

ACTEC BUSINESS PLANNING COMMITTEE
FLP/LLC Checklist Subcommittee
Draft Checklist

I. PRE-ENTITY ISSUES

A. Is an entity appropriate for this client? (See memorandum attached as Exhibit A)

1. Client motivation/objectives
2. Client mindset (sole proprietor v. entity)
3. Client/family sophistication
 - (a) Assets
 - (b) Understanding of risks
 - (c) Involvement of other professional advisors
 - (d) Relationships/cooperation within family
4. Reasonable alternatives to entity planning

B. Choice of entity issues (FLP v. LLC)

1. Asset protection for owners of entity interests
 - (a) Similar for both members of LLC and limited partners of FLP
 - (b) Judgment creditor may obtain charging order and/or have rights of assignee, but generally cannot force dissolution of entity
2. Liability of individual serving as general partner or manager
 - (a) In most states, FLP requires a corporation or an LLC to serve as general partner in order to shield individuals from liability
 - Some states allow election of limited liability for general partner
 - (b) LLC provides liability protection for managers (without requiring a second entity)
3. Management efficiency
 - (a) State default provisions for FLP gives greater control to general partner than state default provisions for manager/members of LLC

- (b) It is not necessary for a manager of an LLC to also be an owner
- 4. State law nontax issues – (typically the same for FLP and LLC in most states) – differences include:
 - (a) Continuity of life
 - Death, dissolution or withdrawal of general partner (or, in some states, the last remaining general partner) dissolves an FLP
 - Death, dissolution or withdrawal of a member does not generally dissolve an LLC as long as one member remains
 - (b) Law recognizes single member LLC but not FLP
- 5. State tax issues – (typically the same for FLP and LLC in some states) – in some states, franchise tax applies to LLCs but not FLPs
- 6. Federal income tax issues (both FLP and LLC are flow-through entities and are taxed as partnerships)
- 7. Federal and state payroll tax issues
- 8. Federal transfer tax issues - state law default rules may be more restrictive for one type of entity or the other.
 - (a) Examples: Right to withdraw, value or types of property a partner or member is entitled to receive upon withdrawal, dissolution, term of entity existence
 - (b) See chart attached as Exhibit B for § 2036(a) issues
- 9. Choice of jurisdiction for entity
 - (a) Location of entity assets
 - (b) Default state law provisions – 2704(b) issues
 - (i) Duration – Under state law, LLCs might be perpetual whereas FLPs might require a term.
 - (ii) Put Rights – Under state law, LP holders may have put rights whereas LLC holders may not.

10. Valuation Issues – LLC may necessitate creation of Classes so that some interests (Class B) resemble LP units resulting in greater valuation discounts.

C. Explanation to client in writing

1. Benefits, requirements and risks
2. Confirmation of client's significant and legitimate non-tax purposes
3. Review status of IRS attacks and the law
4. Protect the privilege
5. Ethical issues
 - (a) Engagement letter
 - Scope of project
 - Clearly identify attorney's role and identify the client
 - Waiver of conflict
 - (b) Material risks and tax "trade offs"
 - (c) Alternatives to entity planning
6. Circular 230 issues

II. DESIGN OF ENTITY

A. Particular facts of client and plan

1. Age and health of client
2. Specific and general nontax purposes (e.g., accredited investors, retention of favorite family assets (stock, real estate), avoidance of ancillary probate proceedings, ease of administration with third parties in contrast to Durable Powers of Attorney).
3. Particular assets that fulfill nontax purposes
4. Retain sufficient assets for self and estate (asset and income analysis)
5. Any personal use assets to be transferred to entity?
6. Pooling of assets and services

7. Substantive negotiation between parties (drafts with changes, separate representation)
 8. Business plan for entity (active management of assets)
 9. Appropriate “reality check” regarding distributions, liquidation and fiduciary duty
 10. Significant changes before and after creation of entity in benefit and/or management – who will exercise management control and who will retain benefit?
 11. Documentary support for significant and legitimate non-tax purposes
- B. Assess strength of qualification for “Bona Fide Sale for Adequate and Full Consideration” exception
1. See charts attached as Exhibits C-1 through 4, based upon *Kimbell* and *Bongard*
- C. Assess strength of Section 2036(a)(2) avoidance
1. See chart attached as Exhibit D, based upon *Strangi-II*
- D. Certain planning alternatives for Section 2036(a)(2) avoidance (particularly if qualification for exception to Section 2036(a) is weak)
1. See diagrams attached as Exhibits E-1 through 3
- E. Governing instrument and pre-formation issues
1. Recitals
 - (a) Discuss history and goals of the entity
 - (b) Confirm significant and legitimate non-tax purposes
 2. Statement of purpose
 3. Capital structure and ownership
 - (a) Determine ownership based upon fair market value of capital contributions; and
 - (b) Identify whether two classes (control class and non-control class) or one class of entity interests should be established
 4. Management authority

- (a) Identify whether managers or a certain ownership vote will determine whether “capital calls” can be made
 - address “dilution” issue
- (b) Distribution provisions
 - Allocation of profits and losses based upon ownership
 - “Reality check” included in one or more ways:
 - (i) Mandatory distributions based on ascertainable standard
 - (ii) Independent party makes discretionary distribution decisions
 - (iii) Transferor does not serve as manager and transferor does not have voting control over liquidation or amendment of the governing instrument provisions regarding liquidation
 - (iv) Potential for abuse by unscrupulous manager/general partner
- (c) Actions that may be taken by manager/general partner without approval

