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BUSINESS ENTITIES

In the world of business there are numerous entities or business structures which can be used to form and administer a business or commercial enterprise. While there are aspects of business which are common to all commercial enterprises, there is not one entity or structure that is appropriate for all. Each business will have its own set of priorities, capitalization and expense issues, owners and investors, and even differing personalities between members and management that must be considered. All of those factors are relevant in considering which business entity to use.

For some the need for a simple structure is a priority, in which case a sole proprietorship or a single member LLC can be effective. For other, more sophisticated businesses, the need to structure a business based on tax planning can be of primary importance. Partnerships, limited liability companies and small business corporation (or S Corps) give business owners a variety of options for tax planning. For large operations, despite apparent negative tax implications, sometimes the good old fashioned corporation (also known as a C Corp) is the best option. Often more than one type of entity will be appropriate for a given business. In order to determine which entity is best it is necessary to undergo a detailed analysis of numerous applicable factors and weighing of priorities.

Many professionals feel that tax benefits and liability protections are the primary forces to consider when determining what form of business structure is appropriate for the particular business needs. While the authors agree that these are two very important considerations, there are at least twenty (20) other factors that should reviewed as well. Many of these factors are beyond the scope of this chapter, but you are encouraged to consider such things as, marketing, branding, business succession and exit strategies, compartmentalization of risk, future financing and investment criteria, to name just a few.

This article is written to briefly outline the various business entities that are available to business owners and to provide details regarding the factors that weigh for or against use of each. It is not meant to be an exhaustive list of the entity types that are available and certainly not a complete dialogue of all factors to consider. Additionally, most of the focus of this chapter will be regarding entity structures appropriate for "for profit" entities. Non-profit or low profit enity planning is an animal all to it's own.

While tax issues are not always the guiding factor, proper tax structure for a business can often have a significant impact on the profitability of a business or on the attractiveness of a business to potential investors. Therefore in addition to exploration of the fundamentals regarding various business options, substantial reference is included to tax structuring and tax based operations.

Sole Proprietorship. A sole proprietorship ("SP") is not a formal business entity. It is the oldest form of doing business and has existed since long before state recognized entities. Simply stated, a SP is fancy way of saying "doing business on your own." It is owned by an individual and is the simplest form of business entity, though again it is not technically an entity.

All of the income of the SP is taxable to the proprietor and all assets are likewise owned by the proprietor.

The owner of a SP can operate the business that is the subject of the SP in his or her own name or the SP can use a formal business name registration commonly referred to as Doing Business As or “DBA.” A SP can obtain a DBA typically by registering with the county or counties where doing business. The SP then has a formal business name registration, which is protectable intellectual property, but that is the extent of any protections afforded to the owner of the SP. Although a SP can own property and assets, as well as enter into contracts and conduct business, the SP has no separation from the owner, and therefore the owner has no liability protection from the creditors and liabilities of the SP.

The only real advantage to operating a SP as opposed to any other business structure is the simplicity with which the SP can be organized and can conduct business. Unlike a corporation or limited liability company, there are no annual filings to be completed with the state where doing business, and tax reporting for the SP is done simply by reporting business income on Schedule C of the SP owner’s personal income tax return.

In addition to concern for no limited liability protection, the SP has the other disadvantages of income still being subject to self-employment tax and fringe benefits are generally not deductible. The owner of the SP is not eligible for any fringe benefit that an employee may enjoy in other business structures.

General Partnership. It is common under the laws of the various states of the United States for a partnership to exist anytime there are two or more individuals who join or work together in a common commercial enterprise. If there is no formal written partnership agreement then state law regarding partnerships will govern the rules of administration and the duties of the partners involved.

A partnership exists as a separate entity from its partners. This means that the assets and property used in the partnership is deemed to be the property of the partnership rather than of the individual partners. Typically, partners will contribute cash, tangible property and even securities to the partnership as initial and ongoing capitalization. The individual partners' percentage of ownership in the partnership is determined by the amount of capital and property contributed in relation to the other partners.

