

Kimball, Tiry & St. John LLP

Holding Title to Real Property Through an Entity

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Many property owners do not hold title to their properties as individuals. Instead, they hold title through an entity, (a partnership, corporation or an LLC) in which they have an ownership interest.

Why do property owners do this? The primary reasons are:

- **Personal liability avoidance** - If a properly formed and capitalized LLC or corporation is liable for a tort or contract claim, only the assets of the entity can be reached to satisfy that claim. Except in limited circumstances¹, the personal assets of the individual shareholders or members are not at risk other than their investment in the entity. Because many individual property owners cannot (or choose not to) insure against claims that can have large potential liability -- such as environmental hazards, mold, fair housing, personal injury and contract claims -- owners can limit their exposure to uninsured claims by holding title in an entity, limiting their liability for large tort claims to their entity ownership interest. Partnerships do not provide this personal property avoidance; in fact, holding title to property in the name of a partnership may even expand potential liability.
- **Privacy** – A corporation or LLC may provide a level of privacy. Because the property will be held in the name of the entity, the County Recorder's grantor-grantee lists only the name of the entity, not the LLC members or corporate shareholders². However, in the age of the internet, it can be difficult to achieve privacy.
- **Entity formation documents may provide a framework for the group decision making process** -While not required by law, it is advisable for properties with multiple owners to have a written agreement between the owners specifying how they will make decisions relating to the property, under what circumstances one owner can require sale of the property, and how disputes between the multiple owners will be resolved. Corporate bylaws provide this for corporate property owners. An LLC's operating agreement does the same for LLC property owners. A partnership agreement provides a framework for partnership decisions.

Forming an entity to hold title to real property is not advisable for every property.

- The cost to set up and maintain a new entity may make entity ownership uneconomical.
- While partnerships, LLC's and corporations can choose pass-through taxation, LLC's and corporations may incur at least \$800 per year in California minimum franchise taxes³ in addition to other possible taxes.
- The property owner's estate plan may impact whether a property should be held in an entity.

¹ An LLC member may be found personally liable when the LLC is not properly formed or operated, when the LLC member is personally involved in wrongful action, or when the LLC member personally guarantees an LLC obligation.

² Corporate officers' names are available to any member of the public who requests a Statement of Officers from the Secretary of State. LLC manager names are available to any member of the public who requests a Statement of Information (LLC-12) from the Secretary of State.

³ Currently, most new corporations are not subject to a minimum franchise tax fees for the first taxable year.

- Current and future financing, 1031 exchanges, and future conveyance plans may impact whether a property should be held in an entity.
- Unless planned carefully and properly, a change in title can result in possible reassessment of the property and increased property taxes.

Property owners should consider alternatives to holding title to property through an entity. For example (1) some personal liability avoidance may be achieved by purchasing additional insurance, and (2) a framework for decision making can be achieved through a partnership agreement and/or a tenancy in common agreement).

Through discussion, an attorney can help you determine if holding title to property through an entity may be advisable for you. Attorneys at Kimball, Tirey & St. John can provide this service, and if advisable, assist you in forming your business entity by drafting the necessary documents and coordinating any required filings with the Secretary of State, county recorder offices, city or county documents, and others.

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