5. Capital contributions

- (a) Identify the assets and services that will be contributed to the entity
 - Real estate
 - (i) Determine potential tax consequences and creditor approval requirements (and costs) if property subject to secured debt
 - (ii) Special tax issues if debt is in excess of basis
 - Securities – avoid “investment company” issues in a tax partnership by:
 - (i) Contributing other non-marketable assets (at least 20% of value of all assets)
 - (ii) Ensuring only “diversified portfolios” are contributed

- (iii) Have contributors contribute identical assets
 - (iv) Have only one significant contributor
 - (b) Determine fair market value of underlying assets (this may necessitate appraisals of some assets)
 - (c) Restrictions, consents and effect of property transfers
 - Pre-approval of secured lenders
 - Restrictions/approvals for transfer of entity interests
 - Insurance coverage and changes
 - State property tax issues (see Exhibit F for California real estate)
- 6. Major events that require owner vote and the voting threshold required:
 - (a) Removal of general partner/manager (consider unanimous vote or super majority)
 - (b) Substantial asset sale (if only a few assets inside the entity, such as real estate or a concentration of stock, be sure and comply with the requirements in the Agreement)
 - (c) Debt in excess of certain amounts
 - (d) Amendment of governing instrument and owner agreement
 - (e) Dissolution and liquidation
 - (f) Avoid authority of client to control distribution and liquidation and consider third-party approval or other “reality check” for such events
- 7. Fiduciary duty/accountability (determine whether to increase state default duty)
- 8. Term of entity
- 9. Right of owner to withdraw assets (default should be no withdrawal right)
- 10. Transferability of entity interests
 - (a) Identify transfer restrictions on ownership in entity, often in separate buy-sell agreement

- Can specific persons (such as transferor) make permitted transfers without consent of others?
 - (i) Revocable living trust
 - (ii) Immediate family
 - (iii) Lineal descendants
 - (iv) Spouses of lineal descendants
 - (v) More remote relatives
 - Provide for purchase options in the event of certain “triggering events”
 - (i) Voluntary transfer (right of first refusal?)
 - (ii) Death-related transfer
 - (iii) Bankruptcy
 - (iv) Divorce
 - (v) Determine process by which purchase price will be calculated
 - (vi) Determine whether process will include “discounts” for closely held status and/or minority interests
 - (vii) Determine who will pay any required appraiser
 - (viii) Determine how payments will be made (installments or immediate payment)
 - Consider 2704(a), transfer of assignee or partner interests
 - Consider gift tax annual exclusion, “put option” for donees of entity interests or rights of first refusal
11. Amendment of governing instrument (consider requiring unanimous consent)
 12. Amendment of owner agreements
 13. Substantial asset sale
 14. Liquidation

15. Resolution of disputes
 - (a) Mediation
 - (b) Arbitration
 - (c) Tie-breaker procedures/put/call
16. Supporting documents, management agreement, business plan, etc.

III. FORMATION AND IMPLEMENTATION OF ENTITY

A. Entity formation

1. Formation documents filed with state
2. State licenses and registrations filed as necessary (privilege, franchise, intangibles tax issues)
3. Obtain federal EIN
4. Finalize governing instruments for entity (partnership agreement/operating agreement/buy-sell agreement)
5. Ensure all capital contributions are properly completed via deeds, account retitling, assignments and bills of sale in a timely manner in compliance with state law and are done in the right order
6. Obtain and confirm ownership transfers with any affected entities
7. Open separate entity bank accounts
8. Transfer property/casualty insurance to name of entity
9. Satisfy lender requirements regarding secured financing
10. Issue and deliver ownership stock certificates
11. Prepare organizational minutes (Exercise caution here. If procedures are undertaken and not consistently administered, client's credibility in respecting the entity is damaged).

B. Organization meeting with client, CPA and other participants (See chart attached as Exhibit G)

1. Confirm completion of entity formation and tax ID number and state filings

2. Confirm completion of asset transfer(s) to the entity and reflect transfers in capital accounts
3. Provide entity bank account information
4. Method of accounting for entity income and set up internal accounting for entity affairs
5. Establish fair compensation to be paid to general partner/manager and withholding taxes on any guaranteed payments
6. Project frequency and amounts of distributions based upon entity income, expenses and tax requirement of partners
7. Evaluate any state tax issues with respect to entity income or entity assets
8. Ensure that entity pays all appropriate expenses and acquires contracts in its own name
 - (a) Property taxes
 - (b) Insurance
 - (c) Utilities
 - (d) Miscellaneous expenses
9. Fair consideration to be paid in a timely manner for use of entity assets (e.g., rent)
 - (a) Determine fair consideration through appraisal if a transferor is using an asset
 - (b) Document the arrangement with appropriate legal instruments
10. Deduction or amortization of “business” legal, accounting, appraisal, etc., expenses versus “personal” expenses and source of payment for professional fees.
11. Evaluate any taxes or contractual provisions triggered by “change in control”
12. Preliminary plan for gifting or otherwise transferring entity interests
 - (a) Amount of entity to transfer
 - (b) Transfer of assignee or full partner interests
13. Confirm whether CPA or attorney will prepare gift tax returns