In a general partnership all of the partners are deemed to be general partners, and as such they are jointly and severally liable for all of the liabilities of the partnership. Also, each partner of a general partnership has the authority to bind the partnership when the partner acts in the normal course of business. Common law rules and various state laws, including the Uniform Partnership Act (UPA) in states where it has been adopted govern the administration of partnerships.

Partnerships are also commonly referred to as a type of pass-through entity because all of the income and losses flow through from the partnership level to the individual partners. Upon formation each partner will have a capital account that is a reflection of the amount of capital or the value of any assets contributed to the partnership. A partner's capital account increases whenever the partner is allocated a portion of profits or revenue and the capital account decreases when a distribution is made to the partner. Taxation of a partnership is governed by subchapter K of the Internal Revenue Code, which is one of the more complex sections of the U.S tax code.

Limited Partnership. Limited partnerships are statutorily created entities. A limited partnership is typically formed by filing with the state a certificate of limited partnership. A limited partnership can also be formed by filing articles of conversion to convert an existing entity into a limited partnership. Similar to a general partnership there must be at least two partners, but in the limited partnership one or more partners may be the general partner with the remaining partners known as limited partners. The general partners have unlimited liability and typically manage or actively participate in the business of the limited partnership as well have full authority over all of the assets of the partnership. Because a general partner is subject to unlimited liability a general partner is often organized as a corporation or limited liability company in order to shield liability away from the individual general partner. However, it is this characteristic of the general partner being personally subject to the liabilities and debts of the general partnership which makes this entity choice less popular. This is especially true with the advent of the limited liability company as an entity option.

General partners typically have a small percentage of ownership anywhere from 1-10% of ownership. The general partnership interest is also often granted by the partnership in exchange for a promise to provide services to the partnership rather than in exchange for a capital contribution of assets or cash.

Limited partners do not actively participate in the general partnership and have no management control. Rather their involvement is intended and even required to be limited, essentially leaving the limited partner as only a passive investor. Because of this lack of management and active participation in the business of the partnership the limited partner has the protections of limited liability. This means that in the event of a lawsuit or other liability against the limited partnership, the limited partner's loss potential is limited only to the limited partner's contribution to the partnership.

The tax laws and regulations for partnerships under Subchapter K of the Internal Revenue Code apply equally to general and limited partnerships. Subchapter K provides the benefit of the partnership not being subject to double taxation because all income flows through to the partners in proportion to their respective percentage of ownership. The partnership also enjoys tax-free status on formation, meaning that all contributions to the partnership by the forming or later contributing partners are deemed tax free to the partner.

One characteristic that is unique to the partnership is the ability of partners to take a tax-free distributions of property or assets from the partnership. There is no such thing as a tax-free distribution of property in a corporation. All distributions of property, including any property which has been originally contributed by a shareholder to a corporation, is deemed to be a dividend and is therefore subject to tax as such. Whereas with a partnership, partners have the flexibility to contribute to and receive liquidating distributions from a partnership without being taxation.

One of the primary tax benefits of a partnership is the ability to enter into qualified non-recourse finance to acquire assets such as real estate. When a partner contributes capital or assets to a partnership the partner receives a tax basis for the partnership interest. For tax purposes basis is an important tool because in a partnership a partner can deduct losses of the partnership up to the amount of the partner's basis in the partnership. Qualified non-recourse financing is a loan taken to acquire real property and there is no personal liability to the partners for repayment of the loan. A loan taken by the partnership that is qualified non-recourse is allocated to all of the partners, which results in an increase in the individual partners' basis in the partnership. Thus giving the partners greater basis from which losses of the partnership can be deducted.

