



Strategies

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Business Planning

For Real Estate Professionals

Course Objectives

At the end of this course, the student will be able to:

- Describe the steps to be taken when starting a legal entity for your real estate practice.
- Explain the reasons for becoming an S-Corporation.
- Describe the process of changing the name with the Florida Real Estate Commission.
- Explain the need for a separate account for business.
- Create a bookkeeping system to keep track of all business-related expenses in order to comply with IRS guidelines.
- Explain the difference between a PLLC, LLC or PA and the requirements for each.
- Describe the elements of a Sole Proprietorship
- Describe a C-Corporation vs. an S-Corporation
- Explain a partnership
- Briefly explain to another Realtor or a customer the Tax on Investment Income.
- Explain how the IRS defines a Real Estate Professional.
- List items that are a deductible real estate business expense according to the IRS.
- Explain the home-office deduction available to real estate licensees.
- Describe how the IRS allows an automobile expense for real estate licensees.
- Learn the best legal and allowable ways to maximize income and reduce income tax.

Course Timeline

I. Establishing Your Business Entity	30 min.
II. Income Tax Considerations - Intro	5 min.
A. Sole Proprietor	10 min.
B. Corporation	10 min.
C. Limited Liability Company	10 min.
D. Tax Investment on Income	10 min.
III. Tax Planning Opportunities - Intro	5 min.
A. Business Expenses	10 min.
B. Equipment Expenses	10 min.
C. Health Insurance Credit	5 min.

D. Retirement	10 min.
E. Cell Phone	5 min.
F. Work Opportunity Tax Credit	5 min.
G. Hiring your children	5 min.
H. Home Office – Section 179	10 min.
I. Automobile Expense	10 min.
IV. Establishing Your Business – Recap	30 min.
Total	180 min.



(3 hours CE)

Introduction

When it's time to consider the creation of a legal real estate business entity, just thinking about it can be a daunting task. You've learned the rules of being a licensed real estate practitioner, but may still be unsure as to the actual practice of creating and running your business – while staying within the parameters of IRS rules. This program is designed to help! We'll take you through the process of determining which business entity is right for you and give you tips for ways to structure your efforts for maximum profitability, all while following IRS guidelines. We'll discuss what type of business structure will be best for you, as well as which items are legally deductible and which are not. We'll take you through some business examples and finally, review start-up steps that will help you create your new business.

I. Establishing Your Business Entity:

PLLC or LLC or PA? What is the Difference?

Many people have questions about the letters that appear next to a professional person's name on a business card or in marketing material. Our discussion today will clarify the meaning behind the letters.

PLLC is the abbreviation for Professional Limited Liability Company. If electing to operate as an LLC, you must use the designation of Professional LLC which is PLLC since you have to have a license to do your work. On the other hand, if you were operating a restaurant or retail store, you could just use LLC, since no certification or license is required. We customarily see PLLC as the designation with licensed Realtors, accountants, engineers, architects, and attorneys.

PA is the abbreviation for Professional Association – which is a corporation as opposed to an LLC. A registered corporation with the State of Florida must follow specific rules set forth by the state and within their Articles of Incorporation.

The reason you see many seasoned real estate agents using PA instead of PLLC, is that until about seven or eight years ago, Realtors were prohibited from organizing as LLCs, so PA was the only option.

Corporations have some requirements that LLCs do not have, such as an obligation to maintain annual minutes and corporate documentation that LLCs are not required to maintain. That is why many people opt for the PLLC over the PA.

So what is the purpose of being a PLLC, LLC or PA?

Simply stated the purpose is liability protection of assets. To better understand the differences, speak with a tax attorney to discuss the advantages and tax ramifications of each form of entity.

What Requirements will I be subject to?



PA	PLLC
<ul style="list-style-type: none">• Annual Meeting/Minutes• File annual Report• Separate Tax ID Number• Separate Bank Account• No commingling of Funds!• Choice of Taxation	<ul style="list-style-type: none">• No annual Meeting/Minutes• File Annual Report• Separate Tax ID Number• Separate Bank Account• No Commingling of Funds!• Choice of Taxation

II. Income tax considerations

A. Sole Proprietor/Disregarded Entity

Many Sole Proprietors elect to be taxed as a “Disregarded Entity”, which means that although a separate business entity has been formed and has operated the business, the IRS will not require a separate tax return filing, except for payroll and excise tax purposes. Instead, the income can be reported on Schedule C of the Form 1040 tax return. This is the simplest and least expensive method of reporting income, however provides the least tax savings advantages. A disregarded entity is an entity that has a single owner and is treated as a mere extension of its owner. When a disregarded entity is owned directly or indirectly by a single owner, it is a nullity for tax purposes. Thus, it operates (a) as if it were a sole proprietorship of a natural person owning the sole interest in the disregarded entity, or (b) as a division of another entity, that is recognized for tax purposes, which owns the sole interest in the disregarded entity.

