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# A few other reasons to use a limited liability company to hold real estate

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Most savvy real estate owners and developers understand that using a limited liability company to hold real estate affords them significant protection against personal liability. Yet, there is still reluctance among some to use this form of ownership, opting instead for more traditional arrangements, such as sole proprietorships, realty trusts and partnerships.

The reason for this is generally two-fold: cost and complexity. Creating an LLC (even a single member LLC) can cost over several thousands of dollars in legal fees, filing fees and other start-up costs. In New Hampshire, the initial conveyance of the property to the LLC will usually trigger a real estate transfer tax (equal to 1.5% of the property's value) as well. LLCs can appear complex; they require routine legal maintenance and usually a detailed, written operating agreement. Given these costs and complexities, together with the fact that insurance will cover a great deal of the risk of property ownership, why bother with an LLC?

Here are few reasons that you may not have thought about:

Management - With an LLC, management can be centralized. It is typical for an LLC to have a single manager with broad authority to handle the day-to-day operations of the real estate. Although not an issue for sole proprietorships, the legal rules governing realty trusts and partnerships are not entirely conducive to efficient management of real estate. Such rules may require the consent of all of the owners to undertake most actions and can be used by the holders of minority interests to hamper sound business administration and planning.

Perpetual Existence - Unlike with many other forms of ownership, an LLC will not necessarily terminate upon the death of its owner. Used in conjunction with sound estate planning techniques, this is a powerful tool in ensuring the success of a real estate venture over multiple generations. Succession planning is more complicated for sole proprietorships and other ownership forms.

Estate Tax Consequences - Using an LLC in conjunction with sound estate planning techniques also will maximize the owner's ability to avoid or minimize estate taxes. Through annual gifting of membership interests to the owner's beneficiaries, much or all of the value of the real estate can be removed efficiently from the owner's taxable estate. Such gifting is difficult with other forms of ownership and do not maximize the ability to leverage valuation discounts.

Ownership Flexibility - LLCs can be structured in a variety of different ways, providing flexible ownership arrangements and opportunities for equity investors that cannot be created with other more traditional forms of ownership. For example, an LLC can have distinct classes of members, each with different governance and financial rights and interests.

Financing - Many mortgage lenders want to make sure that their collateral will not be adversely affected by some condition or circumstance on other property that its borrower may own. It makes sense therefore to create a separate LLC for each individual parcel within a real estate portfolio. By segregating the properties, this also minimizes the lender's bankruptcy risks and allows the lender to better monitor and account for the property's income and expenses. Such segregation is impossible with sole proprietorships and limited with respect to trusts and partnerships.

Ease of Transfers - LLCs can facilitate easier transfers than are usually the case with other types of entities. For example, when selling or financing property by a realty trust, it is usually necessary to obtain the consent of all the trustees and beneficial interest holders. Similarly, the sale or financing of partnership property may require the consent of all the partners. With a properly written LLC agreement, the sale or financing of property by an LLC may simply require a manager's certificate affirming the manager's authority to sell.

There is no simple answer to which legal vehicle is right for any given real estate situation. The issues discussed above, as well as the liability issues, tax considerations, and other concerns, will vary depending on the type of property involved and, more importantly, the particular needs and objectives of the owner.

The larger point, however, is that not using an LLC to hold real estate simply due to the upfront costs and some complexity may be short-sighted. In the long-run, it may well be better to pay the up-front costs and deal with the complex issues with an LLC early on in order to reap long-term benefits.

As always, relying on a team of experienced legal, tax, accounting, insurance and other real estate professionals is critical.

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