

Issue 48

# REI Wealth Monthly



**SUNIL  
TULSIANI**



**ROBERT  
ALLEN**

## Meet Sunil Tulsiani...

Former Police Officer *Turned*  
**Millionaire Property Investor**

Learn About Sunil's Upcoming Event with Legendary Investor Robert Allen

# REI Wealth Monthly

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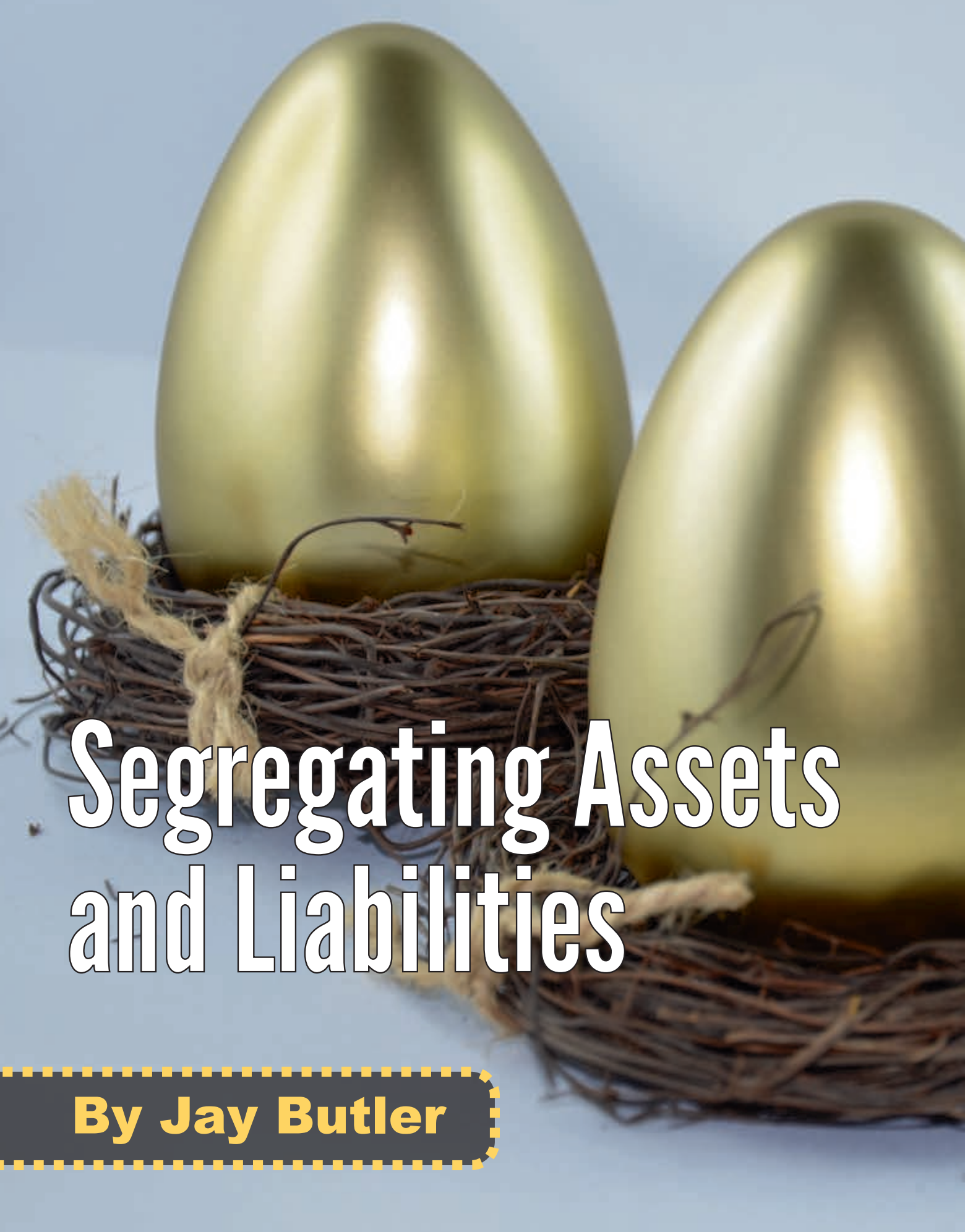
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# Segregating Assets and Liabilities

**By Jay Butler**



Is a 'Series' Limited Liability Company akin to putting all your eggs in one basket or can a Series LLC truly provide asset protection through the segregation of subsidiary assets and liabilities?

