



Social responsibility limited liability companies (LLCs) - by Thomas Kearns

September 17, 2019 - Front Section

The U.S. Business Roundtable recently stated that U.S. publicly-traded corporations shouldn't be solely focused on generating profits for shareholders but must also create good jobs and a sustainable economy and protect the environment. The statement attempts to counteract several legal precedents that hold U.S. corporations must place shareholder profits above all in most situations. Despite its good intentions, lawyers, investors and political leaders have been debating the statement – not all members of the Roundtable signed it.

But what if you are an investor in privately-held real estate limited liability companies with an extended and multi-generational family and you want your successors in the business to comply with the principles expounded by the Roundtable? With LLCs, the vehicle typically used by real estate investors, the principles can be voluntarily written into the agreement governing the LLC. I'll use an example of two friends who have long invested together in commercial real estate. Let's call them Roger and Serena. Both have extended families and both don't want their joint assets sold after their death or disability. They control numerous LLCs that own real estate assets.

Roger and Serena have their LLCs contribute regularly to charities and often support the communities surrounding their various properties through limited profit or nonprofit activities thereby reducing the LLC's short term distributable profits. But both have been very successful in real estate and other endeavors and the incremental profit sacrifice is one they are happy to make to give back to their communities. Their estate planning lawyers told them about charitable trusts but neither owner wants the red tape and regulatory difficulties associated with creating a charitable trust or not-for-profit entity.

They have heard of public benefit companies including B Lab's B Corp/B LLC certifications and about Delaware's recent amendment to its LLC statute providing for public benefit LLCs but those paths seem like a headache due to the extra annual or biennial reporting requirements and, more importantly, neither believes he or she needs to create a marketable identity that a third party certificate similar to a B certificate creates for their contributions to the community since all members of their companies will be part of their families.

Fortunately, LLCs are flexible enough to provide what Roger and Serena want. In both Delaware and New York, a written LLC agreement setting forth the contractual rights of the managers, including Roger and Serena's successor managers, will bind all future members of the LLCs. Combined with the appropriate amendment clause (e.g., a unanimous or supermajority vote

including, if desired, consent by the members of the two families voting separately), these provisions could control future generations. Here is one simple clause I have used with facts changed to protect confidential information:

“The managers shall continue to promote the economic development of the Serenaville neighborhood including relationships with local businesses and community groups and are specifically authorized to conduct limited or nonprofit investments related to the neighborhood and to make charitable donations generally. The managers may also make political contributions to state and local politicians in their judgment. The managers shall not be required to maximize company profits but shall be entitled to consider all such purposes and constituencies in making decisions on behalf of the company.”

Of course, there may be some parameters established in the agreement (e.g., not more than \$x per annum in charitable contributions without a member vote) and the clause raises other issues such as how will successor managers be elected. But real estate investors may set up a governing document that will provide principles-based flexibility to the successor managers to operate in the same community spirit as the original founders of the companies intended.

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