C. Gifting of entity interests

1. Confirm all assets have been transferred to entity and are entered in the appropriate capital account and any third party approvals/consents obtained
2. Confirm whether CPA or attorney will prepare gift tax returns
3. Confirm that distributions change after gifts to reflect the new ownership interests
4. Confirm that entity is not a “disregarded entity” under IRS classification rules at time of gifts (otherwise discounts may not be available)
5. Ensure all recipients of gifts are parties to appropriate governing instruments and buy-sell agreement; any certificates should reference restrictions in documents
6. Ensure spouses of owners sign appropriate consents
 - (a) Acknowledging separate property when appropriate
 - (b) Acknowledging that partnership interests are fully subject to the agreement
 - (c) Acknowledging the right and opportunity for independent counsel
7. Confirm tax issues:
 - (a) Tax impact of proposed gifts
 - (b) Gift tax (including qualification for present interest/annual exclusion)
 - (c) Generation skipping transfer tax
 - (d) Income tax (including cash flow)
 - (e) Property tax
 - (f) Ensure that the K-1s for the 1065 match the gift tax records (sometimes there are different accountants preparing the returns and a lack of communication)
8. Discuss risks associated with gifts, future tax law changes and possible depreciation in value
9. Ensure persons making the gifts adequately part with “dominion and control”

- (a) Physical delivery of entity interests to donee or her agent
 - (b) Sign declaration of gift confirming that no consideration is paid
- 10. Explain how gifts may affect vote on certain entity issues (e.g., gifts of all limited interests to child could give them veto powers on certain issues)
- 11. Potential value of gifts based upon:
 - (a) Appraisals of underlying entity assets
 - (b) Discount appraisals or drafts of appraisals
 - (c) Include book value or estimated fair market value of miscellaneous personal property that might not be appraised
 - (d) Discuss timing and responsibility for gift tax return and payment of gift tax (if any)
 - (e) Adequate disclosure on 709s to get the statute of limitations to run

IV. OPERATION OF ENTITY

- A. Inform client regarding records (general partner/manager) that must be maintained based upon state law
- B. Federal and state tax reporting requirements
- C. Distributions to partners/members
- D. Monitor entity income; if more than 10% of the entity income is from sources other than rents, interest, dividends and gains from the sale of real property, general partner should contact legal counsel
- E. Segregate entity matters and personal matters (of general partner/manager)
- F. Businesslike management of assets
- G. Compensation to general partner or manager
- H. Meeting minutes, annual and all others (see prior caution about consistency in reporting once undertaken)
- I. Ensure that limited partners do not participate in a manner that jeopardizes limited liability
- J. Annual report of registered agent

- K. Provide written explanation to client of general partner/manager duties set forth above and circumstances where additional legal advice or CPA advice may be needed
 - 1. See memorandum attached as Exhibit H for review of circumstances when additional advice is needed
 - L. Assess operation of entity on a periodic basis (See chart attached as Exhibit I)
 - M. Comply with the governing instrument with respect to additional capital contributions, notice, and dilution
- V. LIQUIDATION OF ENTITY (PARTIAL OR COMPLETE)
- A. Partial liquidation of entity through redemption of one or more entity interest owners
 - 1. Adopt redemption plan and identify assets to distribute
 - 2. Redemption agreement issues
 - (a) Asset valuation issues
 - (b) Ongoing liability issues for entity debt
 - (c) Scope of any release among partners
 - (d) Any necessary payment and security terms
 - 3. Determine creditor consents necessary to transfer assets
 - 4. State and federal tax issues
 - (a) Carryover basis and holding period for real estate
 - (b) Distribution of marketable securities and cash in excess of basis trigger tax
 - (c) Affect of any liability shifting among partners under basis rules
 - B. Complete liquidation of entity
 - 1. Analysis of income tax issues
 - (a) Code §§704(c)(1)(B), 731 and 737
 - (b) Carryover basis and holding periods

- (c) State income tax issues
 - 2. Adopt plan of liquidation
 - 3. Payment of creditors and determine creditor consents
- C. Consider affect termination may have on prior transactions, particularly gifts that utilize discounts (i.e., termination soon after gifts may cause IRS to attack legitimacy of discounts)
- D. Document votes necessary to dissolve and liquidate under entity agreements
- E. File necessary cancellation or dissolution document with Secretary of State
- F. Consider termination agreement among owners setting forth agreements for record retention and cooperation in future tax audits
- G. Consider “tail insurance” if necessary to protect against future claims

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EXHIBIT A

CLIENT READINESS FOR ENTITY PLANNING CHECKLIST

1. Client Motivation/Objectives
 - a. Tax benefits.
 - b. Non-tax benefits must be important.
 - c. Extent of benefit and control for client.
 - d. Benefit and participation for family.

2. Client Mindset
 - a. Willingness to treat the entity like an ongoing business (indefinite duration).
 - i. Utilize professionals and follow advice.
 - ii. Distribution, control and accountability in accordance with governing instrument.
 - b. Expectations regarding changes in benefit, control (outright versus entity ownership of assets) and management approach.

3. Client/Family Sophistication and Relationships
 - a. Business/investment background and basic business judgment of client and family members.
 - b. Relationships with qualified CPA and other advisors.
 - c. Good working relationship between client and (at least some) other family members.
 - d. Willingness to address issues relating to asset transfers.
 - i. Documentation and follow through.
 - ii. Complexities and extra steps associated with asset (real estate) transfers.
 - (1) Survey/legal description.