Originally designed to assist investment companies in the mutual fund industry avoid a multitude of SEC filings, Delaware introduced special interest legislation in 1996 to enable one company to act as an 'umbrella' for the activities of all their individual client funds. Such a strategy has also been successfully implemented internationally with 'Segregated Portfolio Companies' (British Virgin

Islands and Belize) and 'Protected Cell Companies' (Republic of Seychelles) for insurance companies and other industries servicing large quantities of related clientele.

The method of shielding large institutions from mass claims arising from catastrophic events was then brought to average individuals engaged in common business activities with varying degrees of risk such as real estate investing, construction and fund raising. However, many questions have since arisen on 'how to use' a Series LLC with regards to banking, documentation and taxation.

A Series LLC consists of a 'master' company and a series of 'subsidiary' companies, which may conduct unrelated business activities with differing ownership interests. Of the thirteen states which currently have legislation enacted for a Series LLC, only Illinois requires their subsidiaries to be registered with the Secretary of State

(which is advantageous, albeit more expensive). All other jurisdictions leave the responsibility of maintaining proper books and records with the company ownership.

Nevada added Series LLC legislation in 2005 and, along with a growing number of states, allows a Series LLC to enter into contracts, hold title to assets, grant security interests and to sue or be sued just like other types of entities. Although no court cases have reached any State Supreme Court to establish a precedence for the efficacy of a Series LLC, there is more than a decade of use to their credit. Nevada is currently working to pass legislation preventing any (future) out-of-state court rulings to be used into a Nevada court of law.

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Assets  
and Liabilities**

While many states have not yet enacted any Series LLC legislation in their state laws, or do not yet recognize the use of a Series LLC within their state, it is possible to avoid 'foreign filing' (ie. registering your entity in another state) by combining a Series LLC with other structures like Land Trusts, or on-the-ground 'data processing centers', or third-party management companies contracted to perform certain state-specific activities. Meaning, "Nevada stays in Nevada" and your 'Series' LLC should not be foreign-filed in another jurisdiction.

The tax treatment of a Series LLC is also becoming clearer as their use continues to spread. A Series LLC can be formed with a single-member (not recommended) or with multiple members and, if not acting as a disregarded entity for tax purposes, may choose to file either a 1065 (partnership), 1120 ("C" Corp) or 1120-S ("S" Corp)

tax election. In 2008, the IRS issued [Private Letter Ruling 200803004](#) which ruled that the Federal tax classification for a Series LLC (whether a disregarded entity, partnership or taxable association) shall be determined for each subsidiary independently. And, proposed [Treasury Regulation §301.7701-1\(a\)\(1\)](#) states subsidiaries shall likely be treated (for tax purposes) as a separate entity regardless of whether

the subsidiary is considered an entity under local law.

In structuring Nevada "Series" LLC's for our clients, we have found it beneficial to have the 'Master' LLC filing as a partnership (for tax purposes) utilizing a flow-through 1065 tax return and a Nevada "C" Corporation to act as the manager of the said 'Series' LLC, with or without any ownership interest. However you choose to structure your 'Series' LLC, it is important to note multiple options exist to take advantage of many retirement and tax-related benefits.

A 'Series' LLC is a specialized type of Limited Liability Company, which requires attention to detail. If you are not organized, then you should be sure to seek the assistance of bookkeeper and tax advisor capable of keeping your books and records in order. There are two primary benefits to a Series LLC and one responsibility which remains unchanged:

## Segregating Assets and Liabilities







## Segregating Assets and Liabilities

The first of two benefits is the ability to form and renew only one company, as opposed to multiple entities. This saves a tremendous amount of money in both formation costs and annual renewal filing fees.

