



AXLEY
ATTORNEYS

Structuring the Ownership of Rental Real Estate

Attorney Nancy Wilson

nwilson@axley.com

262.409.2281

Introduction

Owning residential rental real estate requires the owner(s) to consider three distinct areas of law.

A. Asset Protection

B. Changing Tax Laws

C. Transferring/Selling Assets for Retirement or Estate Planning



Asset Protection

A. Asset protection

1. Internal liability
2. External liability

Asset Protection

B. Choice of entity

1. Sole proprietor
2. Limited partnership
3. Corporation
4. Limited Liability Company
 - a. single member
 - b. multiple member/operating agreement



Asset Protection

C. Liability Exposure

1. Sole proprietor
2. Limited Liability Company
 - a. single member
 - b. multiple members
3. Charging orders in Wisconsin Wis. Stat. Sec. 178.0504
 - a. lien on member's interest
 - b. deterrent to creditors

Recent Tax Law Changes

Under the Tax Cuts and Jobs Act that Impact Residential Rental Real Estate Owners

A. IRC Section 199A Purpose

1. Effective for years after 12/31/2017 and before 1/1/2026
2. Intended to create parity with the corporate tax cut from 35% to 21%
3. Deduction is generally 20% of an owner, member or partner's qualified business income (QBI) earned in a "qualified trade or business"



Recent Tax Law Changes

Under the Tax Cuts and Jobs Act that Impact Residential Rental Real Estate Owners

A. IRC Section 199A Purpose

4. Treated as a separate deduction on individual form 1040 and can be taken whether the taxpayer itemizes or takes the standard deduction
5. Limitations need to be reviewed on an individual basis



Recent Tax Law Changes

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B. Qualified Trade or Business

1. Notice 2019-07 – Section 199A Trade or Business Safe Harbor; Rental Real Estate – Effective Date 12/31/2017 and immediate reliance (proposed revenue procedure)
 - a. real estate must be directly owned by an individual or eligible pass through entity (or disregarded entity)
 - b. separate books and records must be maintained for each rental real estate enterprise
 - c. 250 or more hours of “rental service” must be performed for each rental real estate enterprise



Recent Tax Law Changes

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- C.** Enterprise that Fails to Qualify under Safe Harbor Can Still Qualify if it Otherwise Meets the Definition of Trade or Business under Treas. Reg. Sec. 1.199A(b)(14) which defines trade or business as “a trade or business under section 162” which is a factual question with specific guidance under Sec. 162



Recent Tax Law Changes

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- D.** Triple net lease will be considered a passive investment and will not qualify as a trade or business for purposes of the 20% deduction



Benefits of Selling/Transferring

Benefit of Limited Liability Company (LLC) in Selling or Transferring a Real Estate Rental Business

- A. Sale of business - a member can sell their LLC interest
 1. Buy-Sell agreement through operating agreement – multiple members
 2. Sale of member interest to 3rd party



Benefits of Selling/Transferring

- B.** Transferring LLC interest to next generation Buy-Sell agreement through operating agreement – multiple members
 1. At death with step up in basis
 2. Gifting during lifetime
 3. Advance planning using trusts and installment sales

Questions?



Nancy L. Wilson

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