Most real estate professionals operate their business as a sole proprietorship. This means that you are not someone's employee, you haven't formed a partnership with anyone, and you have not incorporated your business.

Licensed real estate agents are statutory non-employees and are treated as self-employed for all Federal tax purposes, including income and employment taxes, if:

- Substantially all payments for their services as real estate agents are directly related to sales or other output, rather than to the number of hours worked
- Their services are performed under a written contract providing that they will not be treated as employees for Federal tax purposes

This category includes individuals engaged in appraisal activities for real estate sales if they earn income based on sales or other output.

B. Corporation

1. **“C” Corporations:** A “C” Corporation (or “C Corp”) is treated as a separate entity from its owner(s) for tax purposes. When there are gains or losses, the corporation is responsible for any tax, and for the reporting requirements, on its own tax return.
2. **Sub-chapter “S”:** An “S” Corporation (or “S Corp”) is treated for liability purposes as any other corporation under state law. However, for federal income tax purposes it is not a separate tax-paying entity, in most cases. Generally, although an S Corp files a separate tax return which is distinct from the return filed by its owners, it does not pay tax on the income it earns. Rather, the various items that make up the income or loss of the corporation are allocated to the shareholders, as required by Sub-chapter S.
 - a. Reduced Risk of IRS Audit
 - b. Realtors routinely have high risk category expenses:
 - i. Auto/mileage
 - ii. Meals & Entertainment
 - iii. Advertising

C. Limited Liability Company

1. Tax disregard
2. “S” Corporation
3. “C” Corporation
4. Partnership

A **partnership** is formed when two or more people or entities join together to carry on a business or other financially-motivated venture and split the profits from it. There must be two or more participants in order for a partnership to exist.

Mere co-ownership of property that is maintained, kept in repair, and rented or leased does not

constitute a partnership. A **partnership** will not necessarily result, for example, if an individual owner or tenant in common leases farm property in exchange for cash or a share of the crops. However, **partnership** status will result where entities actively carry on a trade, business, financial operation, or venture and divide the profits thereof.

Partnership is not a taxable entity. Its income, gain, loss, deductions, and credits are passed through to partners, who must account for them in computing income tax. A general partner's distributive share of the partnership's income and any guaranteed payment for services rendered to the partnership are considered net earnings from self-employment and are subject to self-employment tax.

The **partnership** agreement determines the tax consequences to the partners. The partnership agreement includes the original agreement and any modifications. The modifications must be agreed to by all partners or adopted in any other manner provided by the partnership agreement. A partnership agreement, or any modifications to it, may be oral or written.

The primary advantage of an LLC over a partnership is that all LLC members are protected from personal liability for entity-level obligations.

Although limited partners are insulated from liability like an LLC member, a limited partnership must have at least one general partner who bears personal liability for the partnership's recourse debts. In addition, limited partners who participate in, or control, the business risk being treated as general partners and being exposure to unlimited liability. LLCs do not have such limitations.

OVERVIEW - Let's take a look at all four types of entities side-by-side:

Business Entity Planning Menu

Your choice of business form must take into account several different factors, based not only on the size and nature of your business, but also the legal relationships involved as well as the tax consequences.