(2) Boundary line adjustment (to increase or decrease size of parcel transferred to entity).

(3) State/county special use qualification and zoning restrictions.

(4) Revaluation for state property tax.

(5) Steps if real estate to be transferred to entity is personally used by a partner.

(6) Real estate currently owned by a corporation (owned by client).

e. Understanding the process/time frame for design and implementation of entity and expense of the project.

i. Written explanation of steps and applicable time frame.

ii. Professional fees.

(1) Attorney.

(2) CPA.

(3) Appraisal of underlying assets.

(4) Appraisal of discount.

iii. Annual expense to maintain the entity.

f. Understanding the risks if the Service conducts a gift/estate tax audit.

i. Reduction of discount.

ii. Elimination of discount.

iii. Inclusion of entity assets in donor's estate.

iv. Loss of annual gift tax exclusion.

v. Undervaluation penalty.

vi. Substantial legal/accounting/appraisal fees.

vii. Recognition of capital gain on the establishment of the entity or on the dissolution of the entity (income tax audit).

viii. Level of risk (aggressiveness) associated with the client circumstances (e.g., advanced age and poor health) and the entity design used to achieve client objectives and tax benefits.

ix. Steps that may be taken to minimize the risk.

4. Understanding of Reasonable Alternatives to Entity Planning in Order to Accomplish Objectives

- a. Holding an undivided interest in assets outright or in trust - tenants in common.
- b. §2702 (GRAT and/or QPRT).
- c. Sale to IDGT.
- d. Charitable split interest planning (CLT and CRT).
- e. Segregating ownership between QTIP trust and surviving spouse.
- f. Wait for federal applicable exclusion amount to increase.
- h. ILIT to purchase life insurance.

Negative Factor Matrix for Finding an "Implied Agreement" Under IRC 2036(a)(1)

	Schauerhamer	Reichart	Harper	Thompson (3rd cir.) (e)	Kinbell	Strangi-III (5th cir.) (e)	Stone	Abraham (1st cir.) (e)	Hillgren(c)	Kinbell (5th cir.) (e)	Bongard (5th cir.)	Bongard (WCB)	Bigelow (BFLP)	Korby	Schutt
1. Commingling of entity income and personal income.	X	X	X				X	X							
2. Continuation of pre-entity benefit. Disregard of entity formalities. Nothing changed except legal title. Practical control. Post death payment of expenses/debts of taxpayer and/or his estate.	X	X	X	X	X	X	X	X	(d)	(f)	X	X	X	X	(f)
3. Disproportionate distributions contrary to entity governing instrument.	X	X	X	X			(a)	(b)	X				X	X	
4. Accounting/financial records for the entity prepared after taxpayer's death.	X	X	X					X							
5. Taxpayer retained minimal assets after transfers to entity.		X	X	X		X	X	X					X	X	
6. No significant non-tax or business reason to create entity. Recycling property through partnership form. No pooling of significant assets among partners.	X	X	X	X	X	X		(b)	X	(d)	(f)	X		X	(f)
7. General partners (family members) did not actively manage the assets.	X	X	X	X		X					X				
8. Poor health of taxpayer at time of entity formation.	X	X	X	X	X	X	X	X	X	X			X	X	X

EXHIBIT B

(a) Upon the death of Mr. Stone, a non-pro rata distribution was made from each of four FLPs to enable the estate to pay estate taxes; the Tax Court found that the requirements for the exception to §2036(a) were satisfied.

(b) The partnership agreement and guardianship order provided for explicit retention of FLP income for Mrs. Abraham's needs; the taxpayer did not provide credible evidence that payment for partnership interests constituted adequate and full consideration.

(c) Despite the application of §2036(a)(1), the Tax Court allowed a substantial discount for a business loan agreement that restricted the real property.

(d) Entity formalities were observed and transfers of assets and entity interests were completed. Substantial business reasons motivated the establishment of the entity. Contribution of assets by other partners is not subject to a "de minimis" test and no need to engage in "arm's length" negotiation.

(e) The Third, First and Fifth Circuits affirmed the Tax Court holdings in *Thompson*, *Abraham* and *Strangi II*, respectively.

(f) A legitimate and significant non-tax reason motivated the creation of the entity and proportionate interests were received in exchange for assets contributed.

EXHIBIT C-1

**KIMBELL ASSESSMENT OF BONA FIDE SALE FOR ADEQUATE
AND FULL CONSIDERATION EXCEPTION***

	Weak			Strong	
	1	2	3	4	5
1. <u>Adequate and Full Consideration</u>					
a. Pro rata entity interests issued for contributions.					
b. Assets credited to partner's capital account.					
c. Distribution upon termination in accordance with capital account.					
2. <u>Bona Fide Sale**</u>					
a. Donor retained sufficient assets for own support.					
b. No commingling.					
c. Entity formalities satisfied in implementation and operation.					
d. Proper funding of assets to entity.					
e. Substantial business or other non-tax reasons and significant portion of assets (approximately 11%) required active management.***					
f. Non-tax reasons that cannot be accomplished in a revocable living trust.					

* *Thompson* (3rd cir.) emphasized the non-tax purpose of the entity and legitimate business operations in satisfying both requirements set forth below.

** Not require arm's length negotiation.

*** *Strangi-III* (5th cir.) stated that “the proper inquiry . . . (in determining whether a bona fide sale occurred) is whether the transfer . . . was objectively likely to serve a substantial non-tax purpose.”

