Title Isn't Everything: Corporate and Tax Issues for Real Estate Investors to Consider Prior to Purchasing an Investment Property
By Paul T. Rushton, Esq.[1]

A real estate investor who is considering the purchase of an investment property in the Commonwealth of Pennsylvania is oftentimes 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, Pennsylvania practitioners representing real estate investors must also ensure that their clients consider, *inter alia*, the following corporate and tax issues prior to the purchase of a property to ensure that such clients are adequately protected against liability and avoid the payment of unnecessary taxes:

Limited Liability Protection. 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.

Don't Pay to Transfer 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 owned by the investor. Although the investor is ultimately protected against personal liability arising after the transfer to the limited liability entity, 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. Similarly, an investor can incur double realty transfer taxation if he or she enters into a purchase agreement for an investment property in his or her own name and then assigns such agreement to a limited liability entity owned by such investor prior to the closing for such transaction so that such entity can 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 "convert" their general partnership into a limited liability entity without incurring realty transfer tax so long as the property is titled in the name of the partnership and certain other requirements are met.

Buyer Beware. Many investors do not understand that they may be liable for unpaid 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 liability can be significant as it is not limited by the amount of the purchase price for the property and/or the taxes or other payments 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 such liability.

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