Partnerships are notorious for one characteristic which can be financially burdensome, especially to limited partners. A partnership is generally not required to issue a distribution of profit to the partners. However, because the partnership is a flow-through entity with all partnership income being allocated or attributable to the individual partners on a pro-rata basis (unless a special allocation of income or loss is made – see below) each partner must pay tax on his or her share of partnership income regardless of whether a distribution of profit is distributed to the partners. This scenario is referred to as "Phantom Income." If a partnership is profitable then at the end of the year, the general or managing partner is required to issue a K-1 to each partner, which shows the partner's share of partnership income. A K-1is also provided to the IRS similar to how a W-2 is issued by employers. Upon receipt of the K-1 each partner is required to report his or her share of the partnership income with the partner's annual 1040 tax return. If the partnership does not distribute the revenue from the partnership and if the partner does not have sufficient outside revenue or capital sources available to pay the tax on the partner's share of partnership income it can leave the partner in a difficult situation with the IRS. This problem can be avoided by proper drafting of the partnership agreement.

Another special tax rule that exists in the partnership world is the ability of partners to make special allocations of income and loss. In general the partnership agreement governs how items of income, gain, loss or deduction will be allocated among the partners. If there is no partnership agreement or if the agreement does not provide guidance as to how those items are to be allocated then each partner's share of income, gain, loss or deduction will be determined according to the partner's percentage of ownership in the partnership. However, tax law governing partnerships gives flexibility for a partnership to allocate income or loss disproportionately as long as the allocation has what is referred as "substantial economic effect."[1] This ability to make special allocations gives the partnership the ability to return cash or assets to a partner before distributing income or other items of loss to other partners. This can allow the partnership to allocate income to partners in a lower income tax bracket or may allow the partnership to pass on losses of the partnership to partners with higher outside income.

The general partner manages the business of the partnership. As a result of that active participation in the business the general partner's income or share of the profits of the

[1] IRC Section 704 (b) and (e).

partnership is subject to self-employment tax.[2] Active participation is key concept in partnership law. If a limited partner participates in the operation of the partnership up to 500 or more hours per year then the limited partner will be deemed to have actively participated and his income or share of income from the partnership will be subject to self-employment tax.

General partners have a responsibility to the limited partners. General partners have sole control of the business of the partnership and have the ability to act for and contractually bind the partnership. The general partner is therefore accountable to the limited partners as a fiduciary. A general partner may breach such fiduciary duties by failing to notify the limited partners of the sale of a partnership asset. As a general rule a general partner may not take a business opportunity which should be shared with the partnership away from the partnership. Although general partner does have the right to participate in similar business ventures to the extent that there is no conflict of interest. There is tension there between the general partners' duty to the partnership and the limited partnership and the general partners' freedom to pursue his or her own interest. One of the general partners' primary duties is disclosure of all information that is pertinent to the interests of the limited partners.

General partners may not exceed the authority granted to them in the partnership agreement to use partnership funds and assets for anything other than the business and pursuits of the partnership. For example, if a general partner obtains a loan on behalf of the partnership from a creditor or lender who has knowledge that the loan will render the partnership insolvent or which is contrary to the terms of the partnership agreement, the lender may not then rely on the authority of the general partner to pursue a claim of default against the partnership.

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[2] If income arises from passive investments such as dividends, interest, capital gains and rent it will not be subject to self-employment tax for the general partner.

Corporations. Corporations have long been used by business owners and investors as one of the most common business structures. A corporation is a separate business person with a separate identity from its shareholders. A corporation is formed by filing with the state articles of incorporation. Once articles are filed and accepted, the state will typically issue a corporate charter declaring the existence of the corporation and authorizing it to do business in that state.

Corporations have several important characteristics which are attractive to business owners and investors. First shareholders of a corporation enjoy limited liability, which means the shareholders are not personally subject to the debts and liabilities of the corporation and are not personally responsible for the corporation's activities. A corporation has centralized management where ownership through shareholders is distinct from the management operations provided by the management team or group customarily referred to as the board of directors. A corporation will typically also have officers who conduct the day to day operations of the corporation.

Shareholders of a corporation are its owners. They have the collective financial interest in the corporation and the power to elect the management of the corporation. The shareholders have borne the financial risk associated with forming and operating the corporation and are therefore granted power to dictate the terms by which the corporation will operate. Subject to federal and state securities laws, shareholders can freely sell or transfer their interests or shares in the corporation. It is often the ease with which one can acquire shares or stock in a company that makes investing in a corporation so attractive to investors. This is particularly true with regard to investing in large corporations whose shares are openly traded on one or more of the formal stock exchanges.

