

THE DUFFORD WALDECK QUARTERLY

A NEWSLETTER FOR OUR CLIENTS

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FOURTH QUARTER

DUFFORD, WALDECK, MILBURN & KROHN, L.L.P.

2013

THE PROS AND CONS OF USING LLCs TO OWN RENTAL PROPERTY

by Michael A. Kuzminski

People who own rental property may wish to consider transferring their property into one or more limited liability companies. For a variety of reasons, LLCs have become the entity of choice for owning rental property.

From a liability perspective, in most cases liability that is incurred on a property owned by an LLC is limited to the assets of the LLC. In the event of a lawsuit against an LLC where the plaintiff prevails, the damages are generally limited to what is owned by the LLC, not what is owned by its managers or members. If insurance fails to cover the damages, the real property, bank accounts and any other assets owned by the LLC could be seized to satisfy the judgment, but the personal assets of the manager(s) and member(s) would (in most cases) be safe. Similarly, if multiple properties are each owned in a separate LLC, each separate property would be insulated from the judgment, which would not be the case if a single LLC owned all of the properties.

LLCs are also very flexible for tax purposes. An LLC can be taxed as a partnership (if there are two or more members of the LLC), a corporation, or, if it has only one member, a disregarded entity, which is an entity that is not separate from its owner for tax purposes. The member(s) or manager(s) of an LLC should consult an accountant regarding the advantages and disadvantages of the various tax elections available to LLCs.

Some disadvantages to using an LLC for the ownership of rental property are that the LLC must maintain its own books and bank accounts and may need to file its own tax return, depending on how its owners elect to be taxed. There are also legal fees and filing costs to form the LLC, as well as a small annual reporting fee that must be paid to the Colorado Secretary of State. In some cases, too, an LLC must acquire its own separate insurance policy for its rental property, rather than using the individual policy of the LLC's owners.

There may also be some impediments to transferring a rental property into an LLC. If the property is financed, the transfer could trigger a due-on-sale clause in the loan documents requiring the immediate and full payment of the loan because the transfer is a legal conveyance from the individual owner(s) of the property to the LLC. The transfer could also void the title insurance policy acquired when the property was originally purchased, unless steps are taken to preserve the original insurance. Additionally, if a property is to be initially purchased by an LLC, rather than an individual, the lender may require the LLC to enter into a commercial loan, which typically has a higher interest rate and a shorter repayment term than a personal loan. Accordingly, it is important for owners to contact their lender before transferring a rental property into an LLC or entering into a real estate contract to purchase property through an LLC.

For many people, the potential liability protection of owning rental property in LLCs outweighs the additional bookkeeping and tax preparation required with LLCs. If you would like more information about using LLCs to own rental property, please contact your attorney, accountant and lender to discuss the pros and cons of your particular situation.

PROPERTY TAX BILLS ARE COMING IN JANUARY. ARE YOU READY?

by Barbara R. Butler

Property owners can expect to receive their property tax bills from the county treasurer shortly after the first of the year. You may also recall receiving a Notice of Valuation concerning your property last May. That Notice contained information on how to appeal the value assigned by the county assessor.

In the usual course, if you believe that your property has been overvalued by the county assessor, the most expedient route is to appeal that valuation to the county assessor's office in May and hopefully obtain some relief. If this does not work, after completing this appeal, there is also a statutory appeal process available to you, starting at the County Board of Equalization, if you remain unhappy with the county assessor's valuation of your property.

If you followed this appeal process starting last May, it is likely that you have exhausted all of the remedies available to you for 2013 and that, as a result, you will probably be unable to object to the tax bill you receive next month.

However, if you did not take advantage of this appeal process, there is an alternate route that may offer some relief. Under certain circumstances, you may file a Petition for Abatement with the Board of County Commissioners.

The Petition for Abatement process is similar to the appeal process to the county assessor, and then the County Board of Equalization. However, under a Petition for Abatement, you can actually seek relief for the proceeding two tax years—not just the valuation of your property you received in May.

But, there are also a couple of issues that you need to keep in mind. First, when it comes to property taxes, you cannot appeal the "taxes" themselves as being too high; the only issue you may challenge is whether your property was fairly valued. Second, if you have already filed an appeal for any given tax year, you may not also file a Petition for Abatement for that same tax year.

If you have additional questions or concerns regarding your property taxes or the methods available to appeal them, you should consider contacting an attorney.

MANTEY HEIGHTS CHOSEN FOR DWMK ANNUAL CHRISTMAS GIVING PROJECT

by Kris E. Nichols



DWMK staff and attorneys will once again participate in a firm-wide Christmas giving project. This year, money donated by DWMK staff and attorneys will be used to purchase Christmas gifts for residents of Mantey Heights Nursing Home who may otherwise not receive gifts on Christmas Day.

The staff and attorneys at DWMK are honored to provide for the residents of Mantey Heights and feel blessed to have the ability to give back to the community that we are proud to be a part of, and that has been so supportive of our firm throughout the years.

HAPPY HOLIDAYS AND A JOYOUS NEW YEAR FROM DUFFORD WALDECK



From everyone at Dufford, Waldeck, Milburn & Krohn, we wish you and your family a Merry Christmas, the happiest of holidays, and a wonderful new year. It has been our pleasure to serve you throughout this past year, and we look forward to 2014.