



Business and Estate Planning

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Agenda:

1. Introduction and Legal Notices
2. Entity Planning: State vs. Tax
3. Corps vs. LPs vs. LLCs
4. The Disregarded LLC
5. The LLC Taxed as an S Corp.
6. Top Ten Legal Pitfalls for Businesses and How to Avoid Them
7. Questions and Answers




Required Legal Notices:

- We are not providing legal advice in this discussion. The information provided here is not intended to be legal advice, but merely conveys general information related to legal issues commonly encountered by entrepreneurs and other business people. We encourage you to seek competent legal counsel for legal advice.
- We are not general practitioners. We know a lot about a few things, and little about everything else.
- The State of Colorado does not certify attorneys as specialists in any field. Therefore, we cannot say that our attorneys are specialists in the fields of:
 - Business Startup Planning
 - Taxable Entity Planning
 - Business Continuity Planning
 - Asset Protection
 - Estate Planning for Entrepreneurs
 - Wealth Transfer Planning




Choice of Business Entity - Issues

<u>State Entity (Colorado)</u>	<u>Tax Entity (IRS)</u>
<ul style="list-style-type: none">➢ Recognized by the Secretary of State of Colorado➢ Provides protection of your personal assets from the liability of your business➢ Provides protection of the business from your personal liability➢ State laws are used to determine rights and obligations	<ul style="list-style-type: none">➢ Recognized by the Internal Revenue Service➢ Provides opportunities for tax efficiency➢ Federal laws are used to determine rights and obligations of entity and owners as taxpayers




Choice of Business Entity - Types

<u>State Entity (Colorado)</u>	<u>Tax Entity (IRS)</u>
<ul style="list-style-type: none">➢ General Partnership➢ Limited Partnership➢ For Profit Corporation➢ Not For Profit Corporation➢ Limited Liability Company➢ Others	<ul style="list-style-type: none">➢ Disregarded➢ Partnership (pass-through)➢ S Corporation (pass-through)➢ C Corporation➢ Others



Corps vs. LPs vs. LLCs

<u>Corporation</u>	<u>Limited Partnership</u>
<ul style="list-style-type: none">➢ Any number of owners (shareholders)➢ Management in Officers and Directors➢ Taxed as C corp. (double taxation) or S corp. (pass-through)➢ Poor "downstream" asset protection	<ul style="list-style-type: none">➢ Two or more owners (general and limited partners)➢ Management in General Partner (unlimited liability)➢ Taxed as partnership (pass-through)➢ As a practical matter, requires another entity as the General Manager for asset protection purposes.
<u>Limited Liability Company</u>	
<ul style="list-style-type: none">➢ Any number of owners (members)➢ Management in Manager➢ Full tax flexibility➢ Single Member Asset Protection Issues	



How Asset Protection Works

Liability generated by you should not affect the operations of the business.

Liability generated by your business partner should not affect your interest in the business.

Liability generated by the business should not affect your personal assets or the personal assets of your business partner.
Examples: slip and fall injuries on your property; business contracts; etc.

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How Does a Business Owner Get Asset Protection in the Business?

- Stay compliant with your filing obligations with the Secretary of State
- Get and stay organized (so you can show the judge your compliance in the future)
- Reach out to Uncle Sam so that he doesn't reach out to you.
- Have annual meetings
- Keep your business funds out of your personal accounts (and vice versa)
- Always act in a representative capacity and not as an individual (in correspondence, business agreements, etc.)

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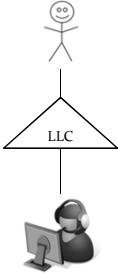
The Disregarded LLC

Ownership Alternative One


Ownership Alternative Two

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The LLC Taxed As An S Corporation



- > Your assets are protected from the liability of your business.
- > Your business is protected from your personal liability.
- > As an S Corporation for tax purposes, you can pay yourself a reasonable salary subject to income and employment taxes.
- > As an S Corporation for tax purposes, profits can be distributed subject to income taxes but free of employment taxes.




Exit Strategy Planning

- Prior planning is key
- A comprehensive strategy will include planning for death and disability as well as retirement and disputes
- Succession to family members is often a vital component to exit strategy planning
- Sales to third parties are also often used exit strategies
- Purchase by a business partner (a family member or other) is the typical exit strategy
- A Cross Purchase Agreement can formalize the exit plan.
- Termination and liquidation is an exit plan, although usually not the most economically beneficial




Estate Planning For Business Owners

- Disability Planning
 - Financial Power of Attorney (General Durable POA)
 - Medical Power of Attorney
 - Living Will
- Death Planning
 - Last Will
 - Revocable Living Trust



**Estate Planning For
Business Owners**

- Special Circumstances
 - Distributions to Children
 - In General
 - Children In The Business vs. Those Who Are Not
 - Distributions to Special Needs Beneficiaries
 - Agricultural Transfers (During Life vs. At Death)
- Estate Tax Planning
 - Estate Tax Exemption
 - Currently \$5,000,000 per person / \$10,000,000 per couple
 - As of 2013, \$1,000,000 per person




**Top Ten Legal Pitfalls for Businesses and How
to Avoid Them**

Theme: Do Not Assume Legal, Tax and Accounting Problems Can Be Dealt With Later.