Corporations also enjoy indefinite existence, subject to state law. Typically the state statute governing formation and operation of a corporation provides that corporation duly formed in the state will exist for an indefinite period of time. Of course a corporation can cease operations and the shareholders elect to have the corporation dissolved with the assets distributed to the shareholders on pro rata basis.

In addition to the state law which governs corporate operations, a corporation is generally governed by bylaws of operations commonly known simply as the bylaws. The bylaws are typically written by an attorney or a qualified business advisor of the corporation and are accepted by resolution of the shareholders. The bylaws outline the rules of operation for the corporation as previously determined by the shareholders or as recommended by legal counsel. Once the bylaws are in place the shareholders, directors and officers are bound to act according to its terms. Of course bylaws can be modified but a majority or sometimes even a unanimous vote of the shareholders is required to do so.

The management structure of a corporation is one of its primary characteristics which makes the corporation unique and in many cases complex. As mentioned above, shareholders assumed the financial risk to form and capitalize the corporation. As a result the board of directors and officers owe the shareholders certain duties, such as the duty of care and the duty of loyalty. These duties are akin to fiduciary duties and the members of the board in particular are expected to act in the best interest of the shareholders.

It is important to understand the relationship between ownership of a corporation through its shareholders and the management conducted through its board of directors and officers. The shareholders are the owners, but at least in the case of large corporations with numerous shareholders, the shareholders are not able or inclined to manage the business of the corporation. The shareholders elect a board of directors, which generally consists of an odd number of directors somewhere between three and nine members. The board of directors often is made up of various individuals with specific knowledge and experience regarding the operations of the corporation and its business, or the board will include individuals with specialized training, such as business lawyers or CPAs, whose experience and expertise is useful in determining what is best for the corporation.

The procedure and timing for election of the members of the board of directors is usually outlined in the corporation bylaws. Board of directors elections generally occur every year or every other year and will often include staggered director elections, meaning that only a certain number of directors will stand for reelection each year. The practice of staggered elections is seen as beneficial to corporation as a way to maintain continuity among the board. Staggered board elections ensures that every time there is an election at least some number of directors will remain, and therefore the process of overseeing the business of the corporation will always include at least some directors who have been involved from the prior year.

The board of directors will typically meet at least once per year but in many cases the board will meet on a bi-annual, quarterly or even monthly basis depending upon the frequency with which the board is directed to meet pursuant to the bylaws of the corporation. Typically the bylaws of the corporation will enable the board to meet as often as the members board, or some minimum required number, may feel is necessary.

The day to day operations of a corporation are conducted by the officers of the corporation. The officers are generally the president, vice-president, treasurer and secretary. Other titles of corporate officers are chief executive officer, chief operating officer, chief financial officer and even chief legal counsel. These terms are often used interchangeably with the positions of president, vice-president, treasurer and secretary. The duties and titles of such officers are generally outlined in the bylaws.

One of the benefits to operating a corporation is that corporations have been used in business for a many years. Most states have a long legal history of corporate operations, which includes statutes and existing case law that in some states goes back literally hundreds of years. The existence of long-standing statutes and case law makes operations of a corporation predictable. Delaware is a state that is often recognized as having very good corporate statutes and case law. Many other states have enacted statutes governing corporate operations that are either modeled on or largely influenced by Delaware's corporate statutes.

State laws governing corporate operations often require various formalities. As noted, formation requires the filing of articles of incorporation. Typically a corporation is also required to file with the state an annual list of officers and to renew its charter. This is usually to be accompanied by a filing fee seen by the state as a reasonable fee paid in exchange for state recognition of the corporation and for privilege of operating under the laws and protections of that state. Additional formalities that are generally required include annual shareholder meetings, annual directors meetings, annual accounting and report to shareholder, annual shareholder election of directors and probably most important maintaining proper separation between the shareholders and the company. Small corporations sometimes run into trouble when shareholders also occupy positions on the board and as officers, and in doing so comingle the assets or funds of the corporation with their own funds and assets. Such a breakdown can often lead to what is referred to as "piercing the corporate veil" by creditors of the shareholders of the corporation. When the corporate veil is pierced the corporation is disregarded, the limited liability protection for with the corporation exists is set aside and the shareholders can be personally liable for the debts and liabilities of the corporation. In order to maintain the integrity of the corporation proper working and economic formalities must be maintained.

