

DECEMBER 2013 NEWSLETTER

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**THE FAMILY LIMITED LIABILITY COMPANY AS AN
ADVANCED ESTATE PLANNING TOOL**

NEWS ALERT:

1. Before addressing this topic, Pozzuolo Rodden, P.C. are pleased to announce the following:

A) PHILADELPHIA MAGAZINE FIVE STAR WEALTH MANAGER, BUSINESS PLANNING

Pozzuolo Rodden, PC is pleased to announce that Joseph R. Pozzuolo was designated as a

2013 PHILADELPHIA FIVE STAR WEALTH MANAGER, BUSINESS PLANNING by Philadelphia Magazine. The award will appear in the November, 2013 edition of the magazine. Mr. Pozzuolo was selected after an independent survey was conducted by Philadelphia Magazine of 64,000 registered financial services professionals, high-net-worth households and subscribers of Philadelphia Magazine all of whom have an income of greater than \$190,000.

2. Upcoming Seminars: Free Online CLE/CPE LawLine Seminars

Pozzuolo Rodden, P.C. is pleased to announce the opportunity to attend a CLE/CPE seminar for free via webcast. Joseph R. Pozzuolo, Judith P. Rodden and Jeffrey S. Pozzuolo will be teaching two 1 hour seminars as part of a full day of seminars being held by LawLine in King of Prussia, Pennsylvania.

“Estate Planning For An Aging Graying Population”

Saturday, December 14, 2013

Presenter: Joseph R. Pozzuolo, Esquire and Jeffrey S. Pozzuolo, Esquire
Pozzuolo Rodden, P.C., Philadelphia, PA

Pass code: <http://bit.1y/1hwURp1>

“The Combine Role of CPAs and Attorneys In Family Law Litigation”

Saturday, December 14, 2013

Presenter: Judith P. Rodden, Esquire
Pozzuolo Rodden, P.C., Philadelphia, PA

Pass code: <http://bit.1y/1hx2hbK>

Please contact Christine Wainwright @ 215-977-8200 or chrissy@pozzuolo.com if you have any questions about logging on.

3. Free Online CLE/CPE Credits:

Pozzuolo Rodden, P.C. is pleased to announce the opportunity to obtain free CPE/CLE credits by viewing the LawLine webcast courses previously taught by Joseph R. Pozzuolo and/or Jeffrey S. Pozzuolo titled “The Negotiation and Documentation of Commercial Financing Documents Including The Use of Convertible Loans With Put and Call

Options”, “How Middle Income Families Should Plan for Retirement Including Ethics” and “The Fundamentals of Starting a Business”.

* How Middle Income Families Should Plan For Retirement - <http://bit.ly/ZvgNbr>

* The Fundamentals of Starting a Business - <http://bit.ly/13Q8dei>

* The Negotiation and Documentation of Commercial Real Estate Loan Documents- <http://bit.ly/17jfXSN>

Any problems, feel free to contact Chrissy at: chrissy@pozzuolo.com

QUESTION OF THE MONTH:

AS A DIVORCED FATHER, AM I LEGALLY OBLIGATED TO SUPPORT MY CHILD WHILE HE IS ATTENDING COLLEGE?

Answer-See Page 5 of this Newsletter

THE FAMILY LIMITED LIABILITY COMPANY AS AN ADVANCED ESTATE PLANNING TOOL

If you are considering your options to transfer your wealth to your children or to keep your family business within the family, you should consider setting up a family limited liability company (LLC). A family LLC is like other LLCs except that it involves your family – the LLC is owned and managed by your family and the LLC assets are familial assets. It is an advanced estate planning tool and, depending on your estate planning needs, it may be the ideal vehicle for you to transfer your wealth to your children and younger generations.

A family LLC may provide numerous benefits to high-net worth individuals, business owners and their families. The benefits range from business and non-tax advantages to clear-cut tax savings.

Business and non-tax advantages.

