

BUDDE LAW GROUP

A Professional Law Corporation



CONSIDER THIS – A BRIEF GUIDE TO OWNING OR RENTING PROPERTY

Many people do not want to spend the money hiring an attorney on the front of a real estate transaction when they purchase investment property and chose less expensive options, such as drafting the agreements themselves or pulling forms from the internet. What money may be saved on the front end of a transaction, by not using an attorney, will cost the client considerably more when problems arise in the future.

A. How do you want to hold/own the Property

Buying
Leasing
1031 exchange

B. Setting up an LLC to hold the property.

1. Choose name and make sure it is available;
2. Decide the breakdown of the ownership percentage of each member;
3. Decide the rights and responsibilities of the members;
4. Create a detailed plan showing how losses and profits will be distributed;
5. Decide how capital will be put into the LLC;
6. Decide the voting rights of members;
7. Create a management plan for the business;
8. Decide on rules for meetings and voting; and
9. Decide on buyout or buy-sell rules that govern when a member's sale of an interest, or a member's death or disability.

Items needed:

1. File Articles of Organization with the Secretary of State
2. Execute Single Member LLC Operating Agreement
3. Optional S-Corporation election if recommended by tax advisor.
4. Obtaining Tax ID No. from the IRS.

C. Leasing Property

1. Know the required disclosures for residential or commercial

2. Standard Provisions for residential

- Party identity and capacity. Make sure the landlord actually owns the property
- Legally enforceable description of premises
- Rental term
- Rent – amount, to whom paid, where paid, when late (grace period?), provisions for what happens when late (late charges), non-payment as basis for 3-day notice
- Security deposit – may not exceed 2x the monthly rent in an unfurnished premises, 3x in furnished premises. Use proper language so it is considered "rent" in the case of a default, but the tenant may not use it as rent
- Other charges? Garbage, water, etc.? Parking?
- No assignment/subletting clause
- Condition of premises – warrant of habitability standards
- Maintenance and repair (usually allocated to landlord – state standards for time landlord must complete certain tasks)
- Use of premises – no smoking?
- Compliance with all laws clause
- Complying with rules and regulations
- Pets
- Waterbeds
- Satellite dishes, antennas, and other telecommunications devices
- Landlord entry
- Insurance
- Damage or destruction
- Condemnation
- Modifications must be in writing
- Guaranties
- Attorneys' fees
 - Mediation/Arbitration?

3. Standard Issues for commercial leases

- Is the listed landlord the legal owner of the subject property?
- Are the premises described accurately?
- Has the square footage been verified?
- Parking?
- Common area: does the tenant have the right to use? Security language.
- Rent:
 - Calculated properly?
 - Increases?
 - Flat/NNN/CAM/Other?
 - CAM definition – See Exhibit A
 - Tenant's right to audit operating expenses
 - Utilities etc. – Separate meters? Part of CAM?

- How is tenant's proportionate share of CAM calculated? Can it change?
- Base year for operating expenses? Property taxes?
- Tenant's right to audit operating expenses
- Cost for operating HVAC/other amenities after hours?

If you have any questions about a real estate transaction or a dispute, please contact our office. For a further list of our practice areas, please visit our website www.blglegal.net