

## Limited Liability Companies (LLCs)

### Purpose

- ◆ An *unincorporated association* without perpetual duration, having two or more members (individuals, corporations, partnerships, trusts, etc) organized pursuant to Arizona Code. LLCs were first introduced in the state of Arizona
- ◆ Called *members* instead of partners or shareholders
- ◆ Treated like a corporation for limited liability purposes
- ◆ Treated like a partnership for federal tax purposes

### Organization

- ◆ Must file *Articles of Organization* with the Arizona Corporation Commission
- ◆ Name must be distinguishable from name of every other LLC
- ◆ Name must contain word "Limited Company," or "Limited Liability Company" or abbreviation LC or LLC

### Control

- ◆ Control lies with members in proportion to their equity in the LLC at the time a vote is taken
- ◆ Almost always there is an Operating Agreement setting forth how the LLC will be operated and how profits and losses will be shared
- ◆ Members of LLC usually elect a manager to operate business who may or may not be a member

### Duration

- ◆ *Articles of Organization* must set forth date on which the LLC is to be dissolved and its affairs wound up
- ◆ Duration also limited to the happening of certain events including death, resignation, expulsion, bankruptcy, or dissolution of a member, unless its business is continued by unanimous consent of remaining members
- ◆ Life of LLC is more fragile than any other entity except a sole proprietorship
- ◆ Dissolution and winding up and distribution of assets is similar to a partnership

### Liability

- ◆ No member, manager, or agent of an LLC will have any personal responsibility for the liabilities of the LLC
- ◆ The assets of the LLC, however will be subject to the claims of its creditors

### Transfer of Interests

- ◆ Like general partnership agreements, most operating agreements

preclude the transfer of a member's interest without the unanimous consent of the other members

### **Tax Treatment**

- ◆ LLCs will be classified as partnerships for tax purposes

### **Advantages**

- ◆ Limited liability for individual members
- ◆ Pass through tax treatment of a partnership
- ◆ No limit on the number of members of an LLC (unlike S Corp)
- ◆ No restriction on the character of members of an LLC (unlike an S Corp)
- ◆ LLC can be a member of an affiliated group (unlike S Corp)
- ◆ LLC member can participate in management without losing protection of limited liability (unlike limited partner)
- ◆ Considerable flexibility in control, management, voting and sharing of economic benefits
- ◆ Allocation of items of income, loss, deduction and credit for tax purposes follow partnership rules
- ◆ Member's tax basis is increased by general loans to the LLC, as well as capital contributions and loans directly from members, thereby permitting greater capacity for deduction losses allocated to members
- ◆ Entities wishing to joint venture a project can share control with limited liability and avoid double taxation through an LLC, where an S Corp would be unavailable and other entities would be unsatisfactory
- ◆ There are no corporate formalities to mess up and jeopardize limited liability

### **Disadvantages**

- ◆ Brand new, no case law
- ◆ Life of LLC is more fragile than any other entity except sole proprietorship; dissolution can occur upon the happening of certain events including death, resignation, expulsion, bankruptcy or dissolution of a member, unless its business is continued by unanimous consent of remaining members
- ◆ Transferee of an LLC membership interest will not be admitted as a new member of the LLC unless all other members give unanimous consent ~