

WAYS TO TAKE TITLE TO COMMERCIAL REAL ESTATE

Presented By:

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Individual Single Name

- ◆ Advantages: Ease and simplicity. Less red tape from a lender or title company. No additional tax documents. Easy to insure.
- ◆ Disadvantages: Full individual liability for each owner, asset must be probated, no privacy.
- ◆ Deed reads: “John R. Smith” (no marital status necessary).
- ◆ VERDICT: Usually only makes sense for a single person owning a homestead or a married person who wishes to own property alone for some reason.

Two Individual Names (Not Married): Tenants in Common

- ◆ Advantages: Ease and simplicity. Less red tape from a lender or title company. No additional tax documents. Easy to insure.
- ◆ Disadvantages: Full individual liability for each, half of asset must be probated after the death of each person, no privacy.
- ◆ Deed Reads: "John R. Smith and Peter F. Jones" (no marital status necessary).
- ◆ VERDICT: This is the statutory default ownership status for two individuals. Usually only makes sense for close family members not married to each other or two close friends only temporarily owning the property.

Two Individual Names with Survivorship (Not Married): Joint Tenants With Rights of Survivorship

- ◆ Advantages: Ease and simplicity. Less red tape from a lender or title company. No additional tax documents. Easy to insure. No probate for first to die: his or her share automatically goes to the other. No probate.
- ◆ Disadvantages: Full individual liability for each owner, asset must be probated after the death of second person, no privacy, can be unilaterally severed.
- ◆ Deed MUST Read: "John R. Smith and Peter F. Jones as joint tenants with rights of survivorship" (no marital status necessary).
- ◆ VERDICT: Usually only makes sense for close family members not married to each other.

Enhanced Life Estate

- ◆ Advantages: Ease and simplicity. No additional creation or tax documents. Avoids probate. Qualifies for homestead. No additional documents to keep track of. Maintain full control of property while alive. Retain all proceeds in a sale or refinance. No signature of remainderman needed.
- ◆ Disadvantages: Less familiarity to the public.
- ◆ Deed MUST Read: "John R. Smith, as to a life estate, [then additional verbiage], and the remainder, if any, to Jessica M. Smith" [daughter]
- ◆ VERDICT: Underutilized and underappreciated. Great for foreigners or simple estates or estates with a POD designation for everything else.

H/W, H/H, W/W (tenancy by the entirety)

- ◆ Advantages: Ease and simplicity. Less red tape from a lender or title company. No additional tax documents. Easy to insure. Federal estate tax-free survivorship between the parties (i.e., when first spouse dies). Some asset protection: A money judgment against one spouse (only) does not attach to any of the property (except for federal tax liens [the *Craft* decision])
- ◆ Disadvantages: Full individual liability for a money judgment entered against BOTH spouses (except for homestead property), no privacy. Asset must be probated after second spouse dies.
- ◆ Deed MUST Read: "John R. Smith and Marianne J. Smith, husband and wife" (marital status **is** necessary). Gay too.
- ◆ VERDICT: A popular way to take title, but only makes sense for a homestead owned by younger people.

BEST FOR PROBATE AVOIDANCE:

Revocable Living Trust By H/W, H/H, W/W

- ◆ Advantages: Still relatively easy and simple. Generally no additional tax documents. Federal estate tax-free survivorship between the parties (i.e., when first spouse dies). Still get homestead tax benefit and asset protection benefit. And a money judgment against one spouse only does not attach to any of the property (except for federal tax liens [the *Craft* decision]). Great deal of flexibility in drafting, revoking, and amending. Can set up children's and grandchildren's trusts within.
Most important: Avoids probate BUT must title the asset in the trust.
- ◆ Disadvantages: No enhanced asset protection, and thus full individual liability for a money judgment entered against BOTH spouses (except for homestead property), little privacy.
- ◆ Deed MUST Substantially Read: "John R. Smith and Marianne J. Smith, husband and wife, as Co-Trustees of the John R. Smith and Marianne J. Smith Revocable Living Trust dated February 4, 2019." (marital status **is** generally necessary). Works for gay married couples as well.
- ◆ VERDICT: Best for homestead for people over 50 years of age or better or younger people who have a serious illness or dangerous job or hobby.

BEST FOR PRIVACY: Florida Land Trust

- ◆ Advantages: The primary is privacy: Beneficiaries' names don't appear on any public record. No one knows who really owns the property unless beneficiaries want them to. This will vex creditors or buyers holding out for a high price. Judgment liens against individual beneficiaries do attach to their interest, (if creditor somehow finds out who they are), BUT property can be sold without paying judgment liens. And the beneficiaries' interests are personal, not real, property. Qualifies for homestead tax and asset protection. Avoids probate. No filing fee or annual fee to the state.
- ◆ Disadvantages: Some complexity. Less familiarity than living trusts or LLC's. Can be more expensive to set up. Need a trustee that can be trusted and who has a different last name than beneficiaries. (Usually an attorney, accountant, or sophisticated and honest family member).
- ◆ Deed MUST Substantially Read: "William P. Johnson, as Trustee of the 123 Elm Street Land Trust"
- ◆ VERDICT: A powerful but underused, underappreciated ownership tool.

