

Guardianship-Avoid It If You Can

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A new type of entity has become popular around the country. However, the Limited Liability Company (LLC) was not a viable choice of entity in Florida until this year. Until now, we used only corporations and limited liability partnerships to protect people from liability. But now the LLC is frequently used instead of those other entities.

One reason we did not previously favor the LLC was that the state of Florida charged a state corporate tax on LLC's, which it did not charge on any other type of entity. It finally did away with that tax last year. But then the LLC was still not popular because the statute was not very well written. But in October of 1999, the legislature took the best of statutes from other states and created a very complete and useful new LLC statute.

The most common use of the LLC is to own real estate or income producing assets. The S corporation is still useful for carrying on a business owned by only a few shareholders. But the LLC is even easier to create than the S corporation and has several advantages. It is created by filing Articles of Organization. While a corporation has Bylaws, Organizational Minutes, Stock Certificates, and a Shareholders' Agreement, all these items are combined into an Operating Agreement in the LLC. An S corporation can only be owned by citizens or resident aliens, but an LLC has no such restriction. In fact, LLC's can be owned by other entities or trusts. There can be layer upon layer of protection. For example, perhaps a person owns a number of pieces of real estate. And he or she has a revocable trust for tax or estate planning purposes. He or she could create a master LLC owned by the trust, and then create a separate sub-LLC for each piece of property, all of which are owned by the Master LLC and thus ultimately owned by the trust. Unless there are employees, a tax identification number is not even required where the LLC

has only one owner, even when the owner is another LLC or a trust.

The LLC is good protection from liability. Just like a corporation, a judgment against the entity will not flow through to the owner's pocket. Likewise, a judgment against the person for something unrelated to the entity will not affect ownership of the entity, because the most the creditor can obtain is a charging order against the LLC for any income that it actually distributes to the debtor.

The LLC also provides professionals somewhat more protection than the previously popular Professional Association (P.A.). The LLC for a licensed professional is referred to as a Professional Limited Company (PLC).

One can avoid probate upon death by owning the interest in a trust, or in the case of the PLC, one can name a special trustee to handle the interest. And one can avoid liability as well as funding separate credit shelter trusts by creating an LLC, placing all assets into the LLC and then dividing the percent interest in the LLC between the two trusts rather than placing some assets into one trust and some into the other.

Finally, one can be very secretive about ownership if that is important. The Articles of Organization, which is the only document filed, can be signed by one or more members, or by an authorized representative. One can have it signed by a friend, lawyer, or accountant, and not reflect the member's name at all. One can also name the authorized representative or somebody else as the registered agent. Also, one can make the LLC Manager-Managed, without saying who the manager is. That way, the real owner or somebody else can sign documents to bind the entity in the capacity as manager.