

Investing With IRA LLCs:  
Is Checkbook Control  
Right for You?





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# Agenda

- 1 About Entrust
- 2 What is an Entity?
- 3 Low-Risk and High-Risk Assets
- 4 Inside and Outside Lawsuits
- 5 Charging-Order Protection
- 6 Q&A Time

# Meet Your Host

Bill Neville

Business Development Manager at The Entrust Group



12

Years at Entrust



Educating investors and professionals on tax-preferred retirement accounts



B.S. in Finance from Penn State University

# About Entrust



**\$4B**

Assets Under Administration



**22k**

Active Accounts



**40**

Years of Service



**1**

Point of Contact

# About Entrust



- Self-Directed IRA administrators
- Knowledgeable staff with CISP designations
- Nationwide offices
- In-person events and virtual webinars
- National Continuing Education program for other credentials
- Bi-annual IRA Academy

## What is a Self-Directed IRA?



A retirement account in which the individual investor is in charge of making all investment decisions



Greater opportunity for asset diversification outside of traditional stocks, bonds, and mutual funds



trustee

All securities and investments are held in a retirement account administered by a regulated custodian or

## Let's Take A Poll

**Which feature of an IRA LLC interests you most?**

**A:** Limited liability protection

**B:** Checkbook control

**C:** Tax purposes

**D:** All of the above





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# Asset Protection Services of America



Jay Butler

BFA - Boston University in 1995

Former Vice-President for Alan Russell  
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Independent Contractor for Carl E. Lovell, Jr.  
Wealth Protection Concepts, LLC

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Co-Handelszentrum, GmbH (Zug, Switzerland)

