

STRUCTURING REAL ESTATE INVESTMENTS

Organizational Forms: To **Minimize Taxes**, **Limit Liability** and define **Management** roles in connection with **Investments**. **Partnerships**, **Limited Liability Companies (LLCs)** and **Real Estate Investment Trusts (REITs)** are the primary **Legal Entities** used for structuring the **Acquisition** and **Ownership** of **Real Estate Investments**.

Pass-Through Entities: **Pass-Through Entities** do not pay **Taxes** directly but instead pass on their **Taxable Income** or **Loss** to the **Partners**, **Members**, or **Shareholders** in those **Entities** who must report their allocable share of the **Taxable Income** or **Loss**.

Partnerships: Can be either a **General Partnership** or a **Limited Partnership**. All **Partnerships** are **Pass-Through Entities** for **Tax** purposes and have a **Finite Life**. **Title to Property** owned by the **Partnership** will be in the name of the **Partnership**. In a **General Partnership**, each **General Partner (GP)** has **Decision-Making Authority** and **Unlimited Liability**. A **Limited Partnership** must have at least one **General Partner**, who will have **Decision-Making Authority** and **Unlimited Liability**, and any number of **Limited Partners (LPs)**, with no **Decision-Making Authority** and whose **Liability** is generally **Limited** to the amount of their **Investment**. **Partnership Interests** are **Personal Property** and so are not eligible for a **Section 1031 Exchange**. A **Partnership Agreement** governs the rights and responsibilities of the **Partners**.

Limited Liability Company (LLC): In 1988, the IRS approved the **Limited Liability Company** structure. In 1994, California became the 46th state to enact an **LLC** law. **LLC Investors** are called **Members**, and all **Members** have **Limited Liability**. In California, only one **Member** is needed to form an **LLC** and **LLC's** have **Unlimited Life**. **LLCs** are managed by a **Managing Member** or a third party, can elect **Pass-Through** status for **Tax** purposes, and are governed by an **Operating Agreement**.

Limited Liability Partnership (LLP): In California, only professional organizations can be **LLPs** (law firms, etc.), so an **LLP** cannot be used for **Real Estate Investments**.

Corporations: **Legal Entities** owned by **Shareholders** (individuals or other legal entities), managed by a **Board of Directors** in accordance with their **Articles of Incorporation** and **Bylaws**, and with **Unlimited Life**. **Dual Taxation** (**Corporate** and **Shareholder** levels) makes “**C**” **Corporations** unattractive for **Property Investments**. “**S**” **Corporations** have **Shareholder** restrictions but can elect **Pass-Through** status.

Joint Venture: In the U.S., not a **Legal Entity** but rather an **Agreement** between at least two parties to pursue a specific investment objective. **Joint Ventures** will typically involve a **Partnership**, **Limited Liability Company**, **Corporation** or other **Legal Entity**.

Syndication: Not a **Legal Entity** but a means of **Financing Investments** by selling **Partnership Interests** or **LLC Interests** in a proposed or existing **Project**.

Capital Account: Accounting of an **Investor's Share** in the **Net Worth** of an **Entity**.