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Part 1

Introduction to Private Retirement Trusts (PRTs)

The use of the Private Retirement Trust in California: Statutory–Based Exemption Planning Under CCP Section 704.115

PRESENTED BY
DUSTIN NICOLS

WEBINAR

PRIVATE RETIREMENT TRUST SERIES

Private Retirement Trust Series

Part 1

Introduction to
Private Retirement Trusts
July 8, 2025 | 12PM PST

Part 2

Planning a Retirement
Purpose with
Private Retirement Trusts
July 10, 2025 | 12PM PST

Part 3

Legal Logistics &
Implementation of
Private Retirement Trusts
July 15, 2025 | 12PM PST

Part 4

Private Retirement Trust
Funding Basics
July 17, 2025 | 12PM PST

Have a Question?

- Please use the **Q&A panel** to submit your questions at any time during the session.
- Questions will be answered **live throughout the session** as time allows, or **via follow-up after the webinar** if we don't get to them all.
- Thank you for joining us today!

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Work with people who understand trust.

Peak Trust Company sets itself apart by providing:

- Prompt responses to complex questions
- Fast and efficient account opening process
- Direct access to expert team as a resource for help with new jurisdictions and advanced techniques

Founded in 1997 in Anchorage, Alaska

State chartered in top jurisdictions **Alaska and Nevada**

Works with **1,500+ estate planners** across the nation

Serves **2,500+ families** residing **in all 50 states** and many countries

$12 billion+ assets under administration

50 employees, no commissioned sales

Privately held

Today's Speaker

Dustin I. Nichols, Esq.

Managing Attorney

The Law Office of Dustin I. Nichols, A PC

Dustin I. Nichols is the Managing Attorney at The Law Office of Dustin I. Nichols, A PC in Newport Beach, California. For over 30 years, he has provided clients with common sense and uncommon thinking in integrated domestic and foreign corporate, estate, and business planning strategies, with a focus on niche retirement planning for California business owners. His practice spans entity formation, estate planning, trust administration, transactional matters, litigation, risk mitigation, and creditor exemption planning. He regularly advises on Integrated Estate, Corporate, and Integrated Exemption Planning structures, including the California Private Retirement Trust (PRT), and is often called upon by bankruptcy and litigation attorneys to assess the validity of complex asset protection plans. His deep knowledge of digital assets and blockchain technology enables him to offer clients the unique option of funding PRTs with cryptocurrency.

Dustin is a published author and frequent speaker on asset protection and retention strategies, having been featured in The Orange County Lawyer, Bloomberg Tax, and First American Trust Quarterly. He leads educational workshops and lunch-and-learns for CPA firms, RIAs, and insurance professionals on the PRT. He holds a Juris Doctor from Western State University College of Law and a Bachelor of Arts in Political Science from California State University, Northridge. He is a member of the California State Bar, certified before the U.S. Tax Court, and licensed to practice before the United States District Courts in the Eastern and Central Districts of California.

Exemption Planning

- A Safe & Effective Solution for Wealth Preservation
  - Exemptions are state law rights created to keep certain assets protected
  - Every state uses different creditor exemptions and amounts
  - Doesn’t disrupt your world – let’s you keep control and build it your way BEFORE you get sued
- Have you maximized all your Creditor Exemptions?

New Law: A.B. No. 2837

- AB 2837 was signed into law on September 24, 2024 by the Governor Gavin Newsom and will become effective on January 1, 2025.
- AB 2837 makes certain changes to the California Enforcement of Judgments Law ("EJL"), including changes to CCP § 704.115.
- The Private Retirement Trust is governed by CCP § 704.115, however, the changes made to the statute relate to tax-qualified retirement plans and DO NOT impact the exemption protection of non-qualified plans such as the Private Retirement Trust.

Changes to CCP § 704.115

- Prior to AB 2837, distributions from tax qualified plans under Sections 403, 414, or 457 of the Internal Revenue Code of 1986, as amended.
- Effective January 1, 2025, select tax qualified plans will become subject to the "Means Test" of CCP § 704.115(e).
- The "Means Test" provides that the amounts in tax qualified plans and IRAs are exempt <u>only to the extent necessary to provide for the support of the judgment debtor</u> when the judgment debtor retires and for the support of the spouse and dependents of the judgment debtor, <u>taking into account all resources</u> that are likely to be available for the support of the judgment debtor when the judgment debtor retires.

