

THE ABEL LAW GROUP, PLLC

MIKE A. ABEL

ATTORNEY AT LAW*

Gilbert Office
1734 E. Boston St. Ste. 103
Gilbert, AZ 85295

PHONE: (480)-478-4515
FAX: (480)-624-5968
mikeabel@yahoo.com

Chandler Office
1035 W. Queen Creek Rd. Ste. 101
Chandler, AZ 85248

*LL.M. International Taxation
Admitted in Arizona, Ohio and
South Carolina

HOW TO PROTECT YOUR IDENTITY

With so many prying eyes and public bullying going on in the world today it is no wonder that most people we work with want to keep their identity and personal information private? They want to keep their personal information out of the prying eyes of their friends, family or even the general public? You may be an entrepreneur opening a new business and you do not want your personal information disclosed to consumers, creditors, or someone who might eventually become unhappy with the company. Without taking steps to maintain your privacy everyone will be able to find where you live and what you own. Many clients ask me if there is a way to protect their privacy as there are so many publicly published documents involved in any business or real estate transaction. Corporate filings, Annual Reports, Deeds, Deeds of Trust, the list goes on and on. What can you do?

First, while no one can guarantee that someone, with enough money and time or through paid data scrapping tools, will not be able discover your identity however, with careful planning you can come close. Depending on how "private" you want to be, through effective planning we can almost make you disappear from public record. Let us give you a scenario. You are involved in a real estate transaction and you are a famous actor, singer, athlete, or just someone concerned with their safety or privacy and you do not want your identity to be disclosed. What do you do? Do you give someone a power of attorney? Maybe you should use a trust? Well, both of these are generally bad ways to go. First, if you use a POA, your name is still listed in the filing and as to a trust, many states require you to disclose the identities of the trustees and or beneficiaries with the filings. So how can we protect your unanimity?

The best way to see what is needed to maintain your privacy is to look backwards at the transaction. Let's further examine the above mentioned real estate purchase. The first step is to determine how you should take title to the property. What we do know is that you do not want to hold it personally, and a trust is also out of the question, so maybe you could use a corporation to hold the property. Well, unfortunately, this would more than likely have negative tax implications and more importantly, this would not maintain your privacy as every year you would have to file an annual report with the state's secretary of state's office listing the officers and directors of the company. So, in most situations that would be out.

What about a limited liability company (LLC)? Would that be the solution? In and of itself, probably not. While in many cases this is a great idea as the LLC can be disregarded for income tax purposes and reducing adverse tax consequences, however most states require you to list all of the members and managers of the company. If you intend to be one of the owners or managers of the company, your identity is blown.

Don't be alarmed though, although most states require the disclosure of the LLC's managers and members, a few states do not. Thus, we have a loophole to work this problem through. Although we must list the members and managers of the LLC in one state, what if that LLC is owned and managed by another out of state LLC in a location that does not require such disclosure? Say you are buying property or forming a new business in California. When we file for the formation of the California LLC the member and manager would be listed as a separate out of state LLC, which we formed in a jurisdiction that does not require such disclosure. If someone wants to see who owns that underlying LLC, they will have to look it up in that state's corporation commission website, and what would they find ... nothing. The only two things that would be listed is the attorney, as the "Organizer", and the statutory agent. If someone would contact the statutory agent, the only thing they could disclose is that the attorney hired them. If those nosey people or creditors contact your attorney, the attorney should say that the information is protected under attorney v. client privilege. An additional benefit is that the client can still own the out of state LLC in their family trust which maintains the integrity of their current estate plan.

So, to sum it up, if someone searched corporate records in both states they will not be able to find your identity! While this takes care of someone finding out who owns the company(ies), what about recorded documents? When someone buys, or sells a house, there are a lot of documents to sign, some of which may show up in public record. The type and amount of documentation depends on if the transaction is cash or a financed purchase.

If it is a cash purchase, we can easily manage the situation. What most of most clients do is list their attorney as a manager of either one of the LLCs. In doing so, their attorney can sign the contract, Closing Statement, Affidavit of Disclosure, or any other document needed throughout the process. This keeps their names off of any document related to the sale. Even if someone is very clever and looks at all of the documents at the county Recorder's office, or even if they rifle through your files, or the title company's, they would not see your name, address, or identity anywhere. It is like you are a ghost.

What if you want to finance the transaction? This does become trickier, and a little more expensive, but depending on the lender's requirements, this too can also be solved. Depending on how sophisticated the lender is, you can generally have two options. First, some lenders will allow you to use the above structure, underwrite the loan as a commercial purchase allowing their attorney to sign all of the loan documents, except the personal guarantee, which will only be evidenced in the lender's file.

The second, and slightly more expensive way to get to our final result is to form a Land Trust in which the beneficiary is the out of state LLC. While Land Trusts can sometimes be controversially due to their masking of ownership, many of our clients use them. The reason they are less effective in a few jurisdictions is some states' require them to disclose the beneficiary, but what if the beneficiary is your out of state LLC? What would someone find on public record? The out of state LLC and not you.

These are just a few of the ways we can mask your identity of your. While some people simply choose to refuse to list their trust beneficiaries on record if required by the state, or simply try to buy the property through their out of state LLC directly, this can cause issues in the future if a lawsuit arises. Will they have standing to sue? Will the disregarding of the states statutes related to foreign registration lead to an adverse judgment? What effect will choice of law application have if litigation would ever arise? Will it affect title insurance coverage? These are just some of the questions that could arise that usually move these options to the bottom of the list.

We use the same procedures when someone wants to start a new business or hold an interest in a company that some people may find controversial. Personally I have had several clients that own interest in medical and non-medical marijuana dispensaries. Most of them do not want their family, neighbors, the public, or their competitors to know their name or address. Just like in the above referenced real estate transaction, I used a similar structure so that their identity is not reflected on public record.

While there are numerous ways to maintain your privacy, these are just a couple of the ways I have found to be quite successful without costing our clients an arm and a leg. Oh, and what about the manager? You may be leery of having your attorney hanging around as your company's manager. No problem, after the closing occurs, they simply prepare an amendment removing them as a manger. Problem solved!