EXHIBIT C-2

**BONGARD (TAX COURT): ASSESSMENT OF BONA FIDE SALE
FOR ADEQUATE AND FULL CONSIDERATION**

	Weak					Strong
	1	2	3	4	5	
1. <u>Adequate and Full Consideration</u>						
a. Transferees each received an interest in the entity that was proportionate to the assets transferred						
b. Assets contributed were properly credited to respective capital accounts						
c. Distributions from entity resulted in negative adjustment to capital account						
d. Legitimate and significant non-tax business reason satisfied heightened scrutiny regarding "dissipated value"						
2. <u>Bona Fide Sale</u>						
a. Arms-length transaction - how unrelated parties would structure the transaction						
b. Legitimate and significant non-tax reasons for forming the entity"						
c. The pooling of assets						
i. Capital accounts were properly credited and maintained						
ii. No commingling						
iii. Pro rata distributions						

EXHIBIT C-3

BONGARD: LEGITIMATE AND SIGNIFICANT NON-TAX REASON
(The actual motivation to create the entity that is
shown by the conduct of the parties)

Non-tax Reasons	Theoretical (Conduct/Circumstances)				Actual
	1	2	3	4	5
A. Strategic Business/Investment					
B. Asset Management					
C. Creditor Protection					
D. Facilitate Gifts					
E. Greater Flexibility than Trusts					
F. Sibling/Spouse Hostility					

EXHIBIT C-4

BONGARD: NEGATIVE FACTORS TEST
(No legitimate and significant non-tax reasons)

		Weak				Strong
		1	2	3	4	5
1.	Decedent "standing on both sides of the transaction" (no negotiation/sham)					
2.	Decedent's financial dependence on distributions from the FLP					
3.	Commingling of FLP and personal assets					
4.	Failure to transfer property to the entity					

EXHIBIT D

FAMILY ENTITY SECTION 2036(a)(2) ASSESSMENT

	Weak				Strong
	1	2	3	4	5
1. <u>General Fiduciary Duty</u>					
a. Meaningful interest owned by independent party.					
b. Meaningful interest subject to independent oversight.					
c. Other circumstances or governing instrument provisions that elevate the probability that fiduciary duty will be enforced.					
2. <u>Economic and Business Realities</u>					
a. Nontax and economic objectives.					
b. Going business/active investment/change from pre-entity approach.					
c. Periodic monitoring and businesslike operation of entity.					
3. <u>Distributions and Liquidation</u>					
a. Donor is restricted from making discretionary distributions.					
b. Donor may not participate in decision to liquidate.					
c. Donor has no vote to reinstate his or her right to liquidate by amending entity's governing instrument.					