<i>Choice of Entity</i>	<i>Choice of Taxation</i>
<p><i>Sole Proprietorship</i></p> <ul style="list-style-type: none"> • Single, individual owner • Operated under individual name or fictitious name; and • Sole proprietor personally liable for debts and obligations of proprietorship 	<p><i>Disregarded Entity (Schedule C)</i></p> <ul style="list-style-type: none"> • Single member LLC or Sole Proprietorship; • “Pass through taxation”- Member or proprietor taxed directly on business profits; and • Reporting of income/loss on Schedule C of member or proprietor’s tax return
<p><i>Limited Liability Company</i></p> <ul style="list-style-type: none"> • “Veil of Limited Liability”- members not personally liable for debts and obligations of company; • “reverse corporate veil piercing”- interest of single member may be seized for personal liability obligation (<i>Olmstead case</i>); and • Member or manager managed 	<p><i>S-Corporation (Form 1120-S)</i></p> <ul style="list-style-type: none"> • LLC or Corporation; • “Pass through taxation”- One level of taxation at shareholder level; • No foreign shareholders permitted; • One class of stock/100 share limit; and • Built in gains taxation (phantom income)
<p><i>Corporation</i></p> <ul style="list-style-type: none"> • “Corporate Veil”- shareholders not personally liable for debts and obligations of corporation; and • Director/officer managed 	<p><i>C-Corporation (Form 1120)</i></p> <ul style="list-style-type: none"> • LLC or Corporation; • “Double taxation”- one level of taxation at corporate level and one at shareholder level; and • No gain recognized on receipt of property for stock
<p><i>Partnership</i></p> <ul style="list-style-type: none"> • Joint and several liability - partners personally liable for debts and obligations of partnership; • “Charging Order” protection - limits personal creditor of debtor - partner to partner’s share of distributions, not voting/management rights 	<p><i>Partnership (Form 1065)</i></p> <ul style="list-style-type: none"> • LLC or Partnership; • “Pass through taxation” - One level of taxation at individual partner level; and • Each partner taxed on partner’s allocable share of income via Schedule K-1 to their individual return

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D. 3.8% Tax on Investment Income

1. To Whom Does the Tax Apply?

This newer 3.8% tax applies to individuals with adjusted gross income above \$200,000 and couples with adjusted gross income of \$250,000 who have 'Investment Income.'

2. Types of Income

Investment Income includes interest, dividends, annuities, royalties, rents (net of expenses) and net gains on the disposition of property, other than property held in a "non-passive" trade or business.

3. Calculation

The tax applies to the LESSER of Investment Income OR Excess of total income over the \$200,000 for individuals or \$250,000 for couples.

Example:

John and Mary sold their principal residence and realized a gain of \$525,000. They have \$325,000 adjusted gross income before adding the taxable gain and it doesn't include any other Investment Income

The tax calculates as follows:

Gain on Sale of Residence	\$ 525,000
Gain Excluded on Sale of Principal Residence	<u>\$(500,000)</u>
Taxable portion of gain	\$ 25,000
Adjusted gross income before gain	<u>\$325,000</u>
New adjusted gross income	\$350,000
Excess of income over \$250,000 threshold	\$100,000
Investment Income = taxable portion of gain	\$ 25,000
As a result, tax applies on LESSER amount of	\$ 25,000
	X 3.8%
TAX DUE	<u><u>\$ 950</u></u>

4. Real Estate Professional Exception



Generally, income derived from rental activities will be characterized as passive and subject to the 3.8% tax, as mentioned above. An exception to this rule relates to rental real estate professionals. Real estate professional, as defined by the IRS, actually has nothing to do with whether you are a licensed real estate agent or broker in your state. It has nothing to do with your education, professional licenses that you hold, or what type of business you are in. Rather, the IRS determines real estate professional status based on a set of different criteria, which involves the type of activity that you do during the year for the properties, as well as the amount of time spent on such activities during the year.

Simply put, you (or spouse) need to meet the two following criteria in order to qualify for the tax benefits of being a real estate professional:

- More than one-half of the personal services you perform in all your business activities during the year must involve real property trades or businesses in which you materially participate; AND
- You must perform more than 750 hours of service during the year in those real property trades or businesses.

A real property trade or business is any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing or brokerage trade or business.

There are a multitude of activities that count towards the real estate professional status. Here is a short list of some of those qualifying activities:

- 1) Buying and selling properties
- 2) Renting, operating and managing properties
- 3) Leasing and brokering
- 4) Meeting with agents and brokers
- 5) Meeting with property managers
- 6) Meeting with prospective tenants
- 7) Meetings with your real estate coach
- 8) Activities related to development or redevelopment
- 9) Actively managing any reconstruction or improvement projects
- 10) Inspecting (monthly, annually, etc) your properties
- 11) Approving monthly expenditures
- 12) Analyzing potential deals
- 13) Physically searching and viewing potential properties
- 14) Actively managing any direct mail campaigns
- 15) Speaking to prospective sellers or investors

With all the above activities that count toward qualification for real estate professional tax benefits, there is need for planning and documentation. **The main thing to keep in mind as you determine if you qualify for real estate professional status is planning ahead and documentation.**

In the documentation of real estate professional status, a taxpayer should utilize a log to keep track of such hours and such log should include the following items:



- a. Date of activity
- b. Description of activity (the more detail, the better)
- c. Number of hours spent on that activity

Such log should be kept in a format like Excel, Word, your PDA, or even a hand-written ledger. However, generally speaking, *calendar entries alone that include such information mentioned above have been found to not be sufficient proof of qualifying hours by the IRS.* Please keep a record of all other source documents to support your time spent such as mileage, emails, offers made, etc.