BEST FOR ASSET PROTECT: LLC--Limited Liability Company

- ◆ "LLC" stands for limited liability company (not limited liability corporation).
- ◆ History: First LLC's filed in Wyoming in 1977 pursuant to a Wyoming statute. First Florida LLC filed in 1982. Up until 1990, only these two states had LLC statutes. Now, all states have LLC statutes.
- ◆ LLC's are a very popular method by which to take title to investment real estate.
- ◆ Deed MUST Read: "Acme, LLC, a Florida Limited Liability Company" (The LLC must end with "Limited Liability Company", "Limited Company", "LC", "L.C.", "LLC", or "L.L.C.". Limited can be abbreviated to "Ltd." and company can be limited to "Co.")

ADVANTAGES OF LLC'S vs. CORPORATIONS

- ◆ Massive Flexibility in Management: LLC's have no shareholders, no boards, no officers (But you can create them in your operating agreement). The statutory default management structure of an LLC is most like a general partnership. The owners of an LLC are called "members." The statutory default is that they manage the LLC together (called a "member managed" LLC). BUT the operating agreement can appoint manager(s) to manage the LLC who may or may not be member(s) (called a "manager managed" LLC). The members can (but are not required to) draft an operating agreement (like a corporation's shareholder agreement) to spell out the duties and obligations of the members and the manager(s). In the absence of a contrary provision in the operating agreement, if any, the statute on LLC's, F.S. 608 controls.

ADVANTAGES OF LLC'S vs. CORPORATIONS

- ◆ Fees: Similar fees
- ◆ Flexible Ownership: The members of an LLC may be individuals, foreigners, other LLC's, other corps., other business entities, or any kind of trust, and there can be an unlimited number of members, By contrast, the shareholders of an "S" corporation must be individuals who are U.S. citizens or resident aliens, and they may not number more than 100 individuals.

ADVANTAGES OF LLC'S vs. CORPORATIONS

- ◆ Flexibility In Classes of Ownership: An LLC can have as many classes of ownership as designated in the operating agreement (usually just one), while an "S" corporation must have one class of ownership.
- ◆ Flexibility In Taxation: You can elect to have an LLC taxed as an "S" corp., a "C" corp., a general partnership, or even, in the case of a single member LLC, as a "disregarded entity" which files no separate tax return at all. The single member just files their standard 1040 form and the LLC is taxed like a sole proprietorship. New, small LLC's and corporations are usually taxed as an "S" corp. (pass-through taxation).

ADVANTAGES OF LLC'S vs. CORPORATIONS

- ◆ Advantageous 1031 Treatment: If you own real estate personally and you want to do a 1031 to purchase another property, ordinarily you need to close on the replacement property in your name personally. But in that case you can also purchase the replacement property in the name of a single member LLC and still do a 1031. Not so with a corp.
- ◆ Simpler Statutory And Case Law Framework: Since LLC's are newer than corps., the legislature and the courts have had less time to restrict them. This is usually an advantage, but occasionally it is a disadvantage.

ADVANTAGES OF LLC'S vs. CORPORATIONS

- ◆ "Double" Asset Protection: Both LLC's and corporations provide asset protection in that an owner is protected from the liabilities of the business. (That is the primary reason the corporations and LLC's exist in the first place). But what about if an owner get in a car accident, gets sued, and gets a court judgment against them personally? Can the creditor seize their ownership in the business? For a corporation, then answer is yes, a creditor can seize one's shares of the corporation. But, **in the case of an LLC owned by two or more people (only)**, a judgment creditor is only entitled to a "charging lien" in which they can only get a claim to distributions made by the LLC to the debtor. (So the LLC would just then not make any distributions to the debtor). Called "double" asset protection. (But no such double asset protection for a single member LLC).

BEST OVERALL: LLC/REV. LIV. TRUST COMBO

Property: The Batcave

Deed: Recorded

LLC: Caped Crusaders, LLC

Members: Batman Rev. Liv. Trust Robin Rev. Liv. Trust

Settlor/Ttite/Bene: Batman

Robin

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“Could you at least leave the store
before you buy that on Amazon?”



“Objection.”



"No that's insanity. You can't plead stupidity."