NEW FAMILY ENTITY WITH SPECIAL MANAGER

Section 2036(a)(2) Does Not Apply

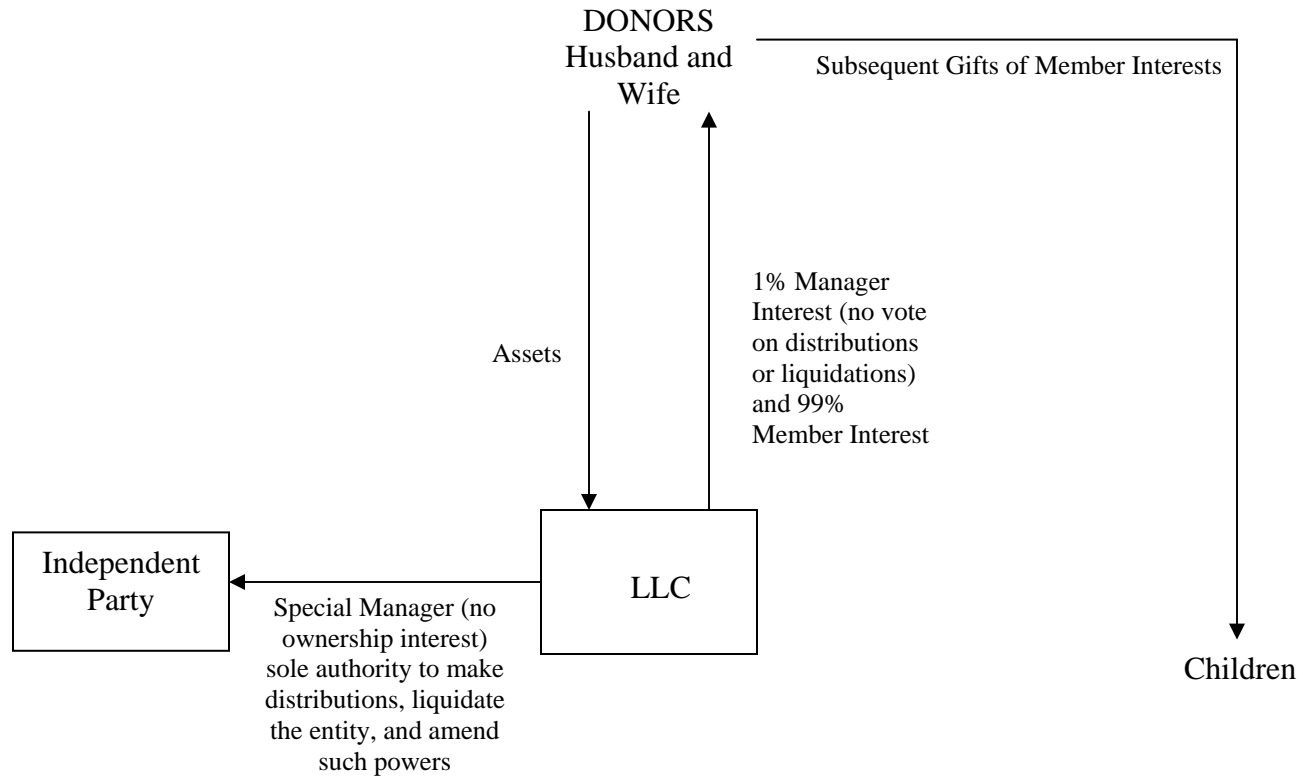


EXHIBIT E-1

NEW FAMILY ENTITY WITH TRANSFERS TO CHARITIES AND TRUST FOR CHILDREN

Section 2036(a)(2) Arguably Does Not Apply*

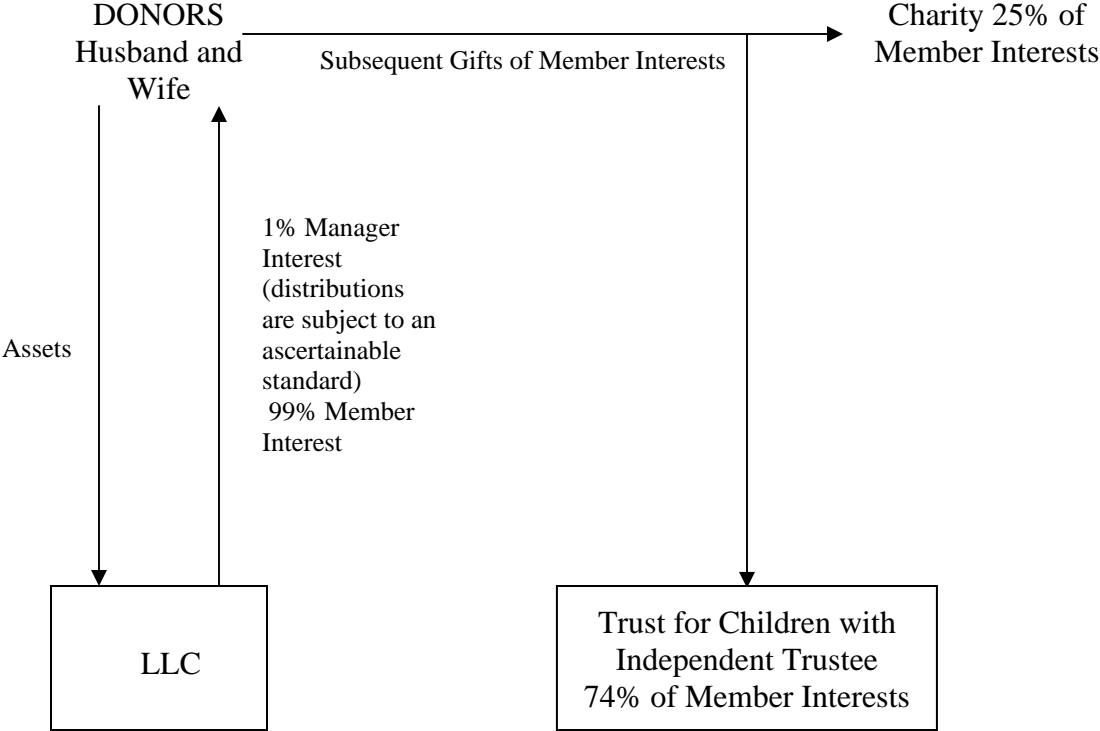


EXHIBIT E-2

* Independent ownership and oversight adds accountability to Donor's fiduciary duty.

