

Advanced Partnerships, LLCs and LLPs: Organization and Operation in Florida

Choosing the Entity
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Choosing The Entity

- Have choices of many different types of entities for business in Florida
- Sole Proprietorship
- General Partnership
- Limited Partnership
- Corporations (both Subchapter C and S)
- Limited Liability Companies

Sole Proprietorship

- No formal filings required with State
- No liability shield-owner of business personally liable for all debts and liabilities
- Profits and losses flow through to owner in single level of taxation

General Partnerships

- Two or more owners agree to share profits and losses
 - Each partner is agent of partnership and can bind partnership
 - Single level of pass through taxation to partners based upon their percentage of partnership interests
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Subchapter C Corporation

- Owners are shareholders and do not necessarily participate in management
 - Shareholders elect board of directors which in turn elects officers to run corporation
 - Must file with State and maintain many levels of formal documents including meeting minutes, etc.
 - Two levels of taxation, at corporate level and then at individual level if dividends issued
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Subchapter S Corporation

- Corporation like C corporation, but the corporation files with the IRS to be treated as single level taxpayer where profits and losses pass through to shareholders
- Many requirements in order to maintain S class status (limits on number of shareholders and classes of stock)
- Same corporate formalities as C corporation must be observed

Limited Partnerships

- Has Limited Partners and at least one General Partner
- General Partner is liable for all debts and liabilities
- Limited Partners can't actively participate in management of partnership activities
- Both Limited and General Partners are given pass through tax treatment

Limited Liability Companies

- Provides limited liability of Members and an opportunity for all Members to participate in management decisions
 - Can elect between partnership or corporate tax treatment
 - Contrary to S corporation, no limits on number of members or type of members or types of stock
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Limited Liability Companies

- Members may agree upon different distributional interests to Members (i.e. may distribute interests unequally based upon the capital investment of each member)
 - Asset protection benefits from creditors-creditors can get a charging order as to Members interest, but can't levy and sell like stock in corporation
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Limited Liability Companies

- Limited liability benefits-uses same standard for piercing the corporate veil as with corporations-the *Dania Jai-Alai* standard
- Can have single member LLC
- Elimination of intangible taxes in Florida eliminates one of disadvantages

Limited Liability Companies

- Advantage over LLP, in LLP context in order to have limited liability must limit yourself in your ability to manage entity and make decisions
- In LLC, get to have active role in managing company and still limit liability

Recent Legislation

- Changes made to LLC statute effective January 1, 2006:
- Minor changes made to the following statutes
- Have included with materials the Florida session laws to see the additions and deletions to each section

Recent Legislation

- Minor additions made to:
- Fla. Stat. § 608.407-Articles of Organization
- Fla. Stat. § 608.4225-General Standards for Managers and Managing Members
- Fla. Stat. §§ 608.438 through 608.439 relating to Mergers of LLCs
- Fla. Stat. § 608.452-Fee of the Department of State

Major Additions to LLC Statute

- Effective January 1, 2006
 - Added Fla. Stat. §§ 608.4351 through 608.43595 providing LLC Members with appraisal rights and payment of the fair value of the Member's interest in the event of a merger or conversion of the LLC
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Major Additions to LLC Statute

- Effective January 1, 2006
 - Addition of Fla. Stat. §§ 608.4401 through 608.4404 providing for conversion of a domestic limited liability company into another business entity
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Recent Cases

- Most cases referenced in the relevant portion of the presentation
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Recent Cases

- SEC v. Diversified Corporate Consulting Group***, 378 F.3d 1219 (11th Cir. 2004)
 - Court allowed penalties to be awarded in favor of SEC and against administratively dissolved LLC, since pursuant to Fla. Stat. § 608.4482, Company can seek reinstatement at any time and it relates back to the effective date of dissolution
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Recent Cases

- ***In re: BFP Investments, Ltd.*** , 149 Fed. Appx. 828 (11th Cir. 2005)
 - Judgment against General Partner of LP is not a lien against real estate titled in name of LP
 - "It is well established that a creditor of an individual partner cannot levy directly on a partner's interest in a partnership, nor on the partnership assets."
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