

Why Your Forming Community Needs a Legal Entity

Why does your community need to form a legal entity? First, you'll need one to purchase your property, and to own it together over the years. (Technically a group can purchase property as a group with no legal entity, but you will nevertheless still have, in the Court's view, a "default" legal entity, most likely from real estate law, and these are definitely not beneficial for your project.)

Second, you'll need a legal entity, which could be a separate entity, to own and manage any community-owned businesses or to manage any nonprofit activities — especially if you want to receive tax-deductible donations for those activities.

Consider the consequences if you don't have a legal entity. Serious, potentially community-stopping conflicts can arise regarding:

- ➔ property rights and responsibilities of community members
- ➔ vulnerability to creditors and lawsuits with regard to members' personal assets
- ➔ financial compensation for departing members
- ➔ issues about who holds title to property and what happens if the community disbands and sells its assets.

Also, without choosing a particular entity you might end up paying exorbitant, unnecessary taxes. Not having a legal entity for your community project is definitely a kind of "structural conflict" that could someday blow your group apart.

Thus the criteria for choosing your community's legal entity for property ownership usually depends on how well it can

- (1) protect your members from potential lawsuits or other financial liability,
- (2) prevent unnecessary taxation,
- (3) allow your community to hold title to land and set up land use and decision-making rights the way you like,
- (4) allow your community to accomplish its purpose, and
- (5) reflect its values.

Some communities have different legal entities for each kind of activity; others conduct various activities under just one legal entity. And since only one legal entity was designed specifically for an intentional community (the **501d nonprofit for income-sharing religious communities**), communities must borrow from the various legal entities designed for operating businesses.

"Wait a minute, *our* community won't be like that," you might say. "We're going to create something beautiful and noble—not some *business*." Ah, but your financial dealings need to be conducted in a businesslike way. After all, you'll probably be dealing with hundreds of thousands or millions of dollars and you'll need clear, fair agreements.

And, when you get right down to it, your community is a business, since it involves your putting this money together and agreeing how you'll spend it, how you'll raise more of it when needed, and how you'll deal fairly with any surplus or deficit.

Benefits to Having a Legal Entity

- (1) Having a legal entity will make the process of buying land easier. A seller or lending institution will take a legal entity with tens of thousands in the bank and a brief credit history more seriously than it would take a collection of individuals trying to buy property together.

- (2) Any agreements the group makes as part of the documents of its legal entity (such as Bylaws), will be compatible with federal and state law, and thus legally enforceable. If a member violates one of these agreements, the other members will have the force of law behind them to induce the errant member to comply.
- (3) Some legal entities are more compatible than others for the various ways you can own property together, such as:
 - (a) everyone owns the property in common;
 - (b) each household owns its own individual plot; or
 - (c) each household owns its own individual plot and everyone together has shared ownership of the rest.
- (4) Since federal and state governments will tax your community's income (and the county will tax your property) according to whichever legal entity you have chosen, you might as well pick one that saves the most taxes relative to your community's particular circumstances.