Managing Director  
Asset Protection Services of America

Secretary  
State Trustee Services, LLC



# Nevada Office Carson City





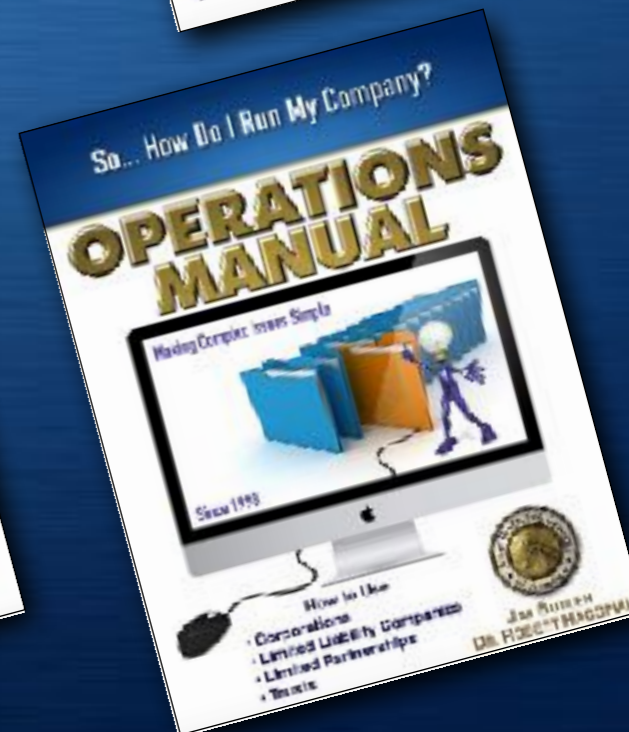
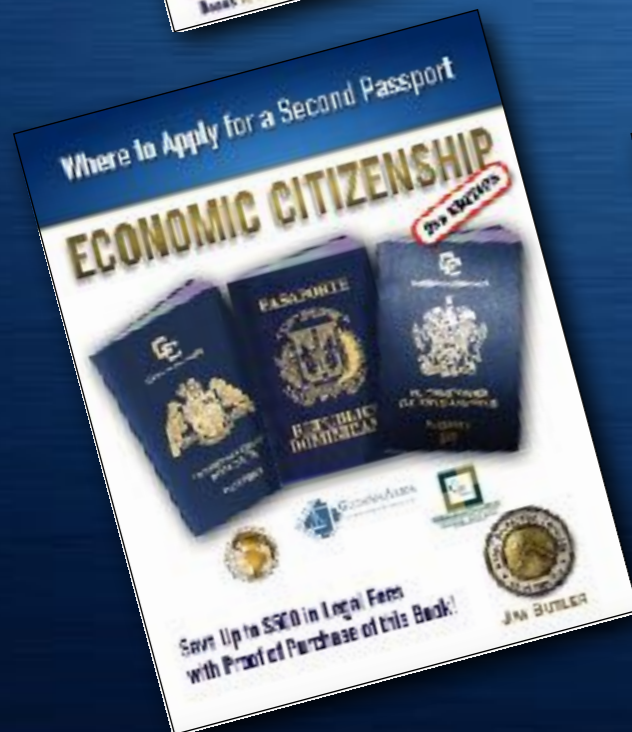
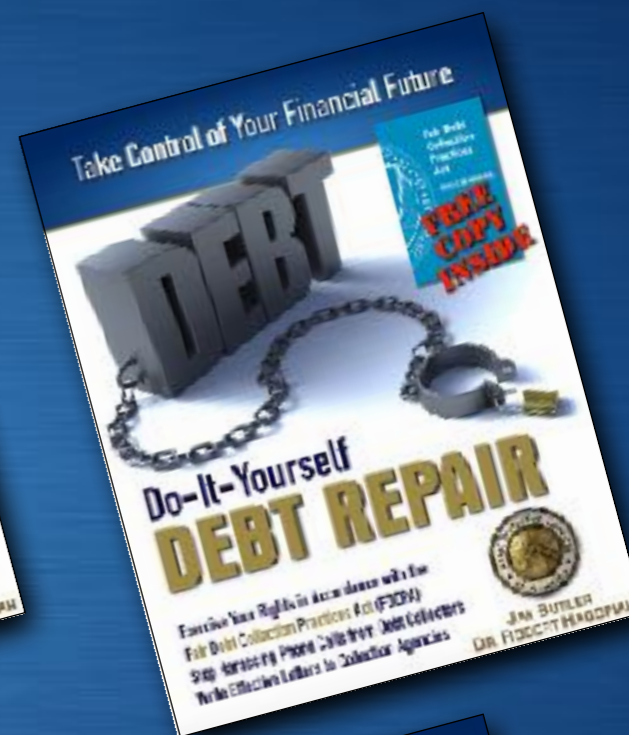
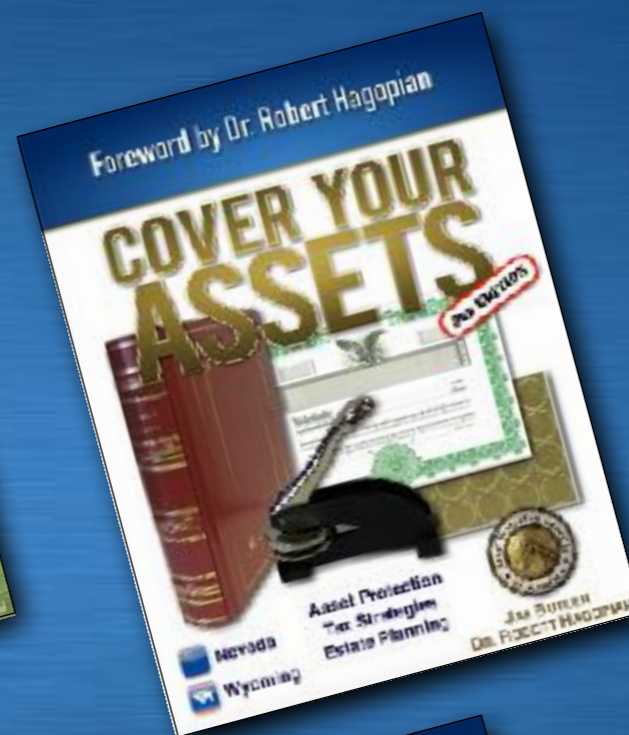
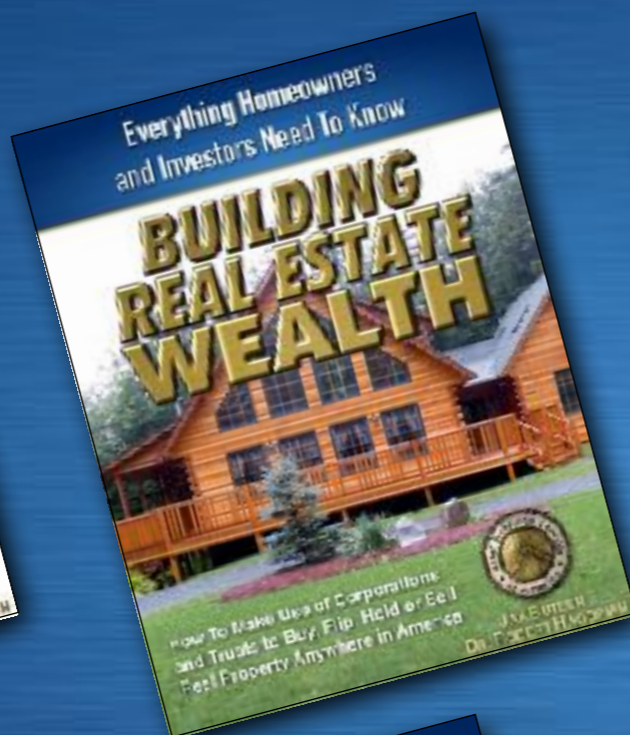
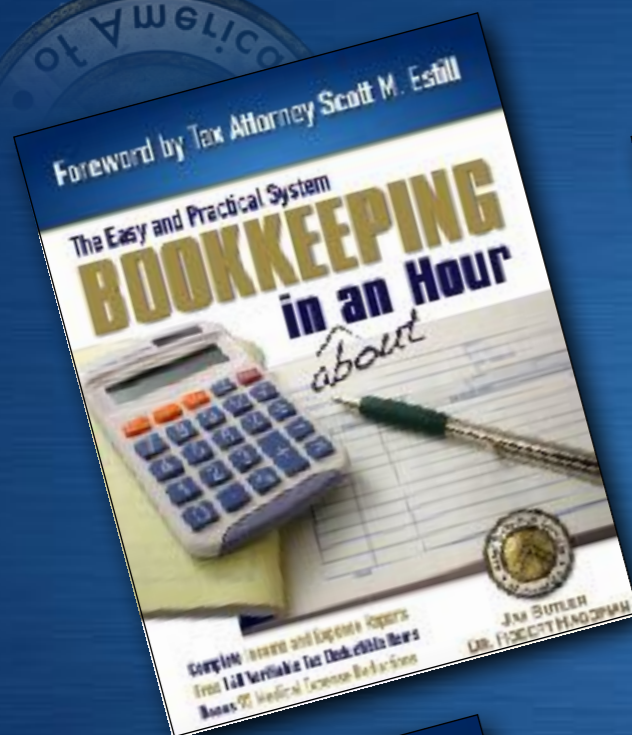
# Wyoming Office Cheyenne





