PROTECTING YOUR POSSIBILITIES PODCAST WITH LUKE FEDLAM

Episode 55: Real estate deals: How to manage risk | Sept. 22, 2021

The following is a transcription of the audio podcast recording. It is largely accurate but in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors.

Luke: I'm sports attorney Luke Fedlam, and welcome to the Protecting Your Possibilities podcast. Each conversation we focus on sharing information and having conversations around how athletes can best educate and protect themselves or their life outside of their sports.

Thank you so much for tuning in to the Protecting Your Possibilities podcast. I'm your host, Luke Fedlam. And I'm excited for another episode of protecting your possibilities. And this week, we want to spend some time talking about real estate.

Now, as you know, the Protecting Your Possibilities podcast really focuses on how we can protect all of the possibilities that athletes have. And we've come to know that this goes even beyond athletes, where we hear from entrepreneurs, business owners and others about the value of these conversations. And I like to try to pull from issues that are current that are relevant, and ultimately, that are impactful. And so we've had some listeners who are folks who listen regularly to the to the podcast, talk about wanting to learn a little bit more around real estate, and in particular, real estate as in ways in which you can be protected in being involved in real estate transactions and real estate deals. And as you know, obviously, our focus here is on the protection side. And so I think it just makes sense for us to kind of dive right into how to protect yourself when it comes to investing in real estate, purchasing real estate, or otherwise getting involved in real estate endeavors.

So one of the things to kind of start off with is a lot of times I'll have athletes reach out to me and say, hey, I want to I want to start buying real estate getting involved in real estate. And I need I need to set up an LLC, right, or, or how do I start this process. And oftentimes, we'll start off with the protection level of making sure that the structure is set up to ultimately protect that athlete. And one of the things that's important to think about when you start having those conversations really is what's the purpose? What is the purpose for the real estate that you are purchasing?

What I mean by that is that sometimes people are purchasing real estate, with the idea that they want to renovate it, flip it and resell it, and they may be holding on to that that real estate property for a short period of time before they turn around and sell it. In other instances, there are some athletes who are really taking it in a buy and hold strategy where it's I want to buy this real estate, I want to have tenants, where I'm the landlord, and I want tenants to live there. And I'm going to hold this asset for a long time, right. And this becomes this long term asset that I have that at some point, I may turn around and sell it. But that is not in the plans for the very near future.

Those are two very different strategies when it comes to real estate. And that's why it's important to start the conversation with understanding what is what is the purpose here. Now, that's just for those who are looking to purchase actual real estate directly themselves, we'll get into in a little bit more around people who are trying to invest in various real estate endeavors, various real estate deals.

So when we when we start off maybe with those athletes and others who are looking to buy a property and then flip it and then sell it. Again, protection is critical. So here's some things to think about. First and foremost, setting up an LLC, a limited liability company is a great place to start. That limits the owner's liability when it comes to making that purchase. And when you think about it, if you're going to be having people on the property doing work, having subcontractors doing work, having others coming in doing work on the property to help you in renovating it so that you can turn around and sell it, then you expose yourself to some liability. Now granted, those contractors who are doing the work should have insurance and things along those lines, but you want to make sure that you have that LLC set up.

Now, there are some athletes and other entrepreneurs and other investors and people who want to have multiple properties at the same time that they've purchased, specifically to renovate, flip and resell. And in those instances, this is where that question comes up around should I have one LLC that has everything in all the different properties, or should I have an individual LLC for each one. Now, again, this is where you should have a conversation with your lawyer and receive advice from your lawyer as to what makes the most sense for you. But generally speaking, and what I'll say just generally again, not offering legal advice here, but what we are seeing is that you may want to have an LLC that that holds two or three of those properties, right, a small number of those properties that you are renovating and flipping for resale. And the reason why is you anything within an LLC within that limited liability company, any assets that are owned by that LLC, if the LLC were to get sued, then all of the assets are at risk within that LLC. So if you have multiple properties that are being renovated and flipped, at the same time, the asset level obviously increases.

So to say having one particular LLC for one real estate property, and having an LLC for each property that you're flipping, you may look at it and say, okay, it makes sense, I'm willing to take the risk of having two or three in one. Now mind you, that you're going to have that LLC, where the LLC where the LLC owns that one particular piece of real estate that's getting flipped, and maybe there's two or three properties in it, owned by the LLC. And then at some point, you get to the point where the renovations are done on one of the properties and you sell it, and then obviously, that reduces the number of properties within the LLC, and it reduces the asset amount that's within that LLC, and then another property gets renovated and sold, and then maybe you purchase another one, and you can start to see how you have this almost kind of revolving door, if you will, within the LLC, for those properties that you are purchasing to flip and then ultimately sell in the short term.

Now, what I'm not talking about, and what you don't hear me talking about are the tax consequences of all of this. And I think that that's a conversation that has to be had with your accountant in consultation with your attorney or legal counsel to make sure that you understand all the implications of those purchases and sales on the taxable exposure that you have. But from a liability perspective, from a protection perspective, having that fluid nature of properties coming in and out of the LLC, as you are purchasing them to flip them and sell them in the short term. That's kind of a strategy to think about.