A corporation can be taxed either as a C Corporation or as an S Corporation or sub-chapter S small business corporation (also colloquially referred to as an S Corp). It is not uncommon for the shareholder of a corporation taxed as an S Corp to state he or she owns an S Corp. The reality is there is no such thing as an S Corp for formation purposes. Rather corporations exist due to formation at the state level due to filing of articles of incorporation. How the corporation will be taxed is function of what type of tax structure the shareholders elect for the corporation. The default tax structure of a corporation upon formation is for it to be taxed as C Corporation. If the shareholders or management team of the corporation elect for the corporation to be taxed as an S Corporation they will file a Form 2553 with the IRS thereby informing the IRS that the corporation has elected to be taxed accordingly.

To further complicate the issue; it is important to note that when an entity is formed, it is formed at the given state level. If a Utah corporation is formed, the state of Utah does not care what type of corporation you are (i.e. "C" corp or "S" corp), it is the IRS that is concerned with the form of taxation. This is an important distinction as other entity types, LLCs for example, can also "elect" to be treated as S Corporations with the IRS while maintaining their status as an LLC with the given state of their formation. This can result in confusion and should be done carefully as when an LLC elects to be treated as an S Corporation, the specific rules to be qualified as an S Corporation must now be met by the LLC. For example; the LLC will now have to make sure there are less than 100 owners (or owner groups) of the LLC, all members of the LLC are qualified shareholders of an S Corporation and the LLC can have only one class of ownership. Preferred and common interests in the LLC will no longer be allowed. These are all issues that are not present with an LLC that does not make an S Election as the IRS will assume the LLC is to be taxed as a partnership. The authors advise caution in proceeding this way in creating an LLC that will be taxed in a different manner.

The benefits of existing as a C Corporation include the ability to take large deductions for providing numerous fringe benefits for employees. However, the downside of operating as a C Corporation is that the corporation is subject to double taxation. This means that the corporation will pay tax on its revenue as earned, and the shareholders will be taxed on their individual share of profits distributed as dividends. In order to ameliorate the effect of double taxation large corporations often seek to pay as much in fringe benefits and executive compensation as possible to mitigate the corporate level tax. If a corporation requires numerous employees to maintain the operations of the corporation then a C Corporation structure may be the best structure in order to provide fringe benefits which are attractive to potential employees.

When a corporation elects to be taxed as an S Corp it will then become a flow-through entity somewhat similar to a partnership, but an S Corp is much more than an incorporated partnership and there are key differences between the two. Under the current Internal Revenue Code an S Corp have no more than 100 shareholders. Shareholders may only be taxpaying U.S. resident individuals and there can only be one class of stock. This means that shareholders of an S Corp must receive distributions based upon percentage of ownership, and there cannot be any preferred class of shareholders.

Non-Profit Corporations. As previously mentioned, only a brief discussion will take place regarding Non-Profit Corporations. Non-profit planning, including not just Non-Profit Corporations, but private foundations, trusts and low profit corporations and LLCs all have very strict rules and guidelines that should be fully investigated.

A non-profit organization is typically a non-profit corporation is organized at the state level similar to any other corporation. Its existence is generally for the purpose of benefit some specific social cause, such as a charity, school, sporting event or other enterprise which exists to benefit a cause rather than to generate a profit. A non-profit organization is formed at the state level but only obtains federal tax benefits (for itself and contributors) after it applies to the Internal Revenue Service to be recognized as a tax-exempt organization such as a 501(c)(3) organization. The Internal Revenue Code allows for certain entities to be tax-exempt for certain social purposes, these include organizing to be a private foundation with a charitable purpose or to be a charitable supporting organization. The moniker of 501(c)(3) refers to the Internal

Revenue Tax Code Section 501(c)(3). There are numerous other Tax Code Sections under which a non-profit organization can seek tax exempt status.