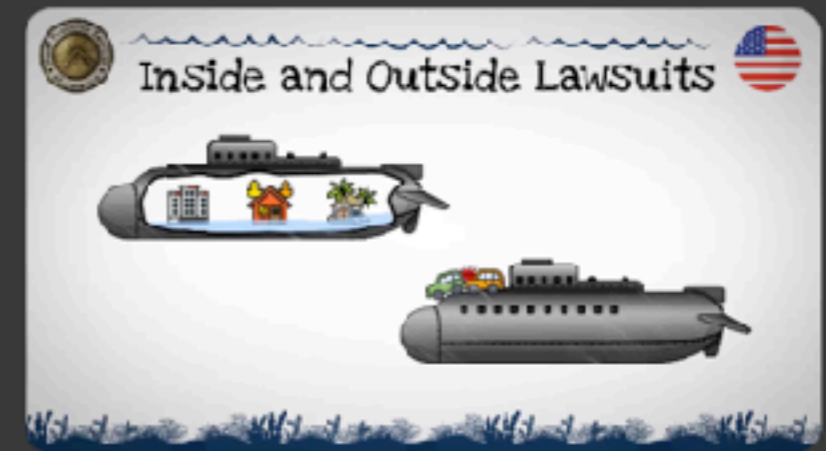
# Books

by Jay Butler and Dr. Robert Hagopian





# Videos



Miami Live Webinar I

Miami Live Webinar II

Miami Live Webinar III





# Do You *Need* Asset Protection with a Self-Directed IRA ?



Unlike a 401(k), Self-Directed IRA's are *not* protected under ERISA, which is the **E**mployee **R**etirement **I**nvestment **S**ecurities **A**ct of 1975.

In the event of litigation, IRA's file **Form 5498** and, while that form does not detail the specific assets held in the SD-IRA, the total valuation of the account is disclosed and could be obtained by the Plaintiff during discovery.





# You Must Be Pro-Active



*“Asset Protection is akin to wearing a seatbelt. In the moment of an accident, you cannot go flying toward the windshield and then try to turn-around and install an airbag.”*

*~Jay Butler*



# You Always Have a Choice



Leave all your retirement savings together  
in the name of your self-directed IRA account

— or —

Place them into a Wyoming  
“Single-Member” Limited Liability Company,  
which is Disregarded for Tax Purposes



# Questions?

- What exactly *is* an entity (ie. LLC) and why would you want to consider using one?
- Do you *need* more than one LLC? If so why, and how many are you supposed to have?
- Are there unique advantages or disadvantages in using an LLC to house your Self-Directed IRA?
- Does it really matter in which State you choose to organize your Limited Liability Company?



