



KLF Legal Briefs

VOLUME 1, ISSUE 2

WINTER, 2010

SPECIAL POINTS OF INTEREST:

- Look to limit your personal liability with your choice of business entity.
- Consider the tax implications of each form of business ownership.
- Understand the assessment power of your homeowners association.
- Pay attention to the essential elements of a valid will.

INSIDE THIS ISSUE:

Choice of Business Entity	1
Homeowners Associations	1
Elements of a Valid Will	2

Choice of Business Entity

In this current economic downturn, many people who have been downsized have been bit by the entrepreneurial bug and are contemplating starting a business. What legal structure this business will have is an important first step in launching the new venture.

By default, a new company is a sole proprietorship or partnership unless a different business entity is created. However, a sole proprietorship or partnership is not distinct from its owner(s). Any income (or loss) is reported directly on the owner's tax return, and you remain personally liable for any of your company's debts or liabilities. And in the case of a partnership, you can also remain personally liable for any deals,

debts or liabilities your partner makes.

Limiting Personal liability is the main reason I recommend to my clients that they consider either the corporate form of business ownership, or forming a limited liability company (LLC). Both

Sole Proprietor, Partnership, LLC, LLP, C Corp, S Corp?

forms offer limited liability protection, meaning that your liability is limited to the assets of your company only, *unless* you personally guarantee any loans, debts or obligations. However, the tax implications vary, so it is important to discuss the pros and cons of the LLC structure

versus the traditional Subchapter C Corporation or Subchapter S Corporation with both an attorney and accountant.

For small companies I have been recommending the LLC form of legal structure. The LLC is a flexible form of ownership that offers the limited liability protection of a traditional corporation with the pass-thru tax structure of a sole proprietorship or partnership. In addition, the LLC may be a better option in the event you want to sell or dissolve the company. Since the assets of the LLC belong to its members (owners), a sale of the business can be structured as a sale of assets instead of stock, or distributed directly to its members in the event of a dissolution.

Homeowners Associations have the Upper Hand!

Mad at your homeowners association? Considering not paying your annual assessment pending resolution of the dispute? You might want to think twice. Homeowners Associations (HOA's) have gained a lot of power under Pennsylvania law in the past decade or so. Since the

adoption of the Uniform Planned Community Act (UPCA) in 1997, Pennsylvania law now recognizes HOA's as "mini-governments", with the legal right and power to assess homeowners their proportionate share of the cost of maintaining such common areas such as roads, lakes, pools and

clubhouses. And if you don't pay your share? The UPCA provides for an automatic statutory lien on your home once you are delinquent. The UPCA further provides that the HOA can foreclose on your property in the same manner as a delinquent mortgage. Better to pay now!



Koeberle Law Firm, LLC

3 Penn Center West
Suite 411
Pittsburgh, PA 15276
Phone: 412-788-9554
Fax: 412-788-9553
E-mail: brian@koeberlelaw.com

Personal service at an affordable cost!

The Koeberle Law firm is a boutique firm catering to the legal needs of both small businesses and individuals. We strive to bring affordable, efficient and effective legal services to our clients in a timely and personal manner. We are entrepreneurs and business owners. We are family-oriented and compassionate attorneys. And we are dedicated advocates for all of your legal needs. For further information, please contact Brian Koeberle at 412-788-9554 or email me at brian@koeberlelaw.com.

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



The Elements of a Valid Will!

Recently a dear friend of mine passed away. It was later discovered that in her final days she attempted to hand-write a "will" on a piece of paper. Unfortunately, the document she wrote lacked many of what are considered to be the essential elements of a valid will.

To protect yourself from this same problem, pay close attention to the following essential elements in making a valid will:

- ◆ You must be of "legal age" to make a will. In most states this is 18 years old.
- ◆ You must have "testamentary capacity" to make a will, which is what many refer to as "sound mind".
- ◆ You must have "intent" to make

this document your last will and testament.

- ◆ You must "voluntarily" sign the will and not be under any duress to make a will.
- ◆ The will must properly "dispose" of your property.
- ◆ The will should be a "written" document and "witnessed" by two other parties.
- ◆ The will should be "properly executed" by you.



In addition, pay close attention to the following:

- ◆ Make sure you revoke any prior wills and/or codicils.
- ◆ Provide for the payment of your just debts and funeral expenses.
- ◆ Name an Executor/Executrix (and alternate) who will be responsible for wrapping up the affairs of your estate.
- ◆ If you have any minor children, name a guardian of both your child's person and estate.
- ◆ Make sure that the signatures on the will are acknowledged by a notary.
- ◆ Lastly, consult with an attorney to make sure that a valid will is properly prepared for you.