KLF Legal Briefs

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KLF

SPECIAL POINTS OF INTEREST:

- **LLC's are a very popular form of business structure.**
- **LLC Operating Agreements can be structured to resemble a number of traditional business arrangements.**
- **Most property is subject to the PA Inheritance Tax.**
- **HOA's should insist on a turnover of control within the guidelines of the UPCA.**

INSIDE THIS ISSUE:

Limited Liability Companies

Limited Liability Companies, or LLC's, have become popular forms of business ownership over the years because of their flexibility regarding internal governance, pass-thru taxation, and protection from personal liability. LLC's are created by filing a "Certificate of Organization" with the Pennsylvania Department of State Corporation Bureau. However, prior to filing the Certificate, an understanding of the various forms of LLC's is essential.

Owners of LLC's are considered "members". A single-member LLC is the simplest form to structure, and in many ways will resemble a sole proprietorship if it is member-managed as opposed to manager-managed.

The corporate model form of LLC is similar to a corporation, whereby the board of managers of the LLC operate in similar fashion to a corporate board of directors. The members of the LLC are treating similar to corporate shareholders with the same voting rights.

The General Partnership form is suitable for multiple-member, member-managed LLC's, and will resemble a General Partnership in terms of governance. Under this model, each member is similar to a "general partner". The members are collectively responsible for the day-to-day operations of the business. One key distinction is that LLC members have protection from personal liability, whereby true general partners do not.

Certificate of Organization
Of
XYZ Company
(a Pennsylvania limited liability company)

The Limited Partnership model resembles a typical limited partnership whereby one general partner undertakes day-to-day operations, while a number of limited partners have more passive financial interests in the company.

Other LLC forms of governance can include Family LLC's, and LLC's with multiple classes of members.

Whatever format you choose, the appropriate LLC Operating Agreement needs to drafted to reflect the form of governance the LLC will follow.

Pennsylvania Inheritance Tax

Many people are under the mistaken belief that if they receive property outside of the probate process as a named beneficiary of an IRA or other retirement account, then they do not have to pay Pennsylvania Inheritance Tax. Nothing could be further from the truth. While the fate of the Federal Estate Tax is still in limbo, the Pennsylvania Inheritance Tax is alive and kicking!

What rate you pay depends on your relationship to the deceased:

- Spouse/Charity: 0%
- Children/Grandchildren/ Parents: 4.5%
- Siblings: 12%
- All others: 15%

Most property is subject to the tax. Jointly held property, such as a bank account, is taxed at the share the deceased owned only. The tax must be paid within 9 months after the date of death, but you can receive a discount of 5% if it is paid within 3 months.

As always, it is best to consult an estate attorney regarding your rights as an heir or beneficiary.

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Koeberle Law Firm, LLC

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- **This newsletter is only intended to provide general information and is not intended to provide specific legal advice.**

Turn Over of Control in Planned Communities under the UPCA

Many homeowners today are living in planned communities governed by a homeowners association ("HOA") and subject to the Uniform Planned Community Act ("UPCA"). Typically the developer, otherwise know as the declarant, initially controls the HOA and the common elements of the planned community. In order to prevent a developer from controlling the HOA, common elements, and lives of the homeowners into perpetuity, the UPCA provides for the turn-over of control from the developer to the homeowners.

Section 5303(C) of the Act provides that "Any period of declarant control extends from the date of the first conveyance of a unit to a person other than a declarant for a period of not more than:

(i) seven years in the case of a flexible planned community containing convertible real estate or to which additional real estate may be added; and

(ii) five years in the case of any other planned community."

Section 5303(C) further provides that "Regardless of the period provided in the declaration, a period of declarant control terminates no later than the

earlier of:

(i) sixty days after conveyance of 75% of the units which may be created to unit owners other than a declarant;

(ii) two years after all declarants have ceased to offer units for sale in the ordinary course of business; or

(iii) two years after any development right to add new units was last exercised.

The concept of mandatory turnover of control is also addressed in the *Restatement Third, of Property (Servitudes)* that provides that "After the time necessary to protect its interests in completing and marketing the project, the developer has a duty to transfer the common property to the association…".

So, worse case scenario, a developer can only control the homeowners lives for no more than 7 years. After that, you're on your own.