents), then ERISA will not apply to protect the funds. The Safe Silo Retirement Trust™ stands-out as the most directly authoritative trust to lock-away retirement purposed assets. The Safe Silo Retirement Trust™ referenced herein is not limited retirement trusts used as designation devices for retirement accounts. The Safe Silo Retirement Trust™ also offers actual asset protections from creditors.

**Notice:** When discussing these planning matters the following devices and alternatives should be discussed with your attorney, wealth building and protection team. This list is a non-exhaustive list and only given as a tool to afford easier discussions with your professional team. Your first step in the right direction is to put together a team, which should include an estate, business and asset protection attorney, CPA, insurance agent (re life, disability, buy-sell, long term care, business interruption or income replacement, etc.), CFP (Certified Financial Planner), industry expert broker, money manager or investment advisor and a brokerage. This article is not intended as legal, tax, accounting, financial, money management or insurance advice, and as such you may not rely upon the same for that purpose. It is recommended that you hire an attorney experienced in this area to plan your business, estate, and protection matters.

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