A family LLC allows for various business and non-tax advantages including:

- Maintenance and management of the family business or assets remains in the control of the senior generation
- Involvement of younger generations in the family business or in the management of family assets
- Pooling of business interests and investment risks
- Asset protection and spendthrift protection for younger generations from creditors or divorcing spouses

- Flexibility in dealing with family wealth and ability to gift interests in property that otherwise cannot be easily divided
- Limited liability for members
- Ability to minimize family disputes with built in dispute resolution procedures

Tax Savings

A family LLC also provides for various tax savings including:

- Transfer tax savings for federal gift tax purposes in that property transfers to the family LLC, as opposed to transfers directly to children or grandchildren, allow for valuation discounts of the gifted interests based on minority status or lack of marketability
- Income tax savings for the family in that income earned on the family LLC property is taxed to the members and, therefore, may be “shifted” from parents to children or grandchildren who are in lower marginal income tax brackets
- Federal estate tax savings in that the gross estate of parents is reduced because the income and appreciation earned on family LLC assets is removed from the parents’ gross estates

A family LLC is structured similarly to other LLCs. The LLC is “owned” by members and may be managed either by the members or by managers who are appointed by the members. The LLC is registered with the state and there is an operating agreement which states who will control the LLC and make decisions over the assets. The LLC offers its members limited liability, similarly to corporations, but also provides for flow through taxation like partnerships. Thus, income is taxed to the members rather than to the LLC.

In the common family LLC setup, parents transfer business or investment assets, such as rental properties or traded securities, to the family LLC and, in exchange, take back membership interests. The transfers are generally tax free. Usually, there is an operating agreement which will name the parents as managers who make all the decisions regarding investment, management, and decisions over distributions to members. Meanwhile, the parents may gift membership interests in the family LLC to their children or grandchildren. In this way, the parents remain as managers of the family LLC, again, retaining control and making all the important decisions over the assets, while the children or grandchildren become owners.

Parents may make annual gifts to the younger generations of the family LLC interests. Furthermore, they can take advantage of the annual gift tax exclusion so that these gifts incur no gift tax. Because of the valuation discounts, the parents can actually make transfers whose value is more than the annual exclusion amount but, nonetheless, will not cross the tax threshold.

Within the operating agreement of the family LLC, parents can exercise even more nuanced control over the assets. The key is that the operating agreement require be drafted to require manager approval over the family LLC activities. For example:

- The operating agreement may provide that no distributions of cash to members may be made without manager approval or that no member may draw from his capital account without manager approval. Thus, parents control whether or not the children actually receive any funds from the family LLC.
- The operating agreement may limit the ability of members to sell or transfer their interests without manager approval, thus, keeping the family business in the family.
- The operating agreement may require a supermajority vote of the total membership interest, death or voluntary resignation in order for a manager to be removed. In this way, parents stay in control over the family LLC.

It is clear that the family LLC can be a useful tool in estate planning which allows for total family involvement but parental control, and various tax savings. However, the family LLC is not an appropriate estate planning tool for every family. Generally, it is useful for those individuals and families who have substantial wealth or have a family business they wish to pass on to younger generations in a controlled and managed transfer. Essentially, the family LLC is an advanced estate planning tool that should be considered only after you have completed other more basis estate planning techniques.

Consult with your estate planning attorney to determine whether a family LLC is appropriate for your family.

QUESTION OF THE MONTH:

As a divorced father, am I legally obligated to support my child while he is attending college?

Pursuant to Pennsylvania Rule of Civil Procedure 1910.19 a parent may seek termination of their child support obligation based on their child reaching the age of eighteen (18) or graduating from high school. Pennsylvania does not require that child support obligations continue when the child has reached the age of eighteen (18) and is attending a college or a university. Furthermore, the Pennsylvania Appellate Courts have recognized this, in Mackay v. Mackay, the Pennsylvania Superior Court stated, “Pennsylvania Law does not impose an obligation on parents to provide for their children’s college expenses.” See also the Pennsylvania Supreme Court case of Blue vs. Blue, 532 Pa. 249 (1992).

