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LIMITED LIABILITY COMPANIES: THE ENTITY OF CHOICE FOR ESTATE AND BUSINESS PLANNING BY STEPHEN TAYLOR

The limited liability company ("LLC") is rapidly becoming one of the most popular, as well as useful, tools for estate and business succession planners and their clients. As the Virginia Limited Liability Company Act celebrates its twentieth anniversary this year, it is a good time to examine why the LLC has become the entity of choice for businesses in Virginia and North Carolina, as well as many other states throughout the country.

As a point of reference, the most common types of business entities are as follows:

- A **sole proprietorship** is an unincorporated business that is owned and operated by a single individual. This individual is entitled to all profits, but is also personally liable for all obligations of the sole proprietorship.
- A **general partnership** is an association of two or more individuals to carry on, as co-owners, a business for profit. Generally, each partner shares equally in the profits and losses of the partnership, and each is personally liable for all obligations of the partnership.
- A **limited partnership** is similar to a general partnership, but must maintain at least one general partner and one limited partner. General partners maintain management and control of the limited partnership, while the limited partners contribute the financial resources for operation of the partnership. In most cases, general partners are personally liable for the obligations of the partnership, while the limited partners are generally liable only to the extent of their investment.
- A **corporation** is an entity with distinct management and ownership. Corporations are typically classified as either a **stock corporation**, a **non-stock corporation**, or a **professional corporation**. While the

owners are generally shielded from liability, corporations are often complex and cumbersome entities, which must conform to extensive federal and state laws governing their existence and operation.

A **limited liability company** can be viewed as a hybrid of a partnership and a corporation, extracting the benefits of those entities while avoiding many of their disadvantages. While the owners of sole proprietorships and general partnerships are subject to personal liability, an LLC is a separate legal entity that limits the personal liability of its owners, similar to a corporation. But while corporations are subject to double taxation, an LLC has the option of classifying itself as a partnership for income tax purposes, meaning that it will be taxed only on one level.

What, you might ask, does this have to do with estate and business succession planning? To answer this question, consider an individual who owns real estate that is used as rental property. If the rental property is titled in the owner's individual name and one of the tenants suffers an injury on the property, then the owner may be personally liable for the tenant's damages. This means that any judgment will be satisfied from the owner's personal assets, bank accounts, salary, etc. Conversely, if the house is titled in the name of an LLC created by the property owner, then any judgment would be against the LLC and not against the owner personally.

The other primary advantage of an LLC is the tax benefit. For example, a corporation provides limited liability to its owners (i.e., the shareholders), but is subject to double taxation, meaning that it is taxed at the corporate level (i.e., the corporation gets taxed on its income) as well as the owner level (i.e., the shareholders then pay tax on the income they receive from the corporation). On the other hand, the income received by an LLC (such as rental income) is taxed only at the individual owner level. The owner of the LLC will report any income the owner receives from the LLC on the owner's personal income tax return, but the LLC itself will not incur any tax liability.

Finally, the advantages of an LLC are not limited to limited liability and favorable tax treatment. LLCs also provide:

- Greater flexibility in structure;
- Centralized management;
- Potential continuity of life; and
- Free transferability of membership interest.

All of this has led to an explosion in the popularity of LLCs. From 2004 to 2007, LLCs were created in greater numbers than were corporations in both Virginia (over 53,000 more LLCs created) and North Carolina (over 34,000 more LLCs created).

The attorneys at Oast & Hook are available to discuss estate and business succession planning, and can assist you with the process of creating and implementing an LLC or another type of business entity in Virginia or North Carolina.

Stephen Taylor is an elder law attorney with Oast & Hook, and he practices in the areas of estate planning, estate and trust administration, business planning, and litigation. Mr. Taylor is licensed to practice law in Virginia and North Carolina.

Announcements

Oast & Hook is pleased to announce that Letha Sgritta McDowell has been elected its Treasurer.

Oast & Hook will hold its quarterly Social Workers and Administrators Breakfast on Thursday, August 11th, at the Springhill Suites, 6350 Newtown Road, Norfolk, Virginia 23502. The guest speaker is Margaret A. Sgritta, Pharm.D., Certified Geriatric Pharmacist, who will present "Medications in the Elderly: The Good, The Bad, and The Ugly," which will focus on pharmacology and how medications affect the elderly. Registration begins at 8:00 a.m., and the presentation begins at 8:30 a.m. Questions will be answered from 9:30 a.m. to 10:00 a.m. The breakfast is designed to be an educational opportunity for area professionals who work with seniors, the disabled, and their families. Seats are limited, so please register early for this breakfast by phoning Darcee Hale at 757-399-7506.

Ask Allie

O&H: Allie, we've heard that there is a 101st Senator in the United States Senate. Please tell us about him.

Allie: Sure! Dakota is a Bichon Friese dog who belongs to Sen. Kent Conrad of North Dakota. Senator Conrad is the Chairman of the Senate Budget Committee and has been very involved with the debt ceiling and budget negotiations in Congress. Dakota is known as the 101st Senator, and as such he is welcomed throughout the Capitol, although he cannot go on to the floor of the Senate. When the "Gang of Six" was having meetings, the Senators often asked if Dakota would be attending. Senator Conrad says Dakota is a great stress reliever, and he is glad to have Dakota in the Senate. To see Dakota in action, please visit www.clicker.com/tv/dateline-nbc/dakota-the-dog-takes-capitol-hill-1999722. What a great story! Nice to see that Dakota gets the opportunity to nap during some of those meetings. I bet the participants want to do the same from time to time! Speaking of nap. See you next week!

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