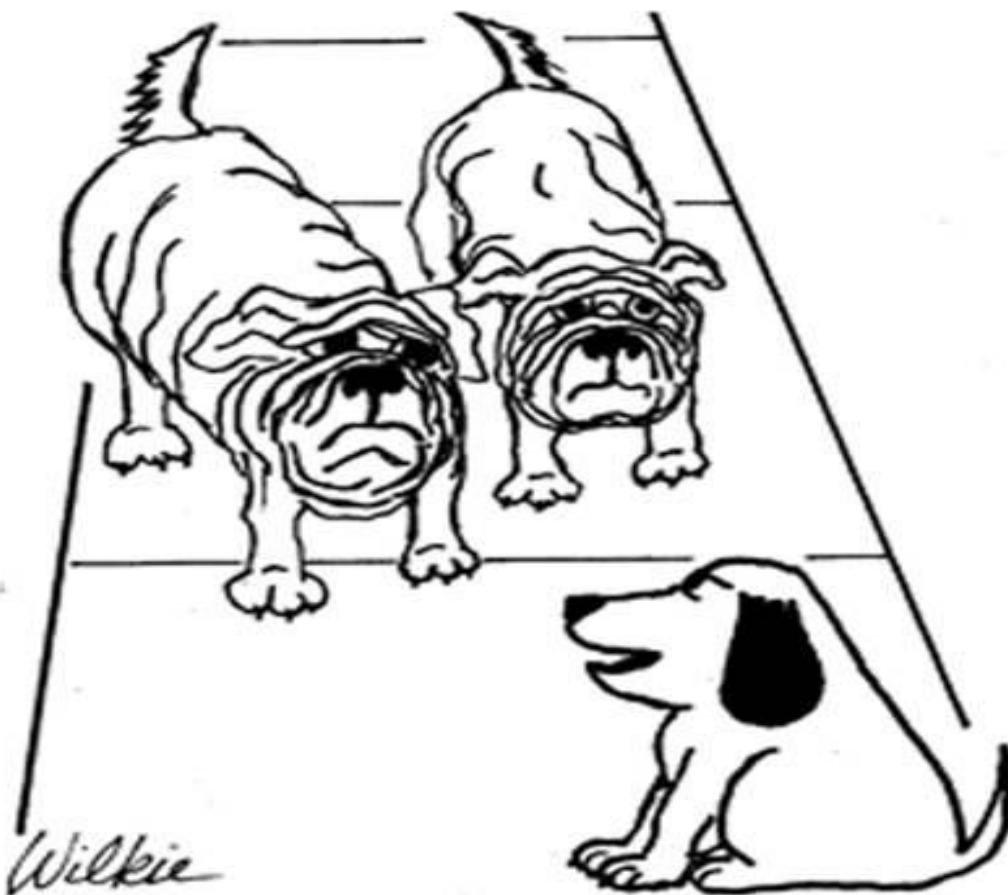
"Then one day he said, 'It's either me or the damned cat!'"

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"If I don't get a good twenty-three hours,
I'm a wreck."

THE WALL STREET JOURNAL.



“Does the word ‘botox’ mean anything to you?”



BURNS
The Most Famous Animal Cartoonist
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“Yeah, well my first husband
left me for a tennis ball.”



“Jack’s lost thirty pounds since I put the invisible fence around the fridge.”



The Best of the Best of Cartoons Collection
© Cartoons From the 1980s

BURNS

“You’re God knows where all day long,
then at night you pounce on my head...
this is not a relationship.”



The Best Dog Artwork! (www.dogart.com)
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Campbell.

“You realize, I guess, that you’ve
left your DNA on that.”



"If it weren't for the food and shelter,
I'd never chase another Frisbee."

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"Here you go. I found a brand that doesn't test on animals."

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BRONX

“Care to sign up for our customer rewards card
that gives you the illusion that
you’re getting some kind of deal?”

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MARTY
LOWE

"I think I'm losing it. Yesterday I chased
a car and nobody was driving it."

THE WALL STREET JOURNAL.



"We're your parents. You don't
get a closing argument."

BIOGRAPHY

- ◆ Edward W. (Ned) Hale, Esquire, is the founding attorney for Hale Law Services, P.A. in Fort Myers. (Ph. 239-931-6767). The firm focuses its practice on real estate law, title insurance, mortgage law, wills and trusts law, probate avoidance law, and general business law. Ned is board certified by the Florida Bar in real estate. He has worked for a developer, other real estate and estate planning firms, and the largest foreclosure firm in Florida. Prior to entering law school, Ned was a commercial real estate broker with CB Richard Ellis. A native of a suburb of Los Angeles, California, Ned holds a B.A. from the University of Chicago, an M.B.A from the Illinois Institute of Technology, and a J.D. from Chicago-Kent College of Law. Over the years Ned has taught tens of seminars on Florida contracts. Ned lives in Fort Myers with his fiancée, Tabatha.