NEW FAMILY ENTITY WITH SPECIAL MANAGER AND TRANSFERS TO CHARITIES AND TRUST FOR CHILDREN

Section 2036(a)(2) Does Not Apply*

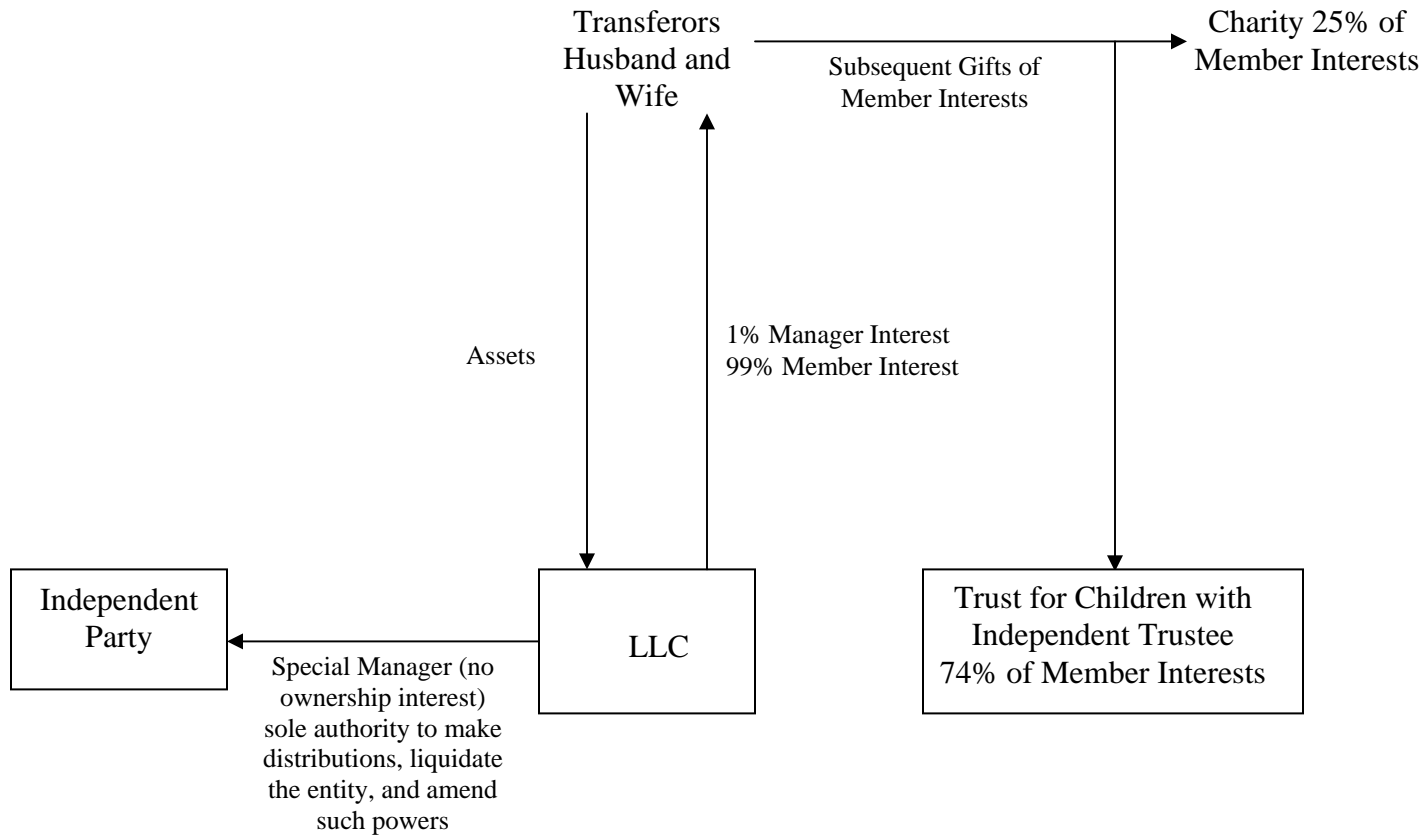


EXHIBIT E-3

* Ownership of minority interests and oversight by non-family members; Independent Trustee has discretionary authority to make distributions to Children.

EXHIBIT F

CALIFORNIA REAL ESTATE (Proposition 13)

California voters passed Proposition 13 in 1978 providing that property tax rates could not exceed 1 percent of the property's market value and assessed values could not grow by more than 2% per annum (unless the property was sold). The important consideration when planning with California property is whether the assessed value is lower than current fair market value. If it is, then the practitioner will want to make sure that transfer of the property or entity interest will not cause a property tax increase.

California law provides that California property is reassessed (at its then fair market value) for property tax purposes upon a "change in ownership." CA Rev. & Tax. Code Sec. 60. There are special rules relating to the transfer of California property to business entities and transfers of interests in business entities holding California property. This Exhibit is intended to be a summary review of these issues, not an extensive review of the subject matter. Due to the summary nature of this document, it should not be relied upon for any purpose.

Transfers upon Formation of LP/LLC.

1. Does transfer of the real estate change proportionate ownership of the real estate?

California Revenue & Taxation Code section 62(a)(2) provides that a change in ownership does not include any transfer between an individual or individuals and a legal entity, such as a cotenancy to a partnership, that results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, in each and every piece of real property transferred, remain the same after the transfer. For example, John and Judy each own an undivided 50% tenants-in-common interest in Blackacre and they desire to form a LP. They transfer Blackacre to the LP and in exchange John receives a 1% interest as a general partner, and a 49% interest as a limited partner and Judy receives a 1% interest as a general partner, and a 49% interest as a limited partner. Because John and Judy each owned 50% of Blackacre before the transfer and 50% of the LP after the transfer, there is no reassessment of Blackacre. If John received 51% of the LP and Judy received 49%, Blackacre would be subject to reassessment.

Transfer of Entity Interests.

The transfer of entity interests can cause reassessment of California property owned by the entity in two ways:

1. Does transfer of the partnership interest cause any person or legal entity to obtain direct or indirect control over more than 50% of the total interests in the partnership's capital and profits?

California Revenue & Taxation Code section 64(c) provides that a change in ownership of all property owned by a partnership (or LLC) occurs when any person or entity obtains control through direct or indirect ownership or control of a majority ownership interest in any partnership (or LLC), including any purchase or transfer of 50 percent or less of the ownership interest through which control or a majority ownership interest is obtained.

2. Does the transfer of the partnership interest result in a cumulative transfer of more than 50% of the total interests of the entity?

California Revenue & Taxation Code section 64(d) provides that if property is transferred on or after March 1, 1975, to a legal entity in a transaction excluded from change in ownership under section 62(a)(2), then the persons holding ownership interests in that legal entity immediately after the transfer shall be considered the "original co-owners." Whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original co-owners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property that was previously excluded from change in ownership under the provisions of section 62(a)(2) shall be reappraised.