Limited Liability Company. For many years the partnership structure was the fundamental business entity for start-up enterprises. However, due to the susceptibility of personal liability by the general partners, and even limited partners who were deemed to actively participate in the business, as well as due to strict partnership rules regarding administration and taxation, business owners began to seek other options with which to operate small businesses. Prior to the advent of the limited liability company the only option available to business owners for limited liability protection was to form a corporation. However, due to the formalities required in maintaining a corporation coupled often with disadvantageous corporate tax laws, business owners sought for another entity type to run small businesses. The answer came when Wyoming enacted the first limited liability company statute in 1977, interestingly created similarly in some respects to the 1892 German GmbH Code and the Panamanian LLC.

A limited liability company, or LLC, is formed by an organizer who files articles of organization, or in some states by filing a certificate of organization. LLCs have numerous characteristics which make them attractive to small business owners and investors. The first of which is limited liability for all members. In a corporation the investors are referred to as shareholders who receive shares for their respective investment. In the LLC a contributing person becomes a member and typically receives units and/or a percentage of ownership in the LLC. The limited liability protection provided to LLC members allows both the passive investment members and those members taking an active role in the administration and management of the business to enjoy limited liability protection. The LLC member's liability is limited to his or her interest or investment in the company. Although a member can be found personally liable in the event of any personal guarantee made by the member or in the event of actions that allow for claims against the member on the grounds of laws governing tort, fraud or illegal actions.

The LLC provides great flexibility for its members. State laws governing LLCs generally provide wide latitude for members of an LLC to dictate the terms of operation and to reduce those terms to an operating agreement. Of course in the absence of an operating agreement state laws generally provide default rules for administration, but the members can often contract around or out of those default rules. This makes for large opportunity for various types of investors, whether passive, active, preferred or a combination of investment options.

An LLC is a pass-through entity just like a partnership, and the default tax structure is for the LLC to be taxed as a partnership subject to Subchapter K of the Internal Revenue Code. However, as previously mentioned, an LLC can also be taxed as an S Corp which is preferable for LLCs that provide professional services or that are in the business of selling goods. An LLC can even be a C Corp if so desired by the members. Many states allow for single member LLCs, in which case the LLC will be taxed as a sole proprietorship in the absence of any other tax structure designation by the single member.

One disadvantage to operating an LLC is lack of uniformity between the states. Therefore when a business is operating in more than one state it may face unexpected rules or consequences by doing business in a particular state. Various states treat LLC activities and taxation differently, such as differences with minimum capital taxes, fees issued on the number of K-1s issued to members and potential taxes when assets are transferred to the LLC. Some states require a franchise tax or a minimum fee payable to the state for the benefit of operating as an LLC in that state. Some states such as Illinois, New Hampshire, Tennessee and Wisconsin subject LLCs to an income tax based on percentages. Other states impose taxes based on capital accounts or the number of members. California is well known as one of the most aggressively taxing states of LLCs with its annual fee and additional tax based on profitability.

The LLC is managed either by members or by managers elected by the members. A person does not typically have to be a member to be a manager, unless required by the members in the operating agreement. The LLC management structure can be simple with as little as one manager, or it can be as complex as a corporation with a board of managers (or board of directors) with company officers such as president, secretary and treasurer. Again the flexibility allowed by most LLC statutes gives the members the ability to determine rules of administration and management that meet the needs and circumstances of the LLC as they arise. It is not uncommon for the members of an LLC to amend the terms of the company operating agreement multiple times as circumstances change and as the number of members and investors increase.