Now, when we start to think about that longer term strategy, that buy and hold strategy, where you are someone who is buying real estate, and then you are ultimately going to hold that real estate and have potentially have tenants living in that real estate, and then maybe at some point, selling it, but not having a plan in the immediate future to sell that property, then you're going to be holding on to those assets for a longer period of time. And by having a having tenants people living in those properties, you are most definitely, as the landlord, setting yourself up for liability exposure. And so having an LLC continues to help provide some of that liability protection for you. So when you have that strategy, that is a buy and hold strategy, where I'm going to buy this real estate asset, I'm going to hold it and lease it rent it out to two tenants, you definitely want to make sure that you have an LLC established for that.

Now, here's the question where we get a lot of times of well, what's the max number of properties that I should have within an LLC? There's no magic answer here. Right? The answer is it comes down to how much risk, right are you willing to take? And how much liability exposure do you want to the assets that you have within that particular LLC. So in some instances, depending on the asset value of the property or the real estate, someone may say, I want to have one LLC for each real estate property that I have. Others may say, you know, especially if it's something like let's just say for example, a duplex or something where maybe you have a multifamily facility or multifamily unit where maybe there's two, three or four units within one property, you may say, I'm willing to take on that risk by having a four unit property in one LLC. You could say that, right. But you could also say maybe I wanted one for one. This is really where you have to understand your appetite for risk based on the fact that you know, if something happens or something goes wrong, a tenant someone living in your real estate property, very well is going to look to the ownership. If there's something that goes wrong, and ultimately a lawsuit would expose whatever assets are within that LLC, to that potential lawsuit. So in thinking about this, you just want to take a look at what is the broad strategy in terms of the number of units number of properties You're going to have and maintain, where you have tenants living in them, it very well may make sense to have one property per LLC, or you may say, I'm going to take up to a certain dollar amount in each LLC, and therefore, you might say, I'm going to have this LLC, holding these two units, this other LLC might hold two or three, this LLC might just be one. Again, based on the asset size of the real estate property that you have, and your appetite for taking on the risk exposure.

So hopefully, that gives some clarity around, kind of LLC and real estate and ways in which to think about it. One of the things that I've seen on multiple occasions is when an athlete comes and says, hey, I've got these 10 units, or these 10 different real estate properties, and they're all in my personal name. And that, as a lawyer, thinking about the risk, the liability exposure just kind of makes you grab your chest a little bit to say, okay, we need to make sure that we are actively working to limit your liability. And that's why LLCs exists, right, is to limit the liability of its owners. And so thinking about then how to best break down those multiple, various real estate properties, and have that ownership come from potentially multiple LLCs, again, just helps to protect that athlete and their liability exposure.

One last thing to think about, and I know, we're just scratching the surface here, but that's kind of what we do on the Protecting Your Possibilities podcast, right? We want to share information with you enough to make you kind of pause and say, hey, I probably should talk to somebody a little bit more about this before I move forward in this space. And hopefully, we're giving you information that can be helpful as you think through this.

But the other thing you want to think about especially if you are taking on that strategy of that buy and hold strategy, where you're going to have tenants, depending on the number of tenants that you have, it might make sense to engage a real estate management company. And having a real estate management company would allow them to do the work of things like collecting rent, handling maintenance issues, handling other tenant issues as they arise, oftentimes, especially for athletes, there is whether it's a current active professional athlete, or if it's a retired athlete, it's interesting, right? How when someone knows that an athlete is the owner, that something that might have been an easy fix, or just a minor inconvenience, all of a sudden becomes a major inconvenience, or even a potential lawsuit, because they start to recognize the depths of the pockets that professional athlete or former athlete might have. So having a property management company, real estate management company come in, and really be that buffer between ownership and the tenants, that's going to be something that could be helpful, right. And there's usually a fee associated with that, but with that fee, it really can take out some of the liability. But it can help more importantly, and more frequently with just handling the ongoing day to day, right, the day to day requirements that come with owning a property that has tenants leasing that property from ownership. So again, that's just sharing some highlights, some thoughts around how to protect yourself when it comes to getting involved in in real estate.

Now, for another episode, we've had a lot of questions around real estate development deals and the investment side of real estate and what it might look like when you are trying to invest in a real estate deal, things to look out for. And I think in that conversation, it would be great for us to bring in some relationships, bringing in outside guests that are involved in the development side of things that can share some perspective from a developer side. And I'll share some perspectives from the athlete or the investor side of things. So that we can give a more kind of comprehensive approach to how to protect yourself in those endeavors. So more to come on that just continue to stay tuned.

And to make sure that you are made aware of these episodes as they come out, please do. Go ahead and subscribe to our podcast on whatever platform it is that you listen to the Protecting Your Possibilities podcast. Again, as you have ideas, thoughts or topics that you'd like us to discuss, please do feel free to share that information with me. You can find me on social media at Luke Fedlam. You can go ahead and Google myself. You can find all my information in the show notes as well.

Get in touch with us, let us know what you'd like to hear. And we'd be happy to share that as well. Again, thank you so much for tuning in to the Protecting Your Possibilities podcast, share it with a friend. Go ahead and share it on social media if you'd like. We just will take all the publicity we can get. But thank you again for tuning into this episode, we look forward to talking to you again real soon. Go ahead and have a great day.