You should expect the IRS to challenge your claim as a real estate professional, particularly if you have another full-time job.

Example:

James Moss was a full-time employee at a nuclear power plant. He also owned and managed four rental properties. Moss produced a calendar and accompanying analysis showing that he spent a total of 645 hours during the year working on his rental properties. Moss contended that he met the 750-hour test because he was “on call” for at least another 100 hours during the year. He noted that any time he was not working at the nuclear power plant; he could have been summoned to one of his rental properties.

The Tax Court concluded that the 750-hour test requires actual service in the activity, not merely a readiness or availability to participate in the activity - being “on call” was not the same as participation.

5. Aggregation Election

If you perform more than one real estate activity, you must qualify each one separately under the two-pronged test for real estate professionals discussed above, unless you make an election timely and properly to treat all your interests in real estate as a single activity. For most real estate professionals, the election is advantageous. The election is due with a timely-filed tax return, but you are allowed to make the election late under certain circumstances.

III. Tax & Business Planning Opportunities

A. Deduct Real Estate Business Expenses

There are dozens of possible tax deductions for real estate professionals. Any expense for your real estate business is deductible if it is:

- ordinary and necessary;
- directly related to your business; and
- reasonable in amount



An expense doesn't have to be indispensable to be necessary; it need only help your business in some way -- even if it's a minor way. A one-time expenditure can be ordinary and necessary.

However, you cannot deduct personal expenses. For example, the cost of a personal computer is a deductible operating expense only if you use the computer for business purposes; it is not deductible if you use it to pay personal bills or play computer games.

If you buy something for both personal and business use, you can deduct only the business portion of the expense. For example, if you buy a cellular phone and use it half of the time for business calls and half of the time for personal calls, you can deduct only half of the cost of the phone as a business expense.



Subject to some important exceptions, there is no limit on how much you can deduct, as long as the amount is **reasonable** and you don't deduct more than you spend. As a rule of thumb, an expense is reasonable unless there are more economical and practical ways to achieve the same result.

If the IRS finds that your deductions were unreasonably large, it will disallow them or at least disallow the portion it finds unreasonable.

Here's a checklist of common expenses for real estate agents which you can use to make sure you don't miss any deductions this year or next:

- Advertising expenses, including websites, mailing lists, newspaper advertising, fliers, online advertising, postcards, promotional materials, logo clothing, and anything else you pay for to market your real estate business;
- Bookkeeping, accounting and legal fees;
- Business gifts (up to \$25);
- Business Licenses and permits
- Business meals and entertainment (only 50 percent deductible);
- Car Service for business travel i.e. Uber, Lyft, cab, etc.;
- Car and truck expenses, including business mileage, depreciation, insurance, interest on car loans, lease payments, license plate fees, parking expenses, and tolls;
- Cell phones;
- Computer software;
- Computers;
- Depreciation Expense
- Desk fees;
- Education to maintain or improve required skills (but not courses you take to pass the real estate licensing exam);
- Furniture and Equipment;
- Home office expenses (see discussion below);
- Insurance, including health insurance, errors and omissions insurance, business liability insurance, and business equipment insurance;
- Interest, such as interest for business loans, interest paid on business credit cards;
- Internet access fees, hotel Wi-Fi access, Hotspots, mi-fi, etc.;
- Lead Generation Membership fees
- Listing site fees- Zillow, Trulia, or other feature listing websites;
- Lockbox fees, apps, maintenance etc.;
- Maps and map books;
- Mileage Tracker App fees;
- Office equipment (cost may be deducted in one year using bonus or 100% depreciation);
- Office expenses, including rent, cleaning and maintenance, and utilities;
- Office supplies;
- Open House provisions- food, flowers, beverages;
- Outsourced Services i.e. staging fees, listing signs installed and removed, cleaning company for final walk through, etc.;
- Photography for listings, drone videos;
- Postage and delivery fees;
- Professional dues and fees - for example, MLS dues and dues paid to the local Chamber of Commerce, Realtor associations, and real estate license renewal fees;
- Referral fees and commission rebates;
- Retirement plan contributions;
- Service Charges;
- Subscriptions to professional journals;
- Real estate franchise fees;

- Taxes, including payroll taxes for employees, state and local business taxes;
- Telephone service fees;
- Travel to business conventions, including transportation, lodging and food;
- Wages and benefits paid to employees.

