

Legal Connections



POWERED BY THE COLUMBUS BAR ASSOCIATION

OCTOBER 27, 2017

REAL ESTATE RESOLUTIONS: TRUST VERSUS LLC

Situations can arise where it's advisable for clients to hold real estate interests in an entity rather than in their personal names; some clients desire anonymity, liability protection or avoidance of probate. When deciding how to own property, it's also important to consider the type of property, number of owners and goals of the client. Two of the available options for clients are holding real estate in an irrevocable trust or in a limited liability company (LLC). Both a trust and an LLC are created under state law, but they are two very different legal vehicles offering distinct advantages and disadvantages.

Irrevocable Trust

An irrevocable trust allows property to be held in trust for the benefit of the named beneficiaries. The trust document establishes the terms of management of the real estate and nominates a trustee to carry out the terms. When the property held in trust is sold, the proceeds are distributed as designated in the terms.

One main advantage: avoiding probate. Upon the death of a beneficiary, the interest transfers directly to the named beneficiaries described in the trust without the need for court intervention. Another advantage is asset protection. The irrevocable trust protects the real estate from creditors seeking to satisfy any personal debt of beneficiaries.

One drawback is relinquishment of control of the real estate. Once the property is placed in an irrevocable trust, it is no longer considered the individual's property, and any income is taxed independently. This also means that the individual owner can't freely make decisions concerning the property, but rather, he or she must abide by the terms of the trust and the decisions of the trustee. Another drawback is the expense. It can cost upwards of a couple thousand dollars to draft an irrevocable



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trust, and some require annual trustee fees as well as additional legal fees to manage down the road.

LLC

While an LLC is typically thought of as operating a business, it can be used to manage and purchase property. An LLC is relatively easy to form by paying and filing Articles of Incorporation with the

Ohio Secretary of State. An LLC can have one owner or multiple and they're usually governed by operating agreements, which establish the terms of management and the relationship between the members. The LLC can be managed by one or more of its members or a manager. Members can dissolve the LLC by agreement at any time and – after payment of any debts – distribute any assets.

However, LLCs don't necessarily avoid probate. Unless transfer on death provisions are used, the interest in an LLC passes through probate and is considered part of the deceased member's estate.

A main advantage is liability protection. Placing real estate owned in an LLC can protect that asset from liabilities of the owner and the owner from some liabilities arising out of the real estate. If the property is subject to a lawsuit, members can only be sued within the constraints of what the LLC owns and not beyond that. For example, if someone hurts themselves on the property's front steps and sues, the claimant can only proceed against the LLC, not the members' personal assets. Additionally, if the owner of an LLC has liabilities, the owner's creditors cannot seize the membership interest of an owner; rather, they are limited to a charging order by which they can recover distributions that might be made to the owner.

To set up a proper LLC or irrevocable trust, find a real property attorney at directory.cbalaw.org.



"The election is less than two weeks away; stay informed and vote with a purpose. Read more about who's on the ballot on judgethecandidates.org."

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EDUCATION & EVENTS

Thursday, Nov 2 • 9 a.m. – 12:15 p.m.
Advising Clients on Retirement
3.0 CLE Hours

Thursday, Nov 2 • 1:30 – 4:45 p.m.
Personal Injury Primer: Auto Accidents
3.0 CLE or NLT & 1.0 Professional Conduct
Hours

Saturday, Nov 4 • 9 – 10 a.m.
Notary Public: Seminar & Test

Thursday, Nov 9 • 1:15 – 2:15 p.m.
Constitutional Conversations: 14th Amendment
Free & Open to the Public

Friday, Nov 10 • 9 a.m. – 4:30 p.m.
2017 OVI Seminar
3.0 CLE Hours Per Session

Friday, Nov 17 • 9 a.m. – 12:15 p.m.
Fundamentals of Economic Damages
3.0 CLE Hours Per Session

Saturday, Nov 4 • 9 – 10 a.m.
Notary Public: Test Only

Thursday, Nov 30 • 3 – 4:30 p.m.
Ohio Supreme Court Year in Review, by Ice
Miller
1.5 CLE Hours

****Save the Date****
Columbus Bar Foundation Gala: March 10

All classes listed are offered at the Columbus Bar Associations offices, 175 S. Third St. Ste. 1100. To register, call 614-221-4112 or enroll online at www.cbalaw.org.

Want to learn more about Real Estate trends? • Save the date for our Real Property Institute on Feb. 1 & 2: cbalaw.org.

A Comedic REVIEW of Recent Supreme Court Decisions

November 1 9am-4:45pm Columbus Bar

Law can be funny—seriously!

Presented by Joel Oster, the "Comedian of Law," this class will entertain, inform, and take you through some unbelievable case studies based on real ethics and professionalism charges. Lunch is included.

Registration:

Register for this class online at www.cbalaw.org or call (614) 221-4112.