The use of an LLC is excellent for holding passive investments, such as rental real estate, investment in stock portfolios and other interest or passive income generating investments. The LLC is attractive in this scenario because of the ease by which the members can place property and investments in and take out of the LLC. Also, because of the limited liability protection afforded to members of the LLC, the LLC is an effective device for asset protection by the member from his or her personal creditors. In many states the sole remedy for the creditor of a member of an LLC is for the creditor to obtain a "charging order" against the member's interest in the LLC. This means that if a creditor obtains a personal judgment against the member, rather than being able to get the member's interest in the company, or worse attach the company's assets, the creditor only obtains the charging order which is essentially a lien against the member's share of LLC distributions. The assets of the company remain protected and the distributions remain protected as well because generally the management of the company will have discretion whether to make a distribution. Some states allow for foreclosure of a charging order, but only after another lengthy legal proceeding by which the creditor must show by a stringent legal standard that a distribution is unlikely. Regardless, the structure provides the member substantial asset protection and at worst will typically provide the member with leverage in reaching a settlement that is favorable to the member.

Of course as with all entity types, LLCs are not without limitations. As mentioned above the default tax structure of the LLC is for it to be taxed as a partnership. This means that the same tax issues that exist with a partnership, such as potential for phantom income, exist with LLCs as well. Also, due to the ease at which an LLC can be formed and operated often business partners and co-investors will form an LLC without taking the time to fully understand the default state law governing the LLC or to obtain a comprehensive operating agreement. In the absence of such an agreement that clearly defines the intent of the parties, state law will govern which can often lead to unintended consequences, particularly with regard to determination of ownership percentages, distributions of profits, taxation, succession of ownership, management power and dispute resolution among members or managers.

Many state LLC statues include nuances which allow for the creation of different types of LLCs such as a Series LLC, PLLC, L3C and the Restricted LLC. The Series LLC allows for the creation of one LLC but allows that each asset of the LLC will be treated separately for liability protection purposes. In the authors' opinion, series LLCs are not as protective of a structure as another structure in which there is a parent LLC or "holding company" that then owns 100% interest in separate single member LLCs to compartmentalize risk. This is due to numerous court cases that have attacked the efficacy of the series LLC and the non-uniformity of series LLC statutes throughout the Country. Not all states allow for series LLCs and although they had been popular a few years ago, many planners are simply choosing not to use them anymore due to these issues. Although the series LLC may contain numerous rental properties, in theory if there is a liability attributable to one of the properties, the other properties are deemed to be held in a separate LLC, thereby making the non-liability related properties unavailable to the creditor of the LLC. In order to maintain the limited liability between the assets it is generally recommended that each separate income-producing asset be administered separately from an accounting perspective. In essence, each series under the series LLC must be run with it's own books and accounting and therefore results in similar complexities to just having the parent holding company with single member LLCs underneath.

The PLLC or Professional Limited Liability Company is useful to professional service providers such as physicians, attorneys, accountant and architects. While no type of entity will protect a professional service provider from personal liability attributable to the professional services provided, it does create a formal structure from which the professional can conduct business and any contractual or other business related liabilities not attributable directly to the providing of professional services will be subject to the limited liability structure available to all LLCs.

The L3C or low-profit LLC provides the financial benefits of the LLC for business administration but also gives social benefits enjoyed by the non-profit corporation. The L3C is a for-profit company and is generally engaged in a commercial enterprise, but the purpose of the commercial enterprise is typically to benefit some social cause or purpose. The L3C is also organized in conjunction with a non-profit organization to provide a profit-generating format that will benefit the non-profit but not subject the non-profit to taxation and cause the non-profit to lose its tax exempt status. This is especially attractive for private foundations. Each year private foundations are required to 5% of average net assets for charitable purposes. This 5% can be contributed to a L3C, which company can take higher risks and attract private sector investment which might not ordinarily support a charity or socially conscious enterprise.

To the author's knowledge only Nevada allows for a Restricted LLC. This rare entity was established in Nevada for advanced estate planning purposes to enable strategic gift giving that will allow for potentially a higher discount on the value of a gift due to lack of marketability and lack of control by the member. The Nevada law allows for a restriction on distributions up to ten years which is designed to deflate the value of partial ownership interests.