# For Your Consideration

## 1.) What is an Entity?

*“What exactly is an entity and why would you want to consider using one?”*

## 2.) Low-Risk and High-Risk Assets

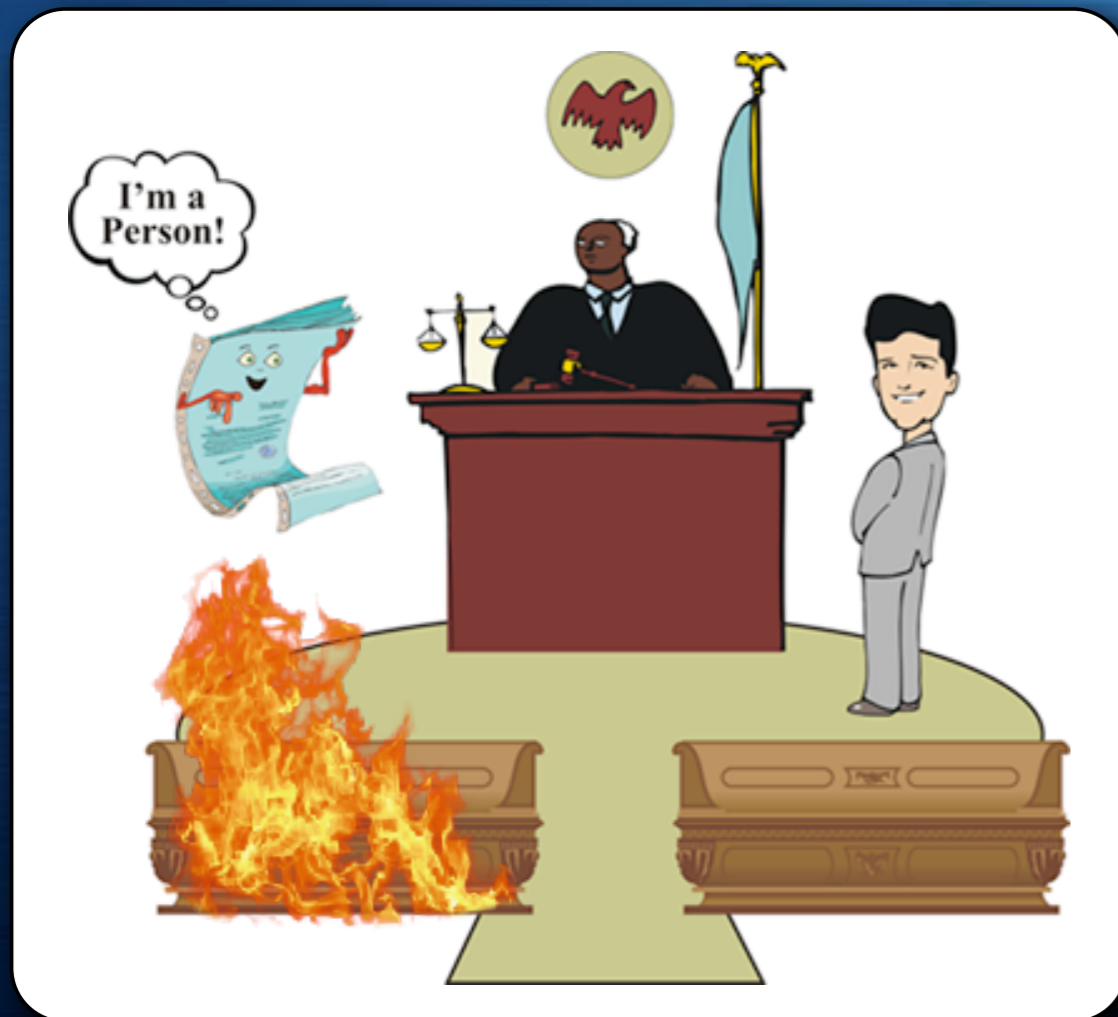
## 3.) Inside and Outside Lawsuits

## 4.) Charging-Order Protection



# What is an Entity?

*An entity is a person and  
Black's Law Dictionary defines a "Person" as:*



- 1.) **A human being;**  
*Natural Person ~ Civil Rights*
- 2.) **An entity** that is recognized by law as having most of the rights and duties of a human being, such as a Corporation, Limited Liability Company or Limited Partnership.  
*Fictitious Person ~ Legal Rights*



# For Your Consideration

1.) What is an Entity?

2.) Low-Risk and High-Risk Assets

*“Do you need more than one LLC? If so why, and how many are you supposed to have?”*

3.) Inside and Outside Lawsuits

4.) Charging-Order Protection



# Low-Risk Assets

Assets of intrinsic value which are ***not*** subject to creating a lawsuit such as cash, stocks, bonds, CDs, gold and silver, furs, jewelry and artwork, etc.





# High-Risk Assets

Assets of intrinsic value which *may* cause a lawsuit such as your home, cars, boats, planes, equipment, rental properties and businesses, etc.







# Keep Them Separated



Low-Risk and High-Risk Assets are a like Oil and Water in that they do ***not*** mix together.





# Why Not?



Because of the difference  
between *inside* and  
*outside* lawsuits.



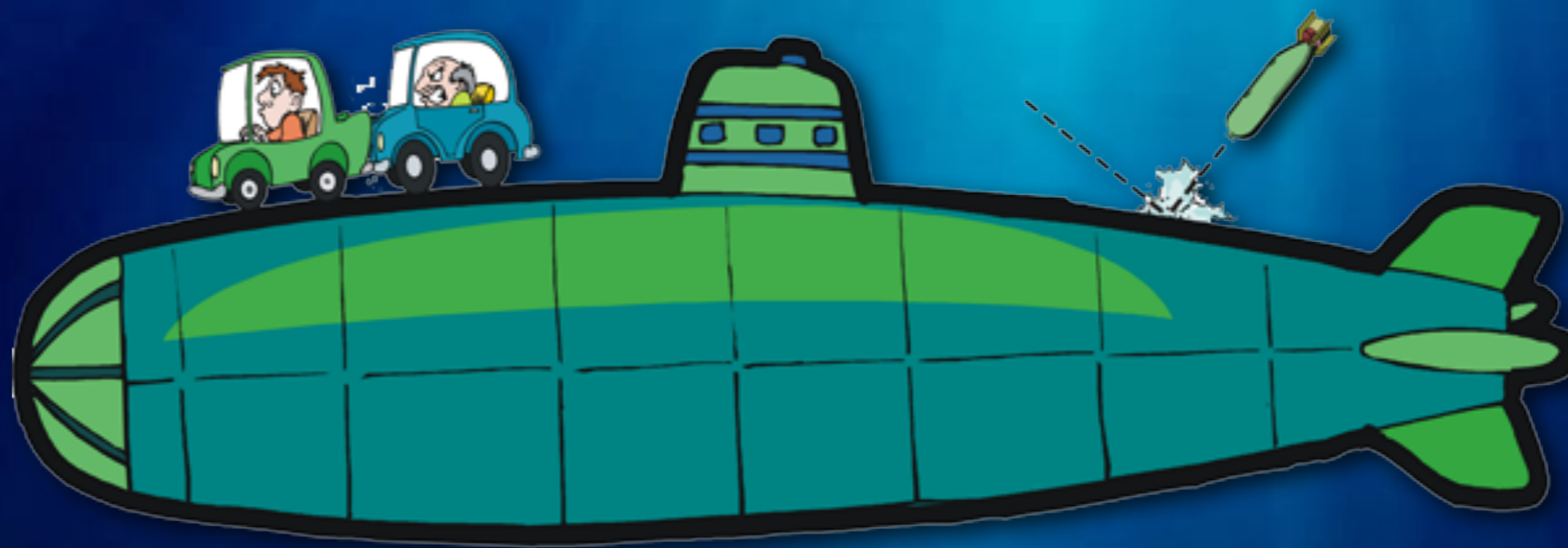


# For Your Consideration

- 1.) What is an Entity?
- 2.) Low-Risk and High-Risk Assets
- 3.) Inside and Outside Lawsuits  
*“Are there unique advantages or disadvantages in using an LLC to house your Self-Directed IRA?”*
- 4.) Charging-Order Protection