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Changes to CCP § 704.115 (continued)

- The "Means Test" is applied at the time money is distributed from the plan, which means that ERISA anti-alienation provisions still protect money in tax qualified plans while the money remains in the plan.
- After AB 2837, bankruptcy may provide better protection for select tax qualified plans than California law, however, bankruptcy is not an option for all clients.
- The Private Retirement Trust provides the trifecta of retirement exemption protection for California residents *(protection of the assets in the plan, distributions from the plan, and the death benefit).*

Private Retirement Plan Exemption: CCP § 704.115(b)

"[a]ll amounts held, controlled, or in process of distribution by a private retirement plan, for the payment of benefits as an annuity, pension, retirement allowance, disability payment, or death benefit from a private retirement plan are exempt."

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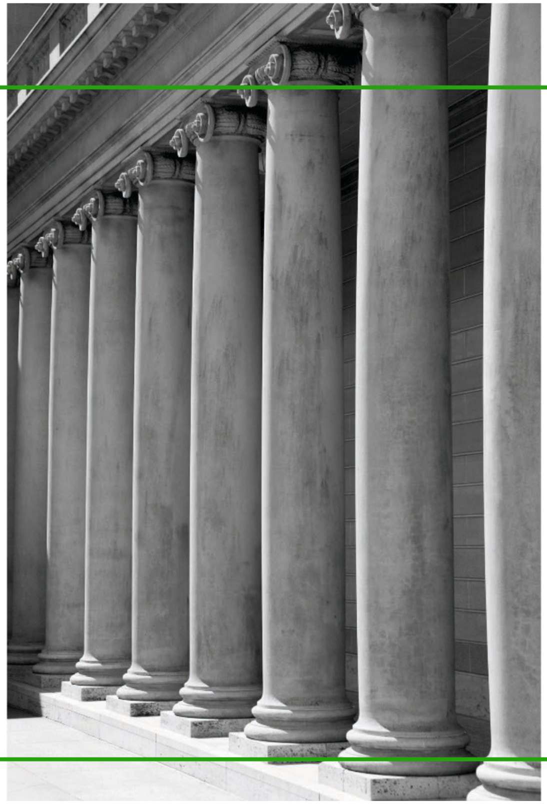
Purpose of the PRT Exemption

- The purpose of the PRT is to protect a debtor from his or her creditors and his or her lifestyle through retirement
- The PRT allows Californians to convert their "exposed" personal assets to "exempt" private retirement assets by enhancing (using in advance) their California exemption
- To be construed in a light most favorable to a debtor (In re Dudley, (9th Cir. 2001) 249 F.3d 1170)



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Additional PRT Features

- 100% exempt *if designed* and *used* for retirement purposes and held by the plan or distributed from the plan
  - Exception Creditors: IRS & judgments for child, family, and spousal support

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Protection Benefits of the PRT

If properly set-up and administered, the PRT can:

- Protect appropriately funded assets from bankruptcies and civil judgments
- Protect all plan values and growth during accumulation
- Protect future contributions (using a secured promissory note)
- Continue protection of plan funds after distribution
- Protect the death benefit

Additional PRT Features

- Re-characterization of assets vs. fraudulent conveyance
- Allows for trust loans to help maintain cash flow
- No ERISA plan penalties, limits or rules
- No participation requirements
- Client can self-direct plan assets, investments and taxation
- PRT is tax neutral: Participants continue to receive tax benefits just as if owned personally

The PRT Process

PHASE 1:
Due Diligence Engagement

- Exemption Asset Analysis
- Litigation Analysis

PHASE 2:
PRT Engagement

- Retirement Appraisal
- Creation & Implementation

PHASE 3:
Annual PRT Administration

- PRTs must be independently administered

Phase 1: Exemption Assessment Analysis

- Lifestyles and Assets
- Exemption Assessment Calculator & Report
  - Pre-PRT Exposure
  - Exemption Protection Potential
- Solvency Review and Affidavit
- Litigation and/or Potential Liability Analysis (if necessary)

Phase 2: Retirement Appraisal & Plan

- Integrates exemption diagnostics with traditional retirement plan modeling
- The resulting calculations **prove-up** the Participant's **retirement need** and provide a roadmap for the appropriate annual funding that would be required to fulfill that need
- Sets the stage for the Participant's retirement story

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Phase 3: Creation of a PRT

CCP § 704.115(a) doesn't define a PRT – Case law provides guidance:

- A Private Retirement Plan (one per Company)
- A Private Retirement Trust to hold the retirement assets (one per Employee)
- PRT must be sponsored by an Employer Company
- Managed by an independent trustee or custodian
- To provide retirement benefits "only" to an employed person
- Plan can be ERISA qualified or not qualified
  - Retirement plan documentation whether qualified or non-qualified
  - Schedule or formula of payments to be made to the Plan by employee or employer or both
  - Schedule or formula of payments to participant at retirement