B. Equipment Expensing and 100% Depreciation

Using Section 179 depreciation, you could deduct 100% of equipment purchased in 2017 up to \$500,000. *The business must have taxable income* in order to be eligible for this deduction. The equipment purchased can be *new or used*.

Alternatively, you can deduct 50% of equipment purchased in 2016. Under this alternative equipment has to be *brand new*, and you can take this deduction even if the business generates a loss as a result.

If you purchase a heavy vehicle (weighing more than 6,000 pounds) you can take advantage of the 100% and bonus depreciation. Section 179 expense allowance is limited to \$25,000 in the case of (1) an SUV, (2) a passenger van that does not seat more than 9 persons behind the passenger seat, and (3) a truck with an interior cargo bed length less than 6 feet. This limitation does not apply to the 50% percent bonus depreciation for new vehicles acquired in 2016.



The \$25,000 section 179 expensing limitation does not prevent you from claiming the 50% bonus allowance.

Example:

- You purchase a heavy SUV that is not subject to the depreciation caps in 2017 for \$75,000.
- The maximum section 179 deduction that may be claimed is **\$25,000**.
- The 50 percent bonus deduction is equal to **\$25,000** ($\$75,000 - \$25,000$ section 179 expense) \times 50%).
- The regular depreciation deduction is **\$5,000** ($(\$75,000 - \$25,000$ section 179 – \$25,000 bonus) \times 20% first-year table percentage).
- **You can take a total depreciation deduction for 2017 of \$55,000.**

Gross vehicle weight rating is the maximum allowable weight of a fully loaded vehicle

(i.e., weight of vehicle, including vehicle options, passengers, cargo, gas, oil, coolant, etc.). The GVWR of a particular vehicle is usually located on the vehicle's Safety Compliance Certification Label, which is attached to the left front door lock facing or the door latch post pillar. The information about particular vehicles can be found at <http://www.carsdirect.com/home> and <http://www.cars.com>.

C. Health Insurance Credit

Take advantage of the small business health insurance credit, which provides a credit worth up to 50% of a small business' premium costs in 2015 and 2016. The credit phases out gradually for businesses with average wages between \$26,200 and \$52,400 with the equivalent of between 10 and 25 full time employees.



D. Contributions to Retirement Plans

Some retirement plan contributions can be made until the day taxes are due, while others require the plan to be set up before the end of the year. Check the contribution limits and deadlines for different types of plans – 401K, IRAs, Simple, SEP, and Roth IRA.

The most common plans for those self-employed are SEP and SIMPLE IRA plans. SEP appears to be the easiest to administer:

- allows to make contribution toward your own and employees' retirement
- potential to contribute more than you would to other plans - you may contribute up to the lesser of \$53,000 or 25% of compensation for each employee
- you don't have to make contributions every year
- can deduct contributions you make each year to each employee's SEP IRA as well as your own
- can establish an account after the end of the tax year but before you file your return or extension
- can make contribution based on this same time line
- the contributions, however, must be based on the written formula and must not discriminate in favor of certain employees.

SIMPLE IRA has more strict rules:

- employees can choose to make salary contributions rather than receiving these amounts as part of their regular pay
- max contribution is \$12,500 (for 2017) by employee or owner/employee
- as employer, can either match employees contribution equal to 1% to 3% of employee's compensation, or make non-elective contribution of 2% of compensation
- plans can be established any time during the year from January 1 to September 30. Contributions must be made within 30 days after end of month in which amounts would otherwise have been paid to employees. Matching contributions must be made by due date for filing tax return.



E. Deduct Cell Phone Expenses

You don't have to keep track of individual calls. In 2010 the IRS made it easier to deduct costs from your cell phone and similar personal communication devices by removing them from the classification of 'listed property', which requires strict record keeping of usage.