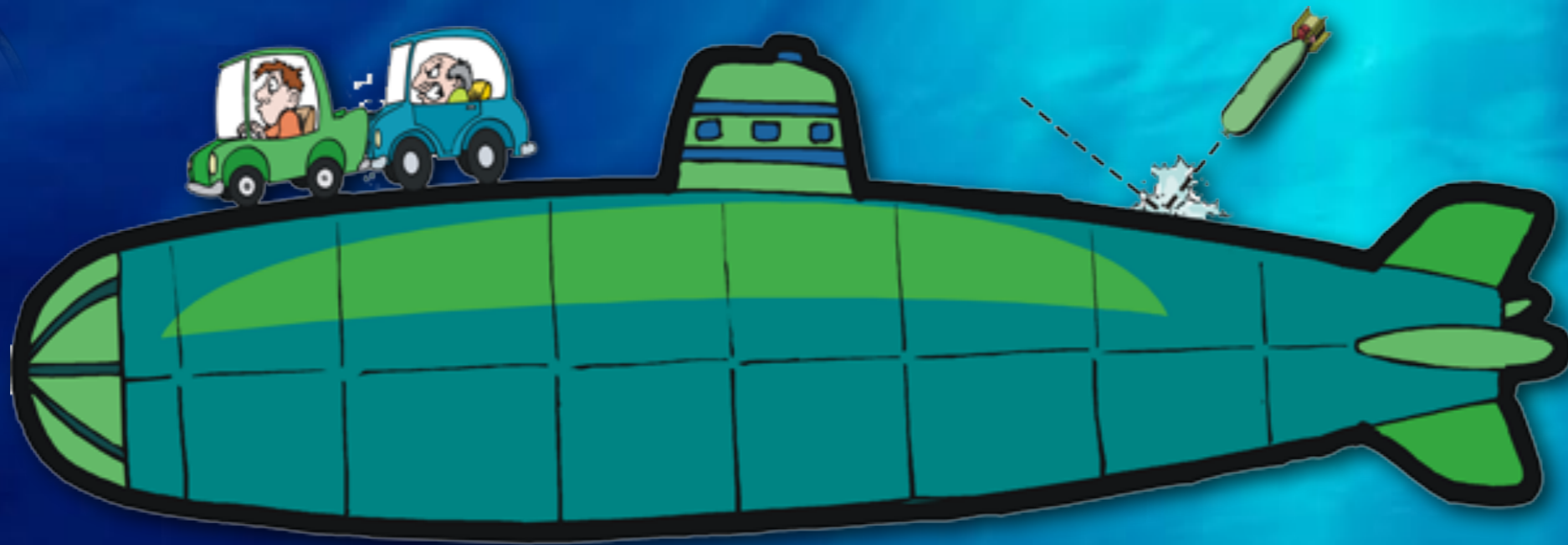


# Inside and Outside Lawsuits





# Outside Lawsuit



An Outside Lawsuit is where the ‘Cause of Action’ (or reason for a lawsuit) is *not* directly related to the business activities of the entity.



# Inside Lawsuits



An Inside Lawsuit is where the ‘Cause of Action’ (or reason for a lawsuit) *IS* directly related to the business activities of the entity.



# WARNING!



The Charging Order Protection  
does **NOT** apply to an Inside Lawsuit!



# Bad News



There is very little (if anything) that can be done to protect your assets in an entity *after* you have been served with an inside lawsuit. (ie. Insurance and/or encumbrances.) All of the Assets owned within the entity *are subject* to seizure by a judgement creditor.





# Good News



Notwithstanding fraud or gross negligence, owners of an entity have *no personal liability* for the debts and obligations of the entity. (ie. Unless you co-sign on a bank loan.) Owner liability is limited to their capital contribution to the entity, thus isolating their losses.



# Capital Contribution



Members are not liable for the debts and obligations of the LLC. Member liability is limited to their respective capital contribution into the company.