The Private Retirement Plan

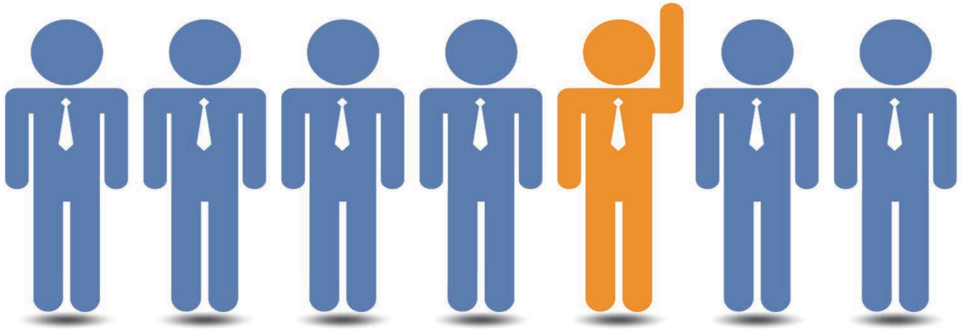
- Sponsored by an Employer Company – may be wholly owned corporation
- Establish policies and procedures regarding:
  - Eligibility and participation in the Plan
  - Contributions – permitted and prohibited
  - Recharacterization of assets
  - Options regarding distributions
  - Plan loans
  - Administrative matters

The Private Retirement Trust (PRT)

- Trust created for benefit of Participant
- Exemption protection vehicle that will hold the retirement assets
- Contains customized provisions based on the particular needs of each beneficiary
- Establishes the policies and procedures for the administration of the retirement assets such as funding and distributions
- Requires a skillful and proficient PRT Integrated Team to realize its purpose

The Private Retirement Plan Trust Adoption Agreement

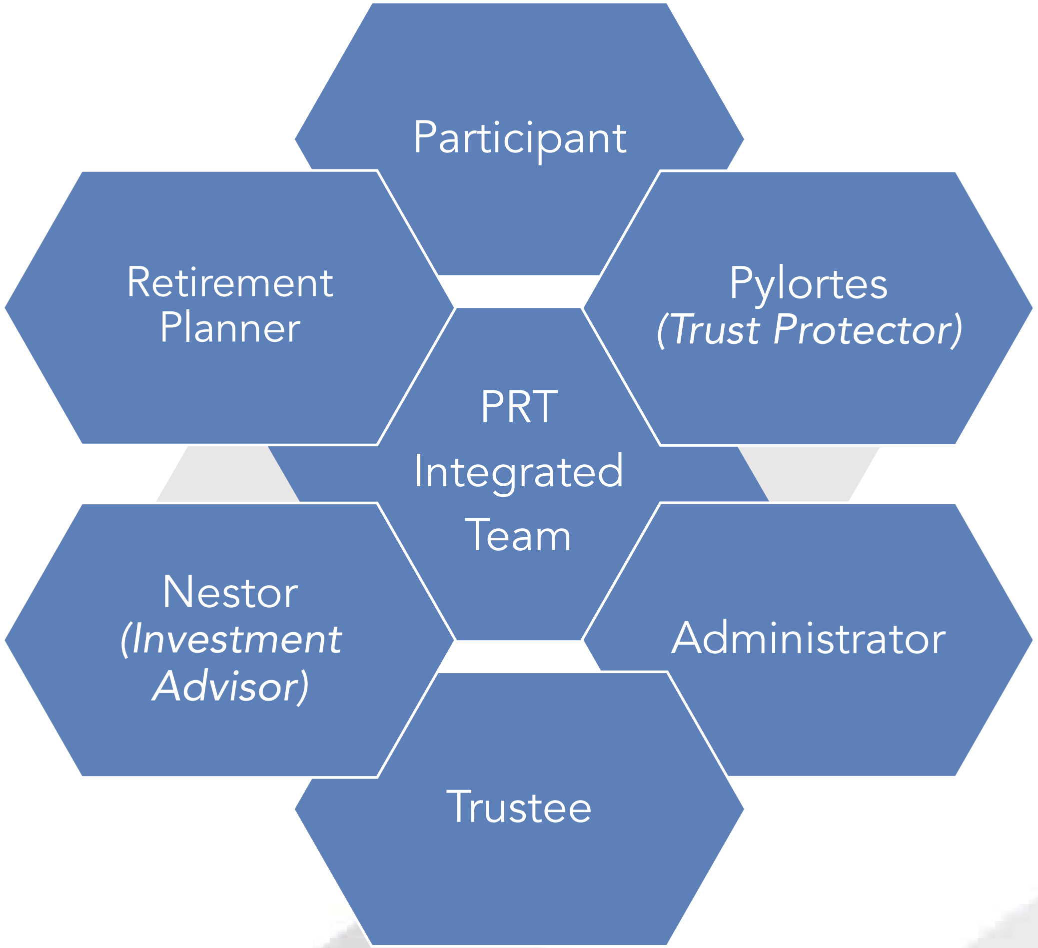
- Sponsoring Company adopts the Plan
- Designates the Plan Participants
- Specifies particular terms for the Plan such as retirement age, vesting options and permitted contributions