The second benefit is that a Series LLC only requires one tax return to be filed by the master LLC. It is far less expensive to file one tax return, inclusive of financial statements for each subsidiary, than it is to file a multitude of (stand-alone) tax returns for the each and every subsidiary LLC.

The 'responsibility which remains unchanged' is that you must keep separate books and records

for each subsidiary, including operating agreements, minutes, meetings and resolutions. While some do not wish to hear this news, try and think of it this way, *"If you had 20 separate Limited Liability Companies, would you not have to maintain separate books and records for each company?"* The answer is 'yes' you would.

If it looks like a duck, walks like a duck and quacks like a duck, it's not a goat. If the Subsidiary companies of your Series LLC are to be respected as such, then your business formalities must be in order. Take these action steps into consideration when investigating the use of a Series LLC:

- Each subsidiary is a separate and distinct company from the master and keeps their own respective books and records.
- Separate EIN (Employer Identification Numbers) are obtained and maintained to segregate bank accounts of each subsidiary.
- All agreements, contracts, deeds and notes, etc are signed in the name of the respective subsidiary LLC.
- Each subsidiary name should include the name of the master in its title, thus providing notice or disclosure to the subsidiary's existence.  
i.e. "XYZ Subsidiary, a Series of (Name of Master) LLC"
- Each subsidiary is to be properly capitalized with no one subsidiary co-mingling funds or ownership interest in another.

We have a very simple philosophy in our company which states, "Documentation Beats Conversation". If each subsidiary is to be treated and respected as a separate company with its own legal personality, then it must behave accordingly. The more you are able to document the distinct business activities of each subsidiary, one-from-the-other, the greater your opportunity will be for a court of law to uphold segregating the assets and liabilities of each subsidiary company within your 'Series' LLC.

For more information on how to properly form and use a Series LLC, please contact our offices for your free private asset protection consultation.

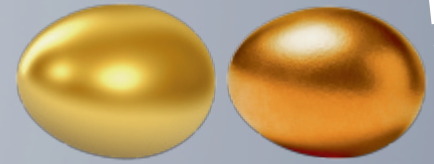
Sincerely, **Jay Butler**  
Managing Director



## Segregating Assets and Liabilities



## Jay Butler



Jay Butler is the Managing Director of Asset Protection Services of America, the former Managing Director of Asset Protection Services International, Ltd and the former Vice-President of Sales and Marketing for Corporate Support Services of Nevada Inc. Mr. Butler holds a Bachelor's Degree of Fine Arts (BFA) from Boston University.

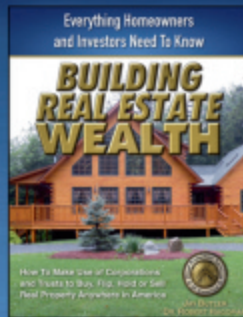
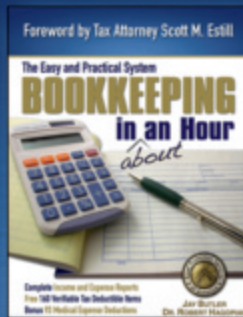
Jay has provided customized business entity structuring for clients in all 50 states along with some of the most respected names in the industry including the Jay Mitton organization "the father of asset protection" and Real Estate Investor Association seminars.

While working with Wealth Protection Concepts, LLC under the tutelage of the former Las Vegas and North Las Vegas city attorney Carl E. Lovell Jr. (now deceased from Leukemia), Mr. Butler was bestowed the title of "Asset Protection Planner" for his competency and experience. He also co-authored the first edition of his book "Cover Your Assets: Legal Authorities on Asset Protection, Tax Strategies and Estate Planning" © 2006 with Dr. Lovell.

While residing in Switzerland, Mr. Butler was the Associate Director of "CO-Handelszentrum GmbH" providing Swiss company formation and administration services and executed a full-range of fiduciary responsibilities including sales, client support and international corporate compliance services (KYC, FATCA, AML, FATF and Swiss Code of Obligations).

Jay builds his relationships through consistent attention to detail and reliable support. He has traveled extensively throughout the United States (having visited 49 of the 50 states), explored 36 nations worldwide, and has lived in a total of 7 countries throughout North America, Central America, the Middle East, North Africa and Europe.

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