# Compartmentalization



\$300,000



~~\$100,000~~

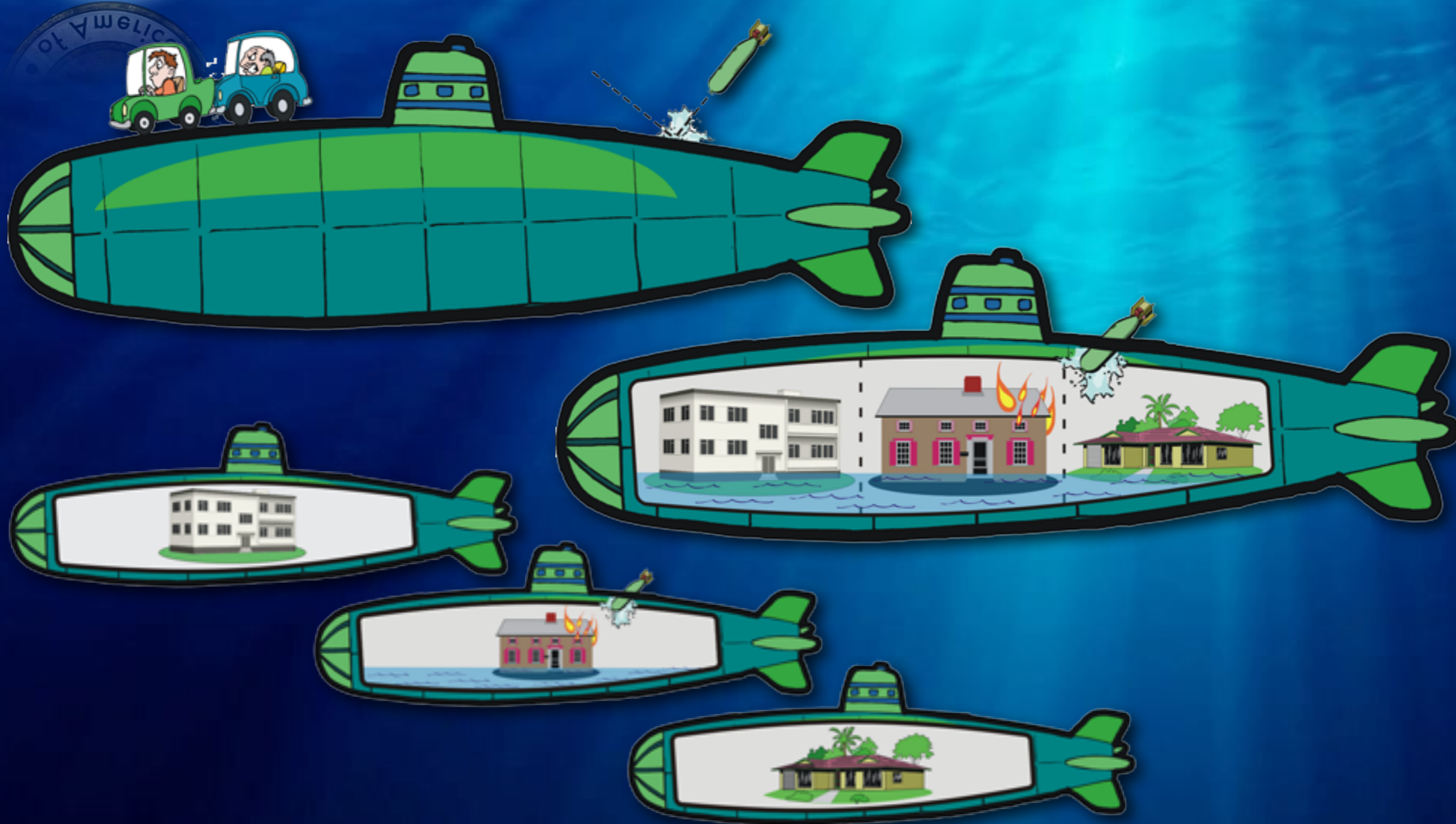


\$100,000

Segregate assets into separate entities based on the value of their equity and cash-flow. The cost to form and maintain bank accounts, bookkeeping and file tax returns is a logical and tax-deductible decision.



# Inside and Outside Lawsuits





# For Your Consideration

- 1.) What is an Entity?
- 2.) Low-Risk and High-Risk Assets
- 3.) Inside and Outside Lawsuits
- 4.) Charging-Order Protection  
*“Does it really matter in which State you choose to organize your Limited Liability Company?”*



# Charging Order Protection



A 'Charging Order' is the *remedy* (or solution) a creditor uses to place a *judgment* against an entity which, ironically, becomes the primary *defense* (or protection) for the debtor.



# Charging Order

A person sued you and **WON** and got a 'Charging Order' **against** you!

That person (now a judgment creditor) has the **rights** of an assignee (distribution of profits) but **not the interests** of an assignee (ownership).

The **Judgment Creditor** has:

- **NO** control or ability to participate in the management of the entity;
- **NO** say as to when, or in what amount, distributions may be made;
- **NO** authority to force distributions;
- **NO** ability to exercise any measure of control over the entity.

The charging order **protects the *other* investors** from the judgment creditors of a **debtor owner**.

