KLF

KLF Legal Briefs

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SPECIAL POINTS OF INTEREST:

- **Statutory Close Corporations can be managed like LLC's or partnerships.**
- **Consider a "break-up fee" if your proposed business purchase or sale falls thru.**
- **Companies are required to "police" their trademarks to uncover and prevent possible infringement.**

INSIDE THIS ISSUE:

The Statutory Close Corporation!

Forming Limited Liability Company's (LLC's) and Limited Liability Partnerships (LLP's) have been all the rage in Pennsylvania the past few years. And while I still recommend the LLC and LLP form of business ownership to many of my clients, the corporation form of business entity still exists, and many times is preferable to an LLC or LLP for a number of reasons. This is particularly true of the Statutory Close Corporation. Not to be confused with a "closely-held corporation", the Statutory Close Corporation derives its specific authority from the Pennsylvania Business Corporation Law ("BCL"). While all statutory close corporations are "closely-held corporations, not all "closely-held corporations" are statutory close corporations.

Any business corporation, other than a management corporation, may elect statutory close corporation status.

The Articles of Incorporation for a statutory close corporation must contain the following mandatory provisions: 1) a heading stating the name of the corporation and that it is a statutory close corporation; and 2) a statement that neither the corporation or any shareholder shall make an offering of any shares of any class that would constitute a "public offering" within the meaning of the Securities Act of 1933, § 2302.

XYZ Corporation, Inc.
A Pennsylvania Statutory Close Corporation

What I like about the Statutory Close Corporation is that it relaxes many of the formalities of a typical corporation, allowing the corporation to be managed in a similar style as an LLC, LLP or general partnership. The Statutory Close Corporation can do away with the traditional board of directors and can be managed directly by the shareholders, similar to an LLC being managed by its members or a partnership being managed by its partners. The corporation would thereby provide indemnification for the actions of the shareholders. The bylaws can also provide for automatic share transfer restrictions and right of first refusals. And formal corporate requirements of regular meetings, notice, quorums and other standard corporate formalities are either relaxed or eliminated.

Due Diligence in Buying or Selling a Business!

Whether you are contemplating buying a business or evaluating an offer to sell your existing business, an understanding of the "due diligence" process is an important first step. Many parties start out with a "Letter of Intent", which is a non-binding agreement outlining each party's understanding of the proposed transaction. Once that intent is memorialized in a letter, a mutual non-disclosure agreement should be signed by the parties. Some of the additional steps involved in due diligence may include disclosure of the following:

- Income tax returns and financial statements
- List of fixed assets to be sold
- Customer/Client lists and agreements
- Employment agreements and compensation
- Leasehold agreements
- Corporate bylaws, shareholders agreement, partnership agreement or operating agreement
- Tax implications of an asset purchase versus a stock purchase.

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- **This newsletter is only intended to provide general information and is not intended to provide specific legal advice.**

Penn State cracks down on Real Estate Companies!

As if the Jerry Sandusky scandal didn't bring enough bad publicity down on Penn State, now the embattled university finds itself embroiled in a federal trademark infringement lawsuit against several real estate rental companies. It was recently reported that the university has sued Double Domer Properties, Rent Like a Champion, and PSU Football House Rentals, claiming trademark infringement concerning the companies' marketing of rental housing for out of town fans attending Penn State football games. More specifically, the university is protesting against the defendants' use of paw prints similar to the Nittany Lion mascot on advertising, use of the website www.psufootballhouserentals.com, and use of the phone number 855-40-LIONS.

Don't mess with the Nittany Lion!

The companies market and rent out houses in Happy Valley for football weekends and share the revenue with the homeowners. The companies pass out fliers in the Penn State area advertising their services, and the fliers contain the website address, paw print and a football helmet.

Penn State contends that the actions of the defendants cause confusion with the public and implies that the university sanctions or is involved in the rentals. The Collegiate Licensing Company (CLC) is in charge of licensing the PSU trademarks to various companies and has not granted a prior license to the defendants. The CLC, acting on behalf of the university, sent the defendants a cease and desist letter demanding that they stop infringing upon the PSU trademarks. Penn State is seeking a permanent injunction barring the alleged infringement, along with damages, attorney's fees and destruction of any infringing marketing materials.