

# Estate & Business Planning

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# About Me

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## **Areas of Practice**

Estate Planning

Asset Protection

Estate and Trust Administration

Business Law

Real Estate

## **Education**

B.S. in Natural Resources, N.C. State University, 1995

Master of Forestry, N.C. State University, 1998

Juris Doctor, Campbell University, 2005

# Disclaimer

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Information provided in this presentation is of a general nature and is not advice about your particular situation.

This material is not intended, and should not be taken, as legal advice on any particular set of facts or circumstances.

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# Business Entities

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# Overview of Liability Protection & Taxes

**Sole Proprietor** – No liability Protection; disregarded for tax purposes.

**General Partnership** – No liability protection; liable for partner's negligence; pass through taxation under Subchapter K.

**Limited Partnership** – Limited partner has liability protection; pass through taxation under subchapter K.

**Limited Liability Partnership** – Protected from partners' negligence; pass through taxation under subchapter K.

**Corporation** – Owner protected from inside liabilities; taxed under subchapter C or S.

**Limited Liability Company** – Owner potentially protected from inside and outside liabilities; can be taxed under subchapter C, K, or S. May be disregarded if sole owner.

# Statistics

Number of legal entities formed with the South Carolina Secretary of State from July 1, 2015 to June 30, 2016 :

Limited Liability Companies.....	31,019
Corporations.....	1,784
Limited Liability Partnerships.....	190
Limited Partnerships.....	106

# Benefits of LLCs

## Liability Protection

- Charging Order protection.
- When foreclosure of charging order allowed, it can be a trap.
- Questionable outside liability protection if sole member.
- Operating Agreement is extremely important.

## Flexible Taxation

- Sole member may choose to be taxed as S-corp or disregarded.
- Multi-member may choose to be taxed as S-corp or partnership.
- Flexibility to change; Ex. Tax Cuts & Jobs Act

# Brown Family Farms

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Are there concerns with a business worth \$8M being in a general partnership?

Why is Brown Family Farms a General Partnership? Probably ARC, PLC, CRP, CSP, disaster

What happens to ARC & PLC payments if Brown Family Farms becomes an LLC or corporation?

What if it is organized as an LLC that is taxed as a partnership?

IRS: LLC is a partnership.

FSA: LLC is an entity.



# Brown Packaging, LLC & Brown Trucking, LLC

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Multiple Owners

Taxation? Currently Partnership; Effect of 199A?

Asset Protection? Required Distributions, Mandatory Capital Calls,

Succession Planning? Who gets the Membership Interest?

# Tax Reform Effects on Small Businesses

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Modest changes in rates

199A Flow Through Deduction – Final Rule Jan. 15, 2019

Choice of Entity is More Important

Bonus Depreciation & Section 179

Sunset Provisions in 2026.

# Planned Business Succession

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# Can Kent & Vicky Retire?

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Assume Business interest worth about \$6.3M.

If they could cash out and use 4% withdrawal rate, they can make \$250K per year.

Payment on 30-year loan for \$6.3M at 5.5% is \$429,249 per year.

Problems with Installment Sale of partnership interest?

Effect of change in tax structure?

# Installment Sale

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Problems with installment sale to individuals?

Potential Solution? Installment sale to grantor trust.

Similar to exchanging a Stock for a bond.

Lots of rules on how this must be done.

Browns probably do not have an estate tax problem under current rules.

# Giftting

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Transition ownership to John and Ann?      What about Robert?

Valuation Discounts for lack of marketability and lack of control?

Giftting to a Trust?

Asset protection for Donor & Donee

Can “freeze” value for estate tax purposes or allow for basis adjustment.

# Crop Insurance Transition if Ann Becomes Involved

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Production history.

Must document involvement in prior years.

Can be documented by loan documents, affidavits, minutes of LLC.

A false statement on application is a federal crime.

Not a problem on the front end. It is a problem for 10-year review after an audit.

No statute of limitations on overpayment.

Pay or be blacklisted.