# Judgment Creditors



Creditor



2nd

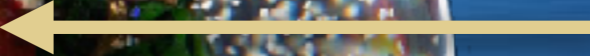
Owner



Entity



Debtor



Profits







# Ashley Albright

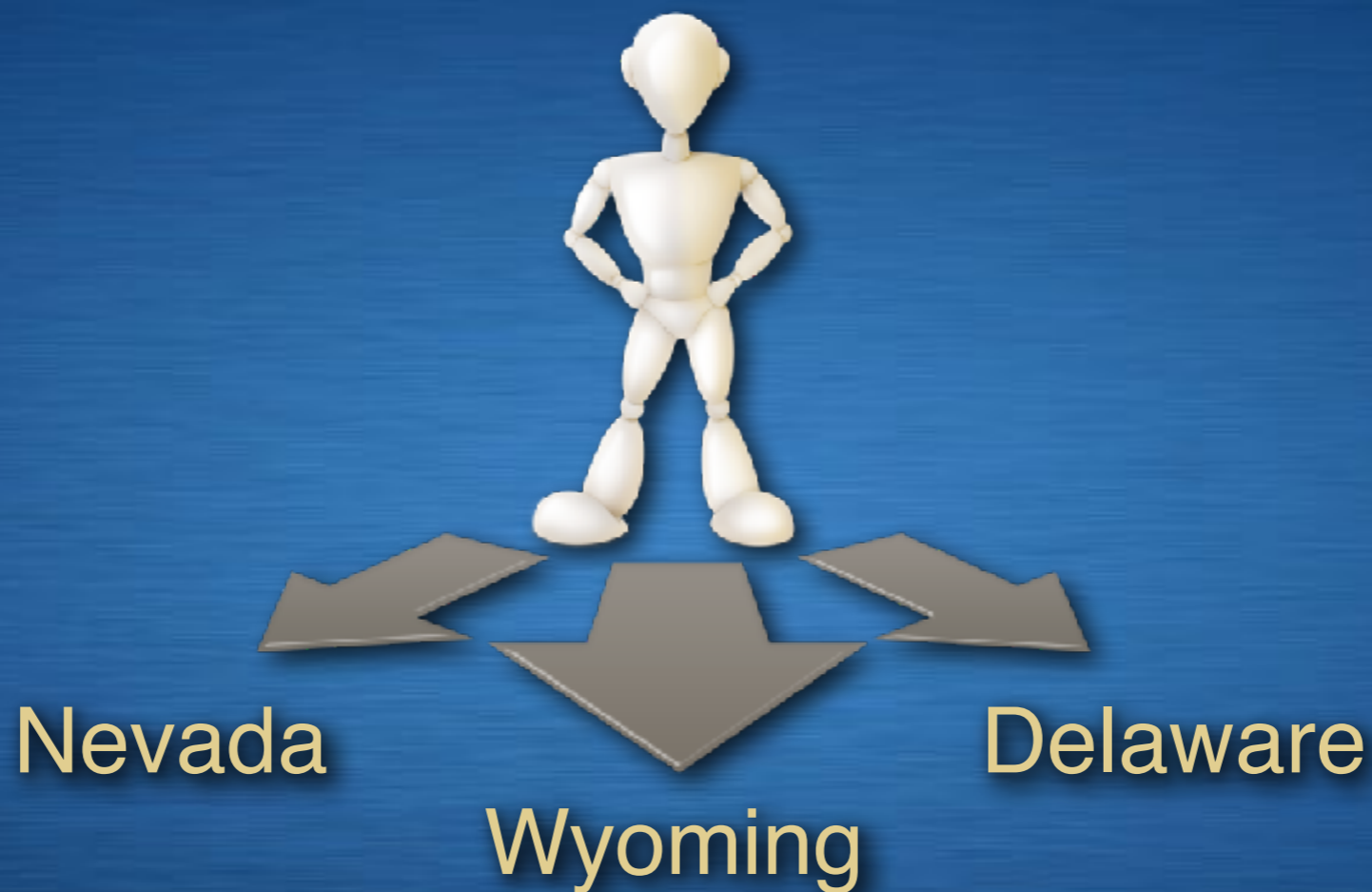
But with the advent of the 'single-member' LLC, the question quickly arose, *“What happens when there are no other investors to protect?”*

*“A charging order protects the autonomy of the original members and their ability to manage their own enterprise. In a single-member entity, there are no non-debtor members to protect. The charging order limitation serves no purpose in a single-member limited liability company, because there are no other parties' interests affected.”*

– Case No. 01-11367, 291 B.R. 538 (Bankr. D Colo. 2003)



# Favorable States



Only three states offer Charging Order Protection to a 'single-member' LLC as the 'exclusive remedy' for a judgment creditor!



# Nevada Limited Liability Company



Nevada Revised Statutes (NRS)

Section 86 - Limited Liability Companies

**NRS 86.401** - Rights and remedies of creditor of member.

1. *On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the member's interest with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the member's interest.*
2. *This section:*
  - (a) *Provides the **exclusive remedy** by which a judgment creditor of a member or an assignee of a member may satisfy a judgment out of the member's interest of the judgment debtor, whether the limited-liability company has **one member or more than one member**. No other remedy, including, **without limitation**, foreclosure on the member's interest or a court order for directions, accounts and inquiries that the debtor or member might have made, is available to the judgment creditor attempting to satisfy the judgment out of the judgment debtor's interest in the limited-liability company, and **no other remedy may be ordered by a court**.*



# Wyoming Limited Liability Company



## Wyoming Title 17

### Chapter 29 - Wyoming Limited Liability Act

#### Article 5 - Transferable Interests and Rights of Transferees and Creditors

#### Section 503 - Charging Order

*(g) This section provides the **exclusive remedy** by which a person seeking to enforce a judgment against a judgment debtor, including any judgment debtor who may be the sole member, dissociated member or transferee, may, in the capacity of the judgment creditor, satisfy the judgment from the judgment debtor's transferable interest or from the assets of the limited liability company. **Other remedies**, including foreclosure on the judgment debtor's limited liability interest and a court order for directions, accounts and inquiries that the judgment debtor might have made **are not available to the judgment creditor** attempting to satisfy a judgment out of the judgment debtor's interest in the limited liability company **and may not be ordered by the court.***



**Cover Your Assets (3rd Edition)**  
by Jay Butler and Dr. Robert Hagopian



**Internal Revenue Service**  
Revenue Ruling 1977-1 C.B. 178  
Section 761 - Partnership Definitions

Headnote

Limited partnership; assignment of interest. An assignee acquiring substantially all of the dominion and control over the interest of a limited partner is treated as a substituted limited partner for Federal income tax purposes.

