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Transferring Residential Property to an LLC: What Every Property Owner Should Know

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For some owners of real estate, it may be beneficial to create a limited liability company to own certain property. For more information on whether an LLC is the right structure for your property, check out this article by Yana Zheng: LLC, Revocable Trust, or Realty Trust: Which Structure Is Right for Your Property?.

While an LLC can be a powerful tool used for asset protection and estate planning, there is more to it than just the simple paperwork involved in creating an LLC. Here are some things to keep in mind when holding property in an LLC:

1. **Create and adopt an Operating Agreement if necessary.** If your LLC has more than one member, or if it is being used as an estate planning tool (which means it will likely have more than one member), be sure to create and adopt an Operating Agreement for the company that sets out the governance rights, ownership, and management of the LLC. Your attorney can help draft these documents for you.
2. **Ask your attorney or contact an accountant and set up a tax ID for the LLC.** A tax identification number will be necessary to open bank accounts and file tax returns if necessary. Our office routinely obtains EIN numbers for our clients, but an accountant can do this as well. Your attorney or accountant can also help you determine whether the LLC is a disregarded entity for tax purposes or if a return must be filed for the company.
3. **Maintain a separate bank account and accounting records for the property.** Never deposit any income from the property directly into your personal bank account; this intermingling of funds will defeat any personal asset protection benefits the LLC creates. Always keep the finances of the company separate from your personal finances to maintain liability protection. For example, if you are paid rent through the

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LLC that holds the real estate, have the rent checks (or direct deposits) made directly to the LLC, pay any expenses for the property through the LLC, and then take distributions.

4. **Submit your annual filings with the Commonwealth.** In order to remain an active company in good standing with the Commonwealth, you must submit an annual filing with the Secretary of State and pay an annual filing fee.
5. **If you have a mortgage on the property, check with your bank before transferring title to an LLC.** Most residential mortgages have a "due-on-sale clause" that can be triggered by this transfer of title, and the bank may demand "full repayment immediately." Additionally, while some mortgages allow transfers with written consent from the bank, some residential loans cannot be assumed by an LLC under bank policy, and you may need to either refinance or pay the full amount of the loan in order to transfer title.
6. **You will lose homestead protection.** Transferring title of a residential property to an LLC means that you will lose any homestead protection you have on the property (currently $1 Million in Massachusetts, or $2 Million for an elderly homestead). This is important to consider if you are using the property as your primary residence. Check out this article that explains the Massachusetts homestead exemption.
7. **Check your title insurance policy.** Your title insurance policy may not automatically carry over. It is important to review the documents or reach out to your title company to seek an endorsement.
8. **Your homeowner's insurance policy may no longer apply.** You may need to replace the name of the insured on your policy, or you may need to get a new policy altogether. It is important to reach out to the insurance company and determine what steps must be taken.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney Chabely Lopez.

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