F. Work Opportunity Tax Credit

Take advantage of tax credits available for hiring new employees before January 1, 2020. Employers hiring an individual within a targeted group (generally, otherwise hard-to-employ workers) are eligible for a credit generally equal to 40% of first-year wages up to \$6,000.



G. Hire Your Children

If your kids are under the age of 18, and you hire them to work for you, you will pay not Social Security Tax, Medicare Tax, State Unemployment Tax or State Disability Tax. Deduct their 2015 or 2016 compensation and you will move the income from a high tax bracket to a lower tax bracket. Make sure you keep good records of services provided and hours worked to substantiate the deduction.

H. Home Office Deductions

The home office deduction is one of the best deductions for self-employed and is available whether you are a homeowner or a renter. You can convert a non-deductible personal expense into a tax deductible business expense. These expenses include mortgage interest, insurance, utilities, repairs and depreciation.

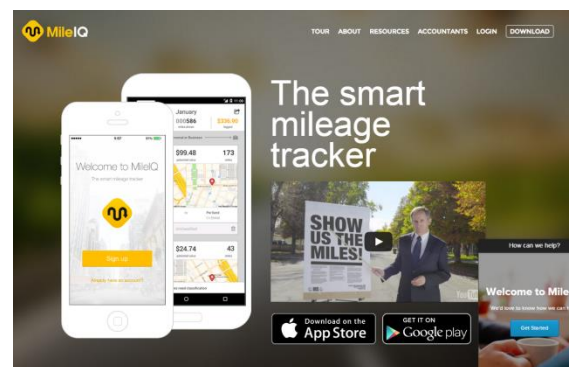
In 2013, IRS announced a simplified option that many owners of home-based businesses and some home-based workers may use to figure their deductions for the business use of their homes. The new optional deduction, capped at \$1,500 per year based on \$5 a square foot for up to 300 square feet, will greatly reduce the paperwork and recordkeeping burden on small businesses. Under the new option you cannot depreciate the portion of your home used in a trade or business, and you can claim allowable mortgage interest, real estate taxes and casualty losses on the home as itemized deductions on Schedule A. These deductions need not be allocated between personal and business use, as is required under the regular method.

Current restrictions on the home office deduction, such as the requirement that a home office must be used regularly and exclusively for business and the limit tied to the income derived from the particular business, still apply under the new option.

I. Automobile Expenses

If you used your automobile for your real estate business in 2017, you can fully deduct the expenses. There are two methods of deducting the automobile expenses – actual expense method or standard mileage rate method. Select actual expenses if the automobile incurred a lot of expenses in the year, and select the standard method if you drove a lot of miles. **The standard mileage rate is \$0.535/mile for 2017.**

Note: It is very important that you track your mileage accurately. If you simply ‘go back through your calendar’ and re-create mileage, the IRS can disallow those expenses. Instead, use an app on your phone to track mileage. Something like ‘mileIQ’ works very well, and can keep you out of trouble in the long run!



IV. Establishing Your Business

Where to begin? In this section we'll recap the 10 easy steps Realtors can take to establish a business:

1. Form an LLC (Must use the Designation "PLLC")
2. Obtain Tax ID (EIN) number for the PLLC.
3. File an election for the PLLC to be taxed as an S Corporation.
4. Change your name with the Florida Real Estate Commission (FREC) to the name of the PLLC.
5. Change your name with your brokerage to the name of the PLLC. Ensure that your commission checks are being paid to the name of the PLLC and commissions are being reported to the EIN of the PLLC.
6. Open a bank account for the PLLC. Obtain a credit card in the name of the PLLC, if necessary, or just use the Debit Card from the PLLCs bank account.
7. Ensure all Realtor-related expenses are paid out of the PLLC bank account/credit card, NOT out of a personal account/credit card.
8. To transfer funds to and from PLLCs bank account, use one time, lump-sum transfers, but DO NOT pay for personal expenses with PLLC funds and Vice Versa.
9. Ensure bookkeeping system is in place to record all business income/expenses in order to maximize deductions.
10. Pay yourself a 'reasonable' salary.

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Koontz & Associates, PL assists clients throughout Florida in legal matters relating to Residential and Commercial Real Estate, Business Law and Tax Law. From their Sarasota and Orlando offices they serve clients throughout Florida.

The information provided in this article is for general informational purposes only and nothing contained herein should be taken as legal advice for any individual case or situation. The information contained in this article is not intended to establish an attorney-client relationship.

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