Altshuler and Spiro
EST. 1959

9301 WILSHIRE BOULEVARD, SUITE 504
BEVERLY HILLS, CALIFORNIA 90210-5412
(310) 275-4475 – (323) 272-5339
FAX (310) 858-6763

Bruce J. Altshuler*
Randy M. Spiro

* a professional corporation

Leo Altshuler
(1919-1999)
James J. Brown
(1918- 1987)

ESTATE PLANNING AND THE LIMITED LIABILITY COMPANY

By Randy Spiro

Clients may create and transfer assets to a Limited Liability Company with the intent of limiting liability. But first they much identify the source of the liability. If the liability comes from a transaction outside the LLC, such as a car accident while on a personal errand, the client's interest in the LLC will be one more asset that could be taken in satisfaction of an award in favor of the injured party and against the client. Even assuming the liability comes from a transaction within the LLC, such as a slip and fall in the building owned by the LLC, the assets of the LLC (including the building itself) could be taken in satisfaction of an award in favor of the injured party and against the LLC itself.

Let us assume therefore that the LLC owner will not incorrectly use the LLC as an excuse for failing to get insurance on his car or insurance on his building and that he will get high enough limits to make him comfortable. When established with reasonable expectations, the LLC can be a good vehicle for lifetime giving.

If the client has a trust and transfers his building to it, when he later creates the trust he (and his wife if he is married) as trustees of the trust will transfer ownership of the building to the LLC, with the trust taking back all (or whatever share corresponds to its prior ownership in the building) interest in the LLC. No gift is made when the LLC is created because the client has no yet surrendered any ownership.

Later, the client may transfer interests in the LLC to his children. At that point he will need to get two qualified appraisals, one of the building itself and one of the value of the interest given to each child. The appraiser will in the second appraisal determine a minority and marketability discount for the interest given to each child. Thus the value of each gift will be less than the corresponding fraction of the LLC's underlying assets.

The value of the client's retained interest in the LLC is affected because he no longer owns 100%. Discounts can again be taken in valuing that retained interest at the client's death. Discounts can be valuable if the client's estate exceeds the amount that a person can die with and pay no estate tax (called the exemption equivalent which is $3,500,000 in 2009). Since the estate tax rate in 2009 on the portion of the estate in excess of the exemption equivalent is forty five percent using an LLC to create, or enhance discounts can be a valuable strategy in minimizing federal estate tax.