10. *Problem:* Not picking the right business entity or structure.
Issues: Adequate asset protection; Tax planning opportunities.
Solution: Involve your business attorney and accountant as early as possible.


9. *Problem:* Not getting the books set up properly.
Issues: Ability to leverage the tax planning opportunities of your structure; obtaining asset protection.
Solution: Ask your accountant for planning services in addition to tax preparation services and see him or her for reviews during the tax year.



**Top Ten Legal Pitfalls for Businesses and How
to Avoid Them**

8. *Problem:* Failing to set up the business entity early enough.
Issues: Founders' liability.
Solution: Set up the business entity before transacting business.


7. *Problem:* Not protecting the founders.
Issues: Allowing investors to take an equity position in the company without giving up control; Wealth transfer to children without giving up control.
Solution: Structure the entity so that voting favors the founders—requires a Manager-Managed LLC.



Top Ten Legal Pitfalls for Businesses and How to Avoid Them

6. *Problem:* Not protecting family and partners against death and disability.
Issues: Family may not receive the value you have built in the business without an appropriate exit plan; A business owner needs to ensure that the owner's partners are not replaced without the owner's input.
Solution: Establish **AND FUND** a cross purchase agreement or redemption plan.


5. *Problem:* Inaccurate tax reporting and / or compliance.
Issues: Withholding problems; Negative capital accounts; Suspended losses.
Solution: Get the accountant on board early.



Top Ten Legal Pitfalls for Businesses and How to Avoid Them

4. *Problem:* Not documenting transactions.
Issues: Getting the benefit of your deal; Cleaning up transactions after the fact is often much more expensive than doing it right the first time; leaving heirs/beneficiaries/partners without clear ownership of assets.
Solution: Have your transactional documentation professionally prepared or reviewed.


3. *Problem:* Not designing an exit strategy when you set up the business.
Issues: Litigation against the business partners you once liked.
Solution: Keep your eyes on the future and make sure your partners and family know your plans. Use memoranda of understanding (business pre-nups) when appropriate. Make sure your estate planning includes the appropriate disposition of your business and establishment of agents to deal with your ownership if you are disabled.



Top Ten Legal Pitfalls for Businesses and How to Avoid Them

2. *Problem:* Not involving the accountant on day one.
Issues: Your accountant not being willing to take the tax position your big-shot attorney built your entity around.
Solution: Make sure your attorney involves your accountant from the beginning of any business project.

1. *Problem:* Not tending to your internal housekeeping and compliance.
Issues: Loss of asset protection; Potential for liability of the owners for business debts.
Solution: **HAVE A REAL OPERATING AGREEMENT**; Hold your meetings; Establish a bank account; Do not commingle assets; Put your entity name on contracts; Act only in a representative capacity.



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Russ is the founding member of Monarch Wealth Attorneys, a Colorado law firm providing wealth transfer and asset protection planning to families with assets in excess of \$10 million. Monarch Wealth Attorneys also works with entrepreneurs helping them structure their "next venture" or sell their existing companies once it is time for a liquidation event.

Russ is a native of Clinton, Maryland, and worked for several years as a software engineer after graduating from the University of Maryland, College Park, with a Bachelor of Science Degree in Physical Sciences (with concentrations in Physics, Computer Science, and Mathematics). He then moved to Miami, Florida, where he attended law school on an academic scholarship at St. Thomas University School of Law. During law school, Russ was an editor of the school's law review, was professionally published, and was the president of the local chapter of the largest legal fraternity in the nation (Phi Alpha Delta). Russ graduated law school and received a J.D. with academic honors. He then went on to continue his education at New York University where he received a Master of Laws Degree (LL.M.) in the top federal taxation law program in the country.

Russ built his legal career in New York where he worked for a well-known international tax law firm designing large estate plans. He was then recruited by one of the Big Four accounting firms as a federal tax manager to service their largest corporate clients. Russ has a significant amount of international planning experience as he has transacted business in well over 50 countries.

Russ has built his practice working with wealthy families and successful business owners. His practice centers on asset protection, wealth transfer, complex estate planning, and legal services for entrepreneurs (with the related corporate and partnership taxation planning).

In addition to being licensed to practice law in Colorado, Russ is actively licensed in New York and regularly works with the extensive network of international service providers he has established. Russ belongs to various estate planning, charitable, and legal organizations in Colorado, including the Colorado Bar Association, the Boulder County Bar Association, and the Boulder County Estate Planning Council.

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