

The Virginia Business Trust

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Although Virginia business trusts have been an option for clients since 2002, very few professionals and even fewer individuals have ever heard of this business entity. As you read on, you will see that the Virginia business trust has some major perks over the ever familiar limited liability company, which is why we are confident that the business trust will grow in popularity as Virginia's business entity of choice for real estate investors, rental property owners, and some business owners.

While reading, you may notice that the Virginia business trust is akin to the Virginia limited liability company ("LLC"); however, a few minute details may make it a much more suitable alternative than the standard subsidiary LLC scheme.

Let's start with the basics:

1. What is a Virginia business trust?

A Virginia business trust is an unincorporated business entity. The Virginia business trust is governed by the Virginia Business Trust Act as codified in Title 13.1 of the Code of Virginia. The business trust is similar to other types of unincorporated business entities, yet offers some unique attributes that are beneficial to many clients.

2. How does a Virginia business trust work?

The Virginia business trust operates like a typical trust. Assets are given by a Grantor to a Trustee. The Trustee agrees to accept the assets and manage them as directed by a private contract known as the trust agreement. The trust agreement will direct the Trustee on how to hold and manage the assets and any income created by the assets. The trust agreement will also establish the relationship between the Trustee and the beneficiaries of the trust by explaining under what conditions the Trustee may distribute trust assets to the beneficiaries or for the beneficiaries' benefit.

The main difference between the Virginia business trust and a standard trust is that the business trust is a recognized business entity and must be registered with the State Corporation Commission (SCC). Registration is a relatively easy process, similar to an LLC's Articles of Organization, the applicant only needs to file Articles of Trust (Form BTA-1212). The Articles of Trust is usually a one-page form that asks for specific information about the Trust: the name of the business trust, the registered agent, and the address. There is a \$100 initial filing fee and a \$50 annual registration fee thereafter.

Other than these few requirements, the inner workings of the business trust are extremely flexible (similar to the Operating Agreement of an LLC). Within the trust agreement the

client can set standards for the business's operations, establish limited liability, provide for succession of management and ownership, and name the business.

Keep in mind, however, that when it comes to drafting the Virginia business trust agreement, the devil is in the details. For instance: the Code requires that a trust agreement contain specific language to establish Series Asset Protection. More on this benefit below. Another consideration is when naming a Virginia business trust it is imperative that your client follow naming conventions established in the Code. If the chosen name violates the established naming conditions, then the SCC will deny your client's registration. For example, when naming a Virginia business trust, the name cannot state or imply that the trust is a corporation, LLC, or limited partnership. Moreover, a drafter must be careful in his use of the word "trust." The SCC will approve a name like: "*RVA Rentals, a Virginia business trust*," but it will likely deny "*RVA Rentals Business Trust*."

3. How is the business trust taxed?

A Virginia business trust has the same taxation options as an LLC; an S Corp, a Partnership, or a Disregarded Entity. Additionally, unlike with multiple LLCs, the business trust will have only one return and one tax identification number regardless of the number of series.

4. How does this add value to my clients?

The Virginia business trust is a valuable planning tool for individuals who want asset protection while maintaining flexibility with minimal administrative costs.

The Virginia Business Trust can Provide Limited Liability and Asset Protection

Because the business' property is titled to the Trustee of the business trust and not to the beneficiary (also known as the beneficial owner), the beneficial owner is separate and apart from the trust. Thus, the liability of the business trust does not extend to the personal assets of the beneficial owner, and the debts of the beneficial owner do not extend beyond what the trust distributes to the beneficial owner (e.g. mandatory distributions). This level of protection is comparable to that of a shareholder of a Virginia Corporation, but it can only be acquired with carefully drafted Trust Agreements and Articles of Trusts.

Additionally, the Virginia business trust offers the business owner the ability to acquire Series Limited Liability, which allows the Trust to compartmentalize assets and liability. Under one business trust you can have multiple series that each can hold individual assets (like real property), have its own management structure (Mom and Stepdad manage one series, while Mom and Son manage the other series), have its own succession structure (All of Series A passes to Stepdad; Series B and C pass to Son), and its own liability (injury on property in Series A cannot be attached to properties in Series B, C, D, or E).

This limited liability structure may sound familiar to you. You may have clients who used multiple LLCs to accomplish the same end and, as you may realize, this use created an administrative burden on them. The Series structure of the Business Trust, however, simplifies this administrative nightmare.

The Virginia Business Trust Cuts Administrative Hassle and Saves on Administrative Fees

The Virginia business trust with a Series structure leads to the same limited liability benefits of owning multiple LLCs, but often at a fraction of the cost.

The limited liability company is a great tool for small businesses. The business files its Articles of Organization with the State Corporation Commission and pays an initial fee of \$100. Then, it simply pays an annual registration fee of \$50 to keep the business running. Not too much of a hassle when you have only one or two LLCs to manage, but things can be more complicated for those who own a network of LLCs for asset protection purposes.

Consider a family who own 10 rental properties together. The traditional model for maximum protection is to place each property within its own individual LLC and then to have those LLCs owned by another LLC. That is 11 LLCs. Each costs \$100 to register with the SCC (\$1,100). Each must pay a \$50 annual registration fee to the SCC (\$550/year). These costs can add up over the lifetime of your clients—especially when you consider the costs of separate accounting and tax preparation and filings for each entity. Following the same example, a family with 10 rental properties can establish one business trust with 10 separate series. Since the SCC regards this as one entity and not 10 separate entities, your client would only have to register the business trust for \$100 and then pay a \$50 annual registration fee to the SCC. That saves your client \$1,000 in formation costs and \$500 a year in registration fees alone. Even better, your client may have additional savings on tax filings and preparation. With a properly drafted Virginia business trust all of these savings can be accomplished while maintaining the flexibility and limited liability provided by the traditional multiple LLC structure.

5. What can I do to best serve my clients?

Educate, educate, educate! When you find a client who already has multiple LLCs, ask if the client would be interested in learning about an easier, more affordable solution.

When you come across a client who should consider moving some assets into multiple Virginia LLCs or a Virginia business trust, let that client know the benefits of each.

As always, we are happy to meet with you and your clients to explain the options that are available to them.