However, this is a general rule and it can be modified by agreement of the parties. The Court in Mackay recognized this, and stated, “A parent may assume financial responsibilities for a child’s secondary education.” Often times, as part of a divorce, parties will enter into a Property Settlement Agreement or Marital Settlement Agreement which settles the financial

implications of the parties divorce. These agreements can include whether divorced parents will be legally bound to contribute to their children's college education and expenses.

Typically Property Settlement Agreements are written and can even be incorporated into the divorce decree entered by the Court. The terms are enforceable and if a party who agrees to pay for his or her children's college education fails to do so, the Court can issue an Order requiring the enforcement of the agreement between the parties and requiring the breaching party to contribute to their child's college expenses.

However, if parties merely discuss a parent contributing to a child's college expenses following their divorce, a parent's obligation to pay for college only becomes enforceable if the parties enter into an agreement. In MacKay, the mother claimed that her and father made an oral agreement where the father agreed to pay for the child's college expenses. The Court recognized that Pennsylvania allows the Court to enforce oral agreements, but the Pennsylvania Courts had not previously ordered the enforcement of an oral agreement to pay college expenses. The Court in Mackay found that while the couple discussed pooling their resources together to help pay for their child's college expenses the couple did not have a legally enforceable agreement and, therefore, as the father was not required to pay for his child's college expenses.

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- If there are any legal questions you would like this office to answer in the future, please email the question to us at info@pozzuolo.com. Each month, the question with the most relevance to our privately held business clients, advisors, and friends will be answered in our monthly newsletter. The questions can relate to any of the areas practiced by this office including business planning and transactions, corporate law, commercial litigation, employment law and litigation, commercial real estate and development, construction law and litigation, estate planning, estate administration, tax and pension law, family law litigation.
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PUBLICATIONS

All of the following professional publications and past newsletters written by attorneys of this office are available by clicking here: http://pozzuolo.com/Pubs_Articles.shtml

- **Corporate/Tax Articles**
- Bankruptcy - How To Prevent It And How To Cope With It Should It Happen To Your Business
- Deferred Compensation Rewards And Retains Key Employees
- Design Buy-Sell Agreements For Maximum Utility
- How An S Corporation Avoids The Double Taxation Incurred When Excessive Compensation Is Treated As A Dividend
- How Mortgage Lenders Should Draft Broker Agreements To Avoid RESPA Violations

- How To Look, Act And Sound Like A Professional Corporation
- How to Structure a Suitable Buy-Sell Agreement
- How To Use Non-Qualified Deferred Compensation Arrangements As A Business, Retirement And Tax Planning Tool
- Money Purchase Pension Plan Falls Out Of Favor
- Protecting A Client's Business From Unfair Competition Using Restrictive Covenants
- Structuring Loans From Qualified Plans - How To Handle The Strict Tax Rules
- What Type of Qualified Corporate Retirement Plan Best Serves Your Business, Tax And Retirement Needs
- Why An Employment Contract Is Mandatory
- **Estate Planning Articles**
- Adapt Estate Planning Strategies to Fit the Needs of Same-Sex Couples
- College Funding Tool Offers Estate Planning Advantage
- Diversify Strategies For An Effective Estate Plan
- Divorce and Estate Planning
- Divorce Raises The Need For Performing An Estate Planning Review
- Drafting The Durable Power Of Attorney For Wealth Protection Purposes
- Estate Planning For Pet Owners
- Remarriage Situations Can Raise Special Estate Planning Considerations
- Six Proven Estate Planning Techniques
- Special Needs Trust - An Estate Planning Tool For The Disabled
- The Limited Liability Company -A Sophisticated Tool For Estate Planning
- Using Trusts To Maximize Family Protection And Minimize Estate Tax
- Why Living Wills- Advance Directives Are An Essential Part Of Estate Planning

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects. It is to provide insight into legal developments and issues. You should always consult with legal counsel before taking any action on matters covered in our updates.

This newsletter is courtesy of Pozzuolo Rodden, P.C.

To subscribe, unsubscribe, or for any questions, please contact us at INFO@POZZUOLO.COM.

