



Planning for Real Estate Investments

Despite recent real estate depreciation throughout Tampa Bay, it has become common to own real estate as part of one's investment portfolio. In doing so, one should consider the potential liability issues that may arise with ownership of investment real estate. Under Florida law, the owner of real property may be held liable for injuries resulting from activities or conditions on the property under the theory of premises liability. If investment real estate is owned individually, it will pose a liability risk to one's personal assets to the extent not covered by insurance.

In order to protect one's assets from these types of claims, an entity, such as a limited liability company or a limited liability partnership, is often used to hold and manage real estate. By doing so, any claims arising from the real estate would be limited to liability insurance and the property itself.

A limited liability company ("LLC") is an unincorporated entity formed by one or more persons by entering into an operating agreement and filing articles of organization with the State of Florida. Members of an LLC are protected from the LLC's obligations and from the liabilities of other members, although no protection is afforded to a member for his or her own malfeasance. This type of liability protection is similar to the liability protection available to shareholders of a corporation.

An LLC may be managed by its members or by selected managers. If the LLC is member-managed, it operates much like a partnership. Each member has equal rights in the decision making process of the company. If the members choose, they may elect a manager or managers to act in a capacity similar to a corporation's board of directors, who would be in charge of the LLC's affairs.

An LLC can be created and maintained by one person. This is also the case with a corporation, although an LLC is generally more flexible than a corporation. If created by one person, the LLC is treated as a "disregarded entity" for tax purposes, meaning that all of its income



and deductions are reported directly on that person's individual tax return. If created by more than one person, an LLC may be taxed as either a corporation or a partnership.

A limited liability partnership ("LLP") is a general partnership that registers with the State of Florida to obtain limited liability status. Because the LLP is registered as such, its partners are protected from the partnership's obligations and from the liabilities of other partners, although no protection is afforded to a partner for his or her own malfeasance. Like the LLC, this type of liability protection is similar to the liability protection available to shareholders of a corporation.

The income and deductions from the partnership are not subject to an entity-level tax. Rather each passes through to the partners, all of whom are involved in the management and control of the LLP.

Each entity has certain drawbacks. For example, LLCs require the filing of annual reports each year, and LLP registration must be renewed each year. Failure to do so in any given year will result in the LLP being treated as a general partnership, and the liability protection will not be available for the partners at that time. Lastly, transfers of real estate to either entity are subject to the documentary stamp tax.

Of course, the use of an entity to hold and manage one's investment real estate should be explored on a case-by-case basis to determine the applicability of this type of planning.



Joshua T. Keleske, P.L. serves families in the Tampa Bay area with their estate planning, estate and trust administration, and business planning needs. If you have questions regarding how we can be of assistance to you and your family, please contact us at anytime at 813-254-0044. We are happy to answer your questions and arrange for an appointment to speak with you.

Please also visit www.trustedcounselors.com to learn more about Joshua T. Keleske, P.L.



Serving Families in the Bay Area

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