



# Title Isn't Everything: Corporate and Tax Issues for Real Estate Investors to Consider Prior to Purchasing an Investment Property

BY PAUL T. RUSHTON, ESQUIRE



A real estate investor who is considering the purchase of an investment property is typically

focused solely on confirming that the seller of the property has good and marketable title to the property and that the requisite financing is in place for the purchase.

However, an investor should also consider the following corporate and tax issues prior to the purchase of a property to ensure that he or she is adequately protected against liability and avoids the payment of unnecessary taxes.

## Ownership Options

An investor who purchases a property in his or her individual name or in the name of the investor and other general partners will be personally responsible for any liability arising in connection with the investment property. In other words, an investor can lose his or her personal assets if an uninsured problem arises with respect to the property. An investor can shield himself or herself from this personal liability if the investor forms a

limited liability entity and purchases the property in the name of the limited liability entity. An investor should consult with his or her attorney and tax advisors about the form of limited liability entity that will most benefit the investor from a legal and tax perspective.

## Avoid Paying Transfer Taxes Twice!

Many investors make the mistake of purchasing an investment property in their own name and then later transferring the property to a limited liability entity. Although the investor is ultimately protected against personal liability arising after the transfer, the investor is forced to pay realty transfer taxes twice – once when the investor purchases the property from the seller of the property and again when the investor transfers the property to the limited liability entity. An investor can avoid this double taxation by forming a limited liability entity in advance of the closing for the purchase of the property and providing for the entity itself to purchase the property.

## Title Matters

Notwithstanding the risks described above, investors are often unwilling to form a limited liability entity at the time of the purchase of a property due to cost, tax or other concerns. In those cases, an investor who is purchasing the property with other partners should make sure that the property is titled in the name of the partnership existing between the investor and the investor's partners, and not in the names of the individual partners themselves. This is important because the investor and the investor's partners can later transfer the property into a limited partnership or a limited liability company without incurring realty transfer tax so long as the property is titled in the name of the partnership and certain other requirements are met.

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## About the author:

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Paul regularly advises real estate investors about a variety of issues, including the issues raised in this article. Paul also works with real estate investors to form various forms of limited liability entities.

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### **Back Taxes?**

Many investors do not understand that they may be subject to successor liability for the taxes and other payments owed to the Commonwealth of Pennsylvania by the seller of a property if such property represents 51% or more of the real estate owned by such seller in the Commonwealth of Pennsylvania. This successor liability can be significant as it is not limited by the amount of the purchase price for the property and/or the taxes which are settled as of the closing for the purchase of the property. In light of such potential liability, it is important that an investor conduct due diligence prior to the investor's purchase of a property to determine if the seller of the property owes taxes

or other payments to the Commonwealth of Pennsylvania. Further, it is oftentimes prudent for an investor to insist upon a portion of the purchase price for the property being held in escrow until certain assurances (called "clearance certificates") are received from the Commonwealth of Pennsylvania confirming that the investor will not be subject to successor liability.



*The information set forth in this article is premised upon the application of Pennsylvania law; if the laws of a different state apply, results may vary. This article does not render specific legal, tax, or accounting advice and is subject to changes in the applicable law which may cause the information set forth in this article to become outdated. It is recommended that readers of this article consult with legal and tax advisors regarding the issues raised in this article.*

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