

Starting on Solid Ground

Entity Formation & LLC Structures for Development Projects

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Who We Are



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Five Considerations for Today

- (1) Entity Formation: Choosing Entity Type
- (2) Tax Treatment for your Entity
- (3) Liability Considerations – Structure and Substance
- (4) Navigating Multi-Owner Structures
- (5) Legal Entity “Good Housekeeping”

1. Choosing an Entity Structure

Limited Liability Company (LLC) vs

- Flexible ownership and management structure
- Fewer corporate formalities
- Easier to structure project-specific entities (single-purpose entities for each development)
- Flexible profit allocations (can differ from ownership percentages)
- LLC Agreement governs rights and responsibilities
- LLCs are typically preferred for real estate and construction ventures

Corporation (Inc.)

- More rigid statutory structure (shareholders, directors, officers)
- Required formalities (board meetings, minutes, resolutions)
- Better suited for raising venture capital or issuing multiple stock classes, options
- Familiar structure to institutional investors and lenders
- May be required for certain public or large-scale financing

2. Tax Classification/Treatment For Entities

- **Default Tax Classifications**

- Single-member LLC → Disregarded entity (taxed as sole proprietorship)
- Multi-member LLC → Partnership taxation
- Corporation → C-Corporation taxation

- **Pass-Through Taxation (LLCs / S-Corps)**

- Profits/losses pass through to owners
- Avoids double taxation
- Losses may offset other income (subject to basis and at-risk rules)
- Self-employment tax considerations

- **C-Corporation Taxation**

- Entity pays corporate tax
- Dividends taxed again at shareholder level (double taxation)
- Potential benefit: reinvesting profits at corporate tax rates

- **S-Corporation Election**

- Pass-through taxation
- Potential payroll tax advantages
- Restrictions on ownership and number/type of shareholders

- ***To review with a tax advisor familiar with development projects:***

- Allocation of depreciation
- 1031 exchange eligibility (real estate projects)
- Carried interests / promote structures
- Capital accounts and preferred returns

3. Liability Considerations – Structure and Substance

- **Limited Liability Protection**
 - Owners generally not personally liable for company debts
 - Protection applies to contractual obligations and lawsuits
 - Critical in construction and development due to risk exposure
- **Piercing the Corporate Veil Risks**
 - Commingling personal and business funds
 - Undercapitalization
 - Fraud or misuse
 - Failure to maintain separateness
- **Project-Specific Risk Management**
 - Use of single-purpose entities (one LLC per project; separate entity for management entity)
 - Separation of assets across projects
 - Contractual indemnification provisions
 - Insurance as first line of defense
- **Personal Guarantees**
 - Common in construction loans
 - Can eliminate liability shield if not structured carefully

4. Navigating Multi-Owner Structures

- **Ownership Structures & Governance**
 - Member-managed vs. Manager-managed LLCs
 - Voting vs. non-voting interests
 - Preferred equity vs. common equity
 - Promote/carried interest structures in development deals
- **Capital Contributions**
 - Initial capital vs. capital calls
 - Consequences of failing to fund
 - Dilution provisions
- **Buy-Sell Agreements**
 - Trigger events (death, disability, deadlock, default, divorce)
 - Valuation mechanisms (formula, appraisal, agreed value)
 - Right of first refusal provisions
 - Funding mechanisms (insurance, structured payouts)
- **Exit Strategies**
 - Sale of project vs. refinance
 - Drag-along / tag-along rights
 - Dissolution provisions

5. Legal Entity Housekeeping

NUTS AND BOLTS: Formation & Maintenance

Formation Documents

- Articles of Organization / Certificate of Formation
 - If applicable, Statement of Authority
- LLC Agreement / Bylaws
- EIN registration (IRS)
- Foreign Qualification(s) (*if applicable*)
- State tax/workers comp registration

Ongoing Compliance

- Federal & State taxes
- Maintaining registered agent & filing an Annual Report (June 1st) in jurisdictions where registered

PRESERVING CORPORATE RECORDS/SHIELD

Formalities to Maintain Separate Legal Identity

- Separate bank accounts
- Written contracts in company name
- Member/manager resolutions for actions

Financial Discipline

- Clean bookkeeping
- Capital account tracking
- Documented loans to/from members

Record Keeping

- Contracts
- Permits and licenses
- Meeting minutes (especially for multi-owner entities)
- Loan documents and guarantees

Questions?

Thank You!



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