# Asset Protection

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# Limiting Liability

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What if Brown Family Farms was a partnership of three sole member LLCs?

May prevent the worst case scenario.

Would both Kent & Vicky remain actively engaged? Does it matter?

What would happen if the land is separated from the partnership?

Capital Rules – Landlord cannot guarantee the obligations of the tenant.

Will lender require land LLC to guarantee operating loan?

# Ex. John's Wife Files for Divorce

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Are these companies marital property?

How does the Operating Agreement protect the other owners?

Could we protect John's share from divorce now?

Could Kent and Vicky have protected the farm from divorce initially?

Can we ensure that Ann's future husband has no interest?

# Ex. Vicky Causes a Wreck

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Vicky was driving a pickup truck owned by the farm partnership.  
Three people were killed. Plaintiff sues Vicky and the partnership.

Insurance is \$1,000,000 per accident, \$500,000 per person.

Insurance defense attorney says the case may be worth \$3,000,000.

What assets may be subject to a judgment?

How do the LLC Operating Agreements apply?

# Estate Planning

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# Goals of Estate Planning

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- Control your property while you are able,
- Make sure you and your loved ones are taken care of if you are unable to do so yourself,
- Give what you have to whom you want, the way you want and when you want, and
- Save as much money as you can.

# Who Gets What

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# Dividing Equitably

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- Fair vs. Equal
- Did Kent & Vicky help give John extra help getting started?
- What was John's role in increasing the value of Kent & Vicky's estate?
- How should Robert be treated?
- Can John and Ann cooperate?

# Unplanned Business Succession

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What happens if Kent & Vicky die unexpectedly?

Assume that their estate is split equally between their three children.

What will happen to Robert's share?

How will the relationship between John and Ann develop?

What is Robert's share of the land worth? Will he sell?

Will Robert's wife sign the personal guarantee?

Will John or Ann be able to buy Robert's share?



# Unplanned Succession: Vicky's Death

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Assume that Vicky dies before Kent.

If she has no Will or Trust and Membership interest not TOD:

Effect of Probate?

In N.C. =  $\frac{1}{3}$  to Kent,  $\frac{2}{9}$  to John,  $\frac{2}{9}$  to Ann,  $\frac{2}{9}$  to Robert

If she leaves all of her assets to Kent and:

Kent remarries.

Kent requires nursing home care at \$9,000 per month.

# Unplanned Succession: John's Death

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Assume no Operating Agreement or Buy-Sell

If John has no Will:

In N.C.: 1/6 of Brown Family Farms, 20% of Brown Packaging, and 25% of Brown Trucking are now owned by a young teacher with no interest in farming.

In N.C.: 1/6 of Brown Family Farms, 20% of Brown Packaging, and 25% of Brown Trucking are now owned by a Toddler, and managed under guardianship.

If he leaves everything to his wife:

Will she want out?

Can the farm continue.

# Buy-Sell Agreement

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- Purchase of shares can be funded with life insurance.
- Member vs. Assignee
- Immediate Purchase with Installment Sale.

# How They Get It

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# Protecting Your Spouse

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- QTIP vs. Bypass
- Elective Share
- Incapacity / Bad Decisions
- Second Marriage Protection

# Testamentary Trusts

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- Divorce
- Bloodline Protection
- Judgment Creditors
- Leverage in Negotiations
- Long-term Care Costs
- Incapacity Protection
- Financial Immaturity & Bad Decisions

# Taxes

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# Transfer Taxes

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- Unified Credit Amount = \$11.4M for 2019
- Sunset Provision / No Clawback
- Will estate be taxable?
  - Business assets currently at \$6.3M.
  - Will value continue to grow?
- Step up vs. Estate Tax Planning



# Managing Basis

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- 754 Election or Partnership Assets
- General and Limited Powers of Appointment
- Reserved Life Estates
- More Important than Transfer Taxes for Most People

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Plans fail for lack of counsel, but with  
many advisors they succeed.

Proverbs 15:22



# Questions

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