

Estate Planning and Business Entity Planning

Paul O. Dillon, JD
284 Main Street, Suite 1
P.O. Box 346
Corinth, Maine 04427-0346
(207) 285-7100
dillaw@dillaw.com

Definition of Estate Planning

- You want to control your property while you are alive and well
- You want to plan for you and your loved ones if you become disabled or die

Definition of Estate Planning

- Transferring *what* you have
- To *whom* you want
- The *way* you want
- *When* you want
- *Saving* taxes and fees

Will Based Plan

Will

- Leaves property at death
- Names guardians of minor children
- Power of Attorney-financial matters
- Health Care Directive-
 - Names Health Care Agent
 - Living Will for terminal illness
 - Organ Donation

Trust Based Plan

Revocable Living Trust

- "Pour over" Will-
 - Puts property in trust not already in trust
 - Names guardians of minor children
- Power of Attorney-financial matters
- Health Care Directive-
 - Names Health Care Agent
 - Living Will for terminal illness
 - Organ Donation

Understanding Estate Taxes

In 2017:

- Applicable Exclusion Amount
- --\$5,490,000 for 2017 (federal)
- --\$5,490,000 for 2017 (Maine)
- --per individual benefactor

Keys to an Effective Estate Plan

A Family Farm is really two parts:

- The Business Operation Side
- The Real Estate Side

Different Business Entities

- Sole proprietorship
- General Partnership
- Sub Chapter S Corporation
- C Corporation
- Limited Liability Company
- L3C-Low Profit Limited Liability Company
- Joint Operation
- Family Limited Partnership

Business Entities

Sole Proprietorship

- Simple to establish & operate--only one owner
- Owner is in complete control
- For tax purposes, income is passed through to the owner, reported on the personal return, and taxed at personal income tax rates

Problems with Sole Proprietorships

- Sole proprietor has unlimited personal liability for all business liabilities
- Sole proprietorship terminates at the death of the owner--no option for continuing the business
- Transferring a sole proprietorship from one person to another is cumbersome

Business Entities

General Partnership

- Simple to form
- Relations between partners is left largely to their own agreement
- For tax purposes, income is passed through to the partners and taxed at the individual level on personal income tax returns

Problems with General Partnerships

- Each partner is responsible for debts and obligations of the general partnership
- Transfer of a general partnership interest is subject to approval of all other partners
- The general partnership will terminate on death or disability of a general partner unless otherwise agreed on
- Deceased partner's share could go to probate

Business Entities

Corporations

- Corporate shareholders have limited liability protection from the corporation's actions
- Shareholders may be restricted by a shareholders' agreement from transferring ownership interests to outside parties
- Corporation can have perpetual life
- Easy to transfer ownership interests

Business Entities

Corporations

- Two primary types:
 - Sub Chapter S Corporation
 - Shareholders are taxed as if partners
 - C Corporation
 - Subject to double taxation

Business Entities

Limited Liability Company

- Members choose who manages the business
- Non-managing members may receive distributions from the LLC
- All members have limited liability protection from the debts, obligations, and judgments of the LLC
- LLC operating agreement has great flexibility

Benefits of a Limited Liability Company

- Single member LLCs can be taxed as a sole proprietor or corporation
- Multiple member LLCs can be taxed as a partnership or corporation
- The Operating Agreement for an LLC has great flexibility

Business Entities

L3C Low Profit LLC

- Socially responsible and beneficial LLC
- Mixture of for-profit and non-profit motives
- Lesser rate of return with profit making metrics
- Intended to Qualify as a Program Related Investment for a Foundation

L3C Low Profit LLC

- Part of the Maine Limited Liability Companies Act M.R.S.A. Chapter 31 §1611 (effective July 1, 2011)
- Attempts to avoid costly private letter rulings by including specific language that should be recognized by the IRS
- Began in Vermont

L3C Low Profit LLC

- Still requires following securities laws
- Can opt out of L3C status to regular LLC status when higher profit level reached
- Allows Foundations to make initial PRI investments to seed a project
- When L3C is up and going Foundation is repaid and uses the investment again somewhere else

L3C Low Profit LLC

- L3C can be owned and invested in just like a business, BUT it must “significantly further the accomplishment of one or more charitable or educational purposes within the meaning of Section 170(c)(2)(B) of the Internal Revenue Code”
- Can have a purpose of generating income and appreciating property, but cannot be a “significant” purpose.

L3C Low Profit LLC

- Pros:
 - Attract private foundation Program Related Investments
 - Attract private investors who have a double bottom line
 - Attract private investors who only have a fiscal bottom line
 - Avoid nonprofit regulations.

L3C Low Profit LLC

- Cons:
 - Inherent and dangerous tension between charitable/educational accomplishments and profit purposes
 - New and untested. Little guidance from IRS.
 - Not eligible for tax-deductible gifts.
 - Could divert foundation money away from traditional charities.

Business Entities

Joint operations

- defined by the FSA as two or more individuals who pool resources and share profits or losses
- As with sole proprietorships, joint operations have no legal existence independent of their owners.
- Participants in a joint operation have unlimited personal liability for the farm’s debts
- Each participant in a joint operation is considered to be one person under current payment limitation rules

Business Entities

Family Limited Partnership

- General Partners
- Control day-to-day operations
- Personally liable
- Limited Partners
- No right to control operations
- No right to transfer ownership
- Limited exposure to liability

A Great Estate Planning Team

- Counseling oriented estate planning attorney
- Accountant
- Financial Advisor
- Insurance professional
- Maine Cooperative Extension Agent

THANK YOU FOR YOUR ATTENTION,
ANY QUESTIONS?

Paul O. Dillon, JD
284 Main Street, Suite 1
P.O. Box 346
Corinth, Maine 04427-0346
(207) 285-7100

dillaw@dillaw.com