



From One Hand to the Other – Transferring Property to an LLC

If you own real property in Texas in your personal name, it might make sense to transfer that property to a limited liability company (LLC). Doing this can offer certain legal protections in the event that something goes wrong with your property. And limiting personal liability sounds all the more relevant considering that approximately sixty-six million lawsuits are filed in the United States each year.

This is not new or uncommon advice, but what are the actual steps to accomplish a transfer of property from yourself to an LLC? And what else do you need to know before you start the process?

First of all, you will need to create the LLC. This can be done by submitting the proper paperwork with the Texas Secretary of State to obtain a Certificate of Formation. Once the LLC is formed, you should also request a tax identification number (an EIN) from the Internal Revenue Service, and you should execute a company agreement, which will govern how your newly formed LLC operates. At this stage, it is important to understand that the most straightforward path, with the fewest amount of complications later in this process (as you will see below), is to create your LLC so that is owned by the exact owners of the property itself. For example, if you and your brother own the property 50/50, then your new LLC should be set up so that you and your brother are each a member with a 50% ownership interest. Getting this right is an important first step, and this firm is well equipped to help you through this process.

Second, whether before or soon after you form your LLC, you need to consider all the parties that would be interested in or affected by such a transfer of the real property from you to your new LLC... your lender, your title insurance company, your other insurance companies, the local taxing authority, and any other parties that have an interest in the property.

1. **Your lender.** If you financed the acquisition and/or development of your property and that loan is still in effect, then your lender is very interested in any sale or disposition of the property. Any sale or conveyance of any interest in your property will likely trigger a due-on-sale clause, allowing your lender to accelerate the note and, if you do not then pay off the balance of the note, start foreclosure proceedings against your property. You will need to submit a formal written request or application, whatever is required by your lender, to transfer the ownership to your new LLC. The lender then will start its underwriting review process, including reviewing the LLC documents mentioned above. It may also require other things from you, such as a personal guaranty and proof of updated insurance.
2. **Your title insurance provider.** Your Owner's Policy of Title Insurance (your OTP) protects your ownership rights in the property, covering financial loss and legal defense for title defects such as undiscovered liens, forgeries, or errors in the public records. However, the policy only remains in effect so long as the "Insured" (which is you) retains an estate or interest in the property and not after you sell or convey the property. That said, the policy itself does expand the definition of "Insured" to cover an entity wholly owned by the named Insured. This means that if you own 100% of the membership interests of your LLC, then your LLC would qualify as an "Insured" under your OTP.
3. **Your property insurance provider.** You likely have a hazard insurance policy covering the property and maybe other policies, too. Similar to your OTP provider, a transfer of the property to the new owner could cause the policy or policies to terminate without something explicitly set forth therein to the contrary. Further, if your conveyance of the property to your new LLC is for a new purpose (for rental purposes, for example), you may also lose coverage under your existing policies. The important thing is to reach out to your insurance broker about your proposed transfer to make sure everything is lined up here, too. (This will likely also be required by your lender.)
4. **The county.** If you have a homestead exemption on the property, know that you will lose this once you transfer title to your LLC. Generally speaking, a homestead exemption in Texas (i) lowers your property's taxable value, saving you hundreds or thousands on ad valorem taxes, and (ii) offers protection from seizure by certain creditors to pay off debts. All of this will be lost, however, if you transfer title to your property into that of an LLC, even if you are the sole owner of the LLC. Additionally, after you have completed the conveyance, you will need to submit the proper paperwork with the county's appraisal district to change the ownership records.
5. **Your accountant.** In addition to the parties mentioned above, it is always a good idea to talk with your accountant before making any decisions about transferring title to your property. There may be tax or other considerations that should factor in this decision.

Finally, once you have checked all of the above boxes, you will need to have the actual deed itself drafted, executed, and delivered (to your new LLC). The deed should be recorded in the real property records and then kept with the books and records for your new LLC, along with the Certificate of Formation, EIN, Company Agreement, and all other relevant documentation. You will also want to provide a copy of it to your lender and any other parties that may request it.

The process is not overly complicated, but it is essential to take all the right steps so that you don't run into troubles later on, whether in the near term or far term. Our firm can certainly help you with the process, from forming the new LLC to drafting and recording the conveyance documents, as well as reviewing all relevant instruments and considering other potential complications that may be unique to your situation. If this interests you or if you have any questions about any of these, please don't hesitate to reach out. We are happy to help.

For further information on these developments, please contact [Josh Harrison](#).