Implementation of the PRT

Proper structure, funding and administration of the PRT requires extensive coordination and collaboration by the PRT Integrated Team

PRT Integrated Team - Nomination & Appointment



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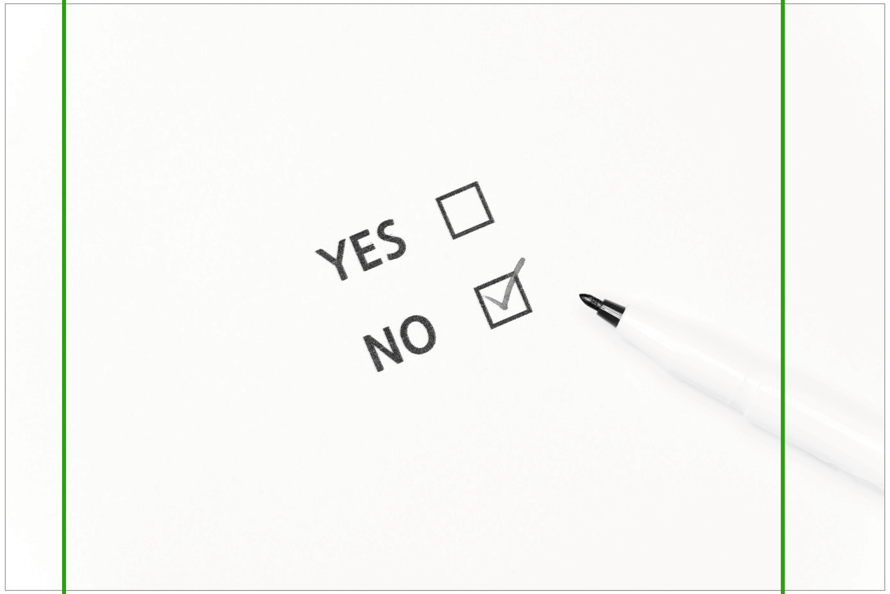
Funding the PRT

Any appreciating capital assets can be funded and protected

Personal Assets	Business Assets
▪ Phantom Stock Plan benefits ▪ Supplemental Executive Retirement Plan benefits (SERPs) ▪ Cash ▪ Stocks and Bonds ▪ Life Insurance and Annuities ▪ Real Estate Investments ▪ Notes	▪ Business Profits ▪ Corporate Stocks ▪ Notes Receivable ▪ Commercial Property

Assets that are Not Appropriate for Funding the PRT

- Personal Use Assets
  - Primary Residence
  - Vacation Home
  - Boats | RV | Recreational Vehicles
  - Jewelry
- Non-cash Flowing Assets
  - Vacant Land
  - Time Shares
- Luxury Assets
  - Ferrari
  - Classic Cars
  - Yacht



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Annual PRT Administration

- Confirm Plan is being followed and activity is documented
- Ensure annual funding to make certain the Participant's retirement goals are realized
- Evaluate the Retirement Appraisal in light of the Participant's changed circumstances (such as net worth, income, and expenses) to maximize exemption potential and avoid overfunding

The Result

Protect a Participant’s retirement assets by recharacterizing the assets as exempt under CCP § 704.115(b)

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Recap of Exemption Protection

The assets in a PRT only benefit from the exemption protection of CCP § 704.115(b) if the PRT is:

- Properly designed and used
- Properly funded
- Annually administered to maintain compliance with applicable laws

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Connect with Dustin

The Law Office of Dustin I. Nichols, A PC

For a complimentary 30-minute
Integrated Exemption Planning consultation
with Dustin Nichols, contact

Sarah Bracken at SarahBracken@dinapc.com

or call 949.240.1101

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Thank you for attending!

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