IRS Revenue Ruling 77-137

*A, a limited partner in a limited partnership formed under the Uniform Limited Partnership Act of a state, assigned the limited partnership interest to B. The agreement of the partnership provides, in part, that assignees of limited partners may not become substituted limited partners in the partnership without the written consent of the general partners. However, it also provides that a limited partner may, without the consent of the general partners, assign irrevocably to another the right to share in the profits and losses of the partnership and to receive all distributions, including liquidating distributions, to which the limited partner would have been entitled had the assignment not been made. Under the terms of the assignment A, who was the nominal limited partner under local law, agreed to exercise any residual powers remaining in A solely in favor of and in the interest of B.*

*Held, even though the general partners did not give their consent to the assignment, since B, the assignee, acquired substantially all of the dominion and control over the limited partnership interest, for Federal income tax purposes B is treated as a substituted limited partner. Therefore, B must report the distributive share of partnership items of income, gain, loss, deduction, and credit attributable to the assigned interest on B's Federal income tax return in the same manner and in the same amounts that would be required if B was a substituted limited partner.*

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# IRS

## Revenue Ruling 77-137

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IRS



## Revenue Ruling 77-137

The person who sued you and **won** and has a 'Charging Order' **against** you...

They have to **PAY TAXES** on money they cannot collect~!



# California Charging Order “Protection”



## California Corporations Code (LLC) Section 17302

- (a) *...The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor.*
- (b) *A charging order constitutes a lien on the judgment debtor’s assignable membership interest. The court may order a foreclosure on the membership interest subject to the charging order at any time.*

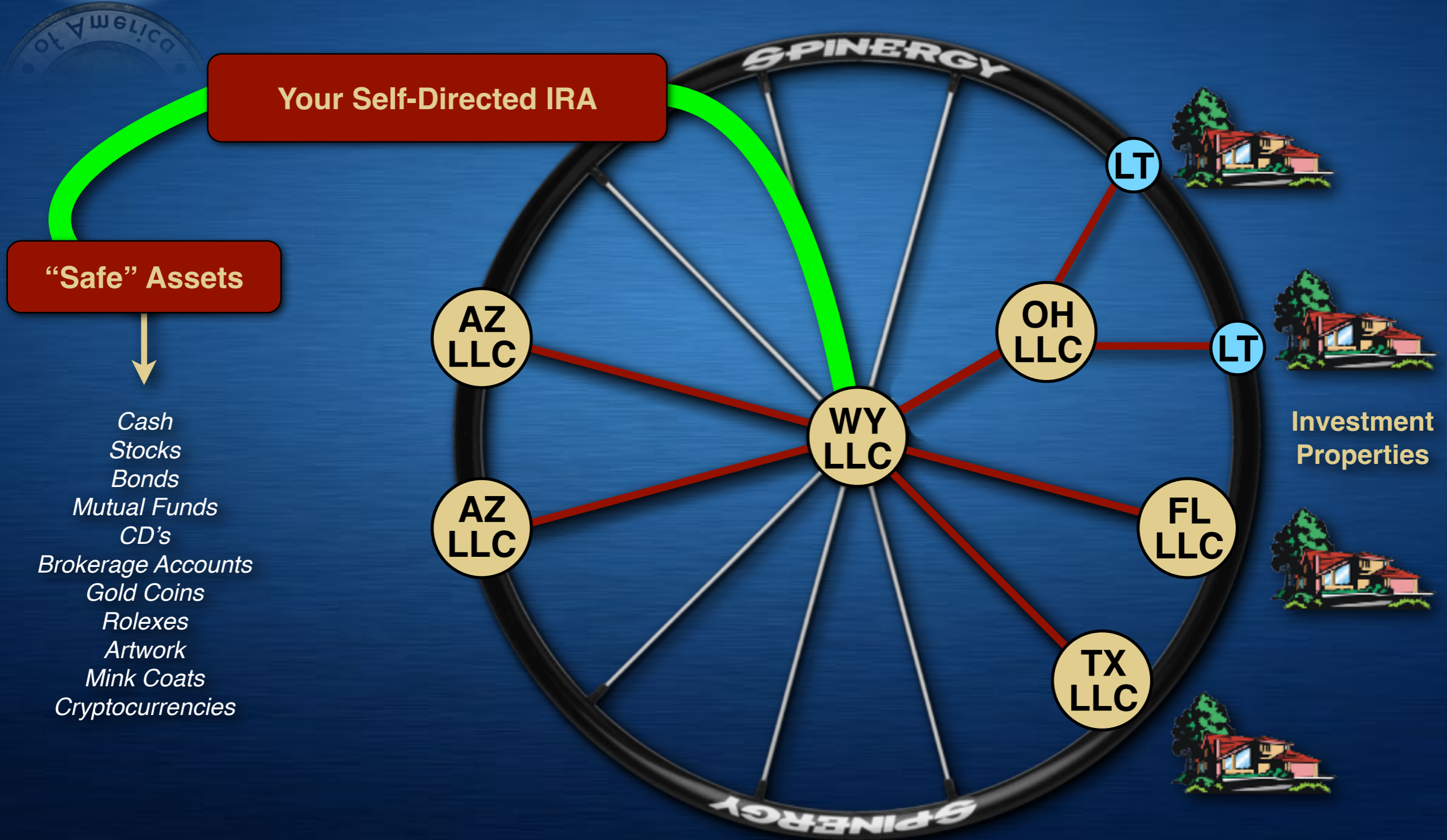
## California Corporations Code (LP) Section 15907

Sets out identical rules for Limited Partnerships.





# SD-IRA can own *both* Low-Risk and High-Risk Assets





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07:30	07:30	07:30	07:30	07:30
09:00	09:00	09:00	09:00	09:00
10:30	10:30	10:30	10:30	10:30
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	15:00	15:00		15:00



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# Time for Questions



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“

Learning gives CREATIVITY  
Creativity leads to THINKING  
Thinking provides KNOWLEDGE  
Knowledge makes you **GREAT**

- *Abdul Kalam*