EXHIBIT G

Compliance – Procedure Issues

A. ESTABLISHMENT AND INITIAL OPERATION	Target Date	Progress	Completion
1. Execution and Filing (if needed) of Formation and Governing Instruments			
2. Funding of Entity			
3. Special Funding Issues <ul style="list-style-type: none">• Real Estate• Consent of any Existing Creditors• Marketable Securities/Investment Company Rules• Debt in excess of Basis			
4. Communication with Other Professionals and Delegation of Responsibilities			
5. Establish Entity Bank Accounts and Financial Procedures			
6. Initial Entity Capital Accounts and Financial Records			
7. Gifting of Entity Interests <ul style="list-style-type: none">• Documents• Delivery			
8. Appraisals (Prior to Date of Gift) <ul style="list-style-type: none">• Assets• Discount			
9. File Initial Tax Returns (Income, Gift)			
10. Documentation of Party/Entity Transactions			
11. Follow-up meeting prior to end of initial tax year to deal with adjustments, rescission and other Section 761 issues			

EXHIBIT H

MEMORANDUM

TO: John and Mary Doe

FROM: Attorney

SUBJECT: Operating Issues Once Doe Family Limited Partnership Has Been Established

DATE: June 2005

Issue	Comments
1. Annual information tax return/IRS Form 1065 and associated K-1s needed for partners' individual tax returns. Gift tax returns.	Certified Public Accountant (CPA) should be consulted by General Partner.
2. Issuing new ownership interests or any additional capital contributions to Partnership or corporation.	Partnership/income tax issues, so advice of CPA and attorney recommended.
3. Gift of partnership interest.	Gift/estate tax issues, income tax issues and partnership transfer restrictions, so advice of attorney and CPA recommended.
4. Purchase or sale of any ownership interests in partnership or corporation.	Partnership/corporate tax issues, so advice of CPA and attorney recommended.
5. Amending Partnership Agreement.	Advice of attorney recommended.
6. Change in general partners.	Advice of attorney recommended.
7. Amending the organizational documents of the Partnership.	Advice of attorney recommended.
8. Substantial sale or exchange of Partnership assets.	Partnership tax issues, so advice of CPA and attorney recommended.
9. Additional contributions of real estate or other assets to the partnership.	Gift tax issues and excise tax or special use continuation, so advice of CPA and attorney recommended.
10. Investment and reinvestment of partnership assets.	Investment policy issues are involved, so advice of financial advisor recommended.

	Issue	Comments
11.	Partnership incurring any substantial amount of recourse or nonrecourse debt.	Partnership tax issues, so advice of CPA and attorney recommended.
12.	Dissolving, merging or consolidating the Partnership.	Partnership tax issues, so advice of CPA and attorney recommended.
13.	All major business agreements.	Proper approval and documentation essential, so advice of attorney recommended.
14.	Annual meeting minutes of general partner and limited partners; not legally required but is recommended.	Advice of attorney recommended.
15.	Maintenance of separate bank accounts and investment accounts.	Typically handled by general partner. Important to keep Partnership as a distinct entity; bank accounts should be clear on signing requirements.
16.	Filing of annual reports with state.	Typically handled by general partner. Important to keep Partnership and Corporation as distinct entities.
17.	Bankruptcy of Partnership or any partner.	Advice of attorney recommended.
18.	Any lawsuit threatened against Partnership.	Advice of attorney recommended.
19.	Any use of Partnership assets by a partner (for example, a partner living on real estate owned by partnership) and any sale of assets or loan to any partner.	Should reflect a fair market value price and be properly documented and approved pursuant to Partnership Agreement. Advice of attorney recommended.
20.	Insurance coverage for Partnership assets.	Should be in the name of partnership as to liability and fire/hazard for all assets. Any life insurance purchased for buyouts should be periodically evaluated by general partner.
21.	Compensation to partners.	General partner should receive advice regarding amount and tax results through attorney or CPA. See Section ____ of Partnership Agreement.

Issue	Comments
22. Employment issues	General partner should ensure proper withholdings and compliance with employment law requirements and consult with CPA and attorney.
23. Reports to other partners.	General partner should comply with specific requirements set forth in Partnership Agreement.
24. Distributions to partners.	The general partner should exercise discretion regarding the cashflow that is retained for "the reasonable needs of the business" and the cashflow that is distributed to partners. The general partner has the responsibility to make timely pro-rata distributions of an appropriate amount. See Section _____ of the Partnership Agreement.
25. Day-to-day operating decisions.	The general partner has this responsibility. Limited partners should limit their roles to avoid becoming treated as a general partner with associated liability.
26. Registered Agent for corporation and Partnership.	Presently attorney is in this role. Could be changed to general partner as desired.
27. Death of partner.	Estate tax and income tax issues are involved, so advice of CPA and attorney recommended.

EXHIBIT I

Compliance – Procedure Issues

B. PERIODIC MONITORING	Satisfactory	Unsatisfactory	Remedial Action Complete
1. Use of Entity Bank Accounts			
2. Distributions Made in Accordance With Governing Instrument			
3. Business Plan Progress and Update			
4. Documentation/Recording of Additional Capital Contributions and Issuance of Additional Entity Interests			
5. Documentation/Appraisal/Reporting of Gifts			
6. Documentation/Valuation of Entity/Party Transactions			
7. Minutes of Entity Actions			
8. Filing of Returns (Income, Gift)			
9. Filing of State Annual Licensing Reports			