

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

INFORMATION SHEET: OPINION NO. 2006-02
FINANCIAL DISCLOSURE STATEMENT:
PROPERTY HELD BY A LIMITED LIABILITY COMPANY

What is the question addressed in the opinion?

Does the Ethics Law require a financial disclosure filer to disclose, on his or her annual financial disclosure statement, real property owned by a limited liability company (LLC) of which he or she is a member?

What is the answer in the opinion?

Yes. A financial disclosure filer who is a member of an LLC that owns real property holds a beneficial interest in the real property interests of the LLC. For that reason, the financial disclosure filer is required to disclose property owned by the LLC on his or her annual financial disclosure statement.

To whom does this opinion apply?

This draft applies to any public official or employee who is required to file a financial disclosure statement.

How and when did the opinion become effective?

The opinion became effective upon acceptance by the Commission.

For More Information, Please Contact:

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IT IS NOT AN ETHICS COMMISSION ADVISORY OPINION.
ADVISORY OPINION NO. 2006-02 IS ATTACHED.

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Advisory Opinion
Number 2006-02
May 25, 2006

Syllabus by the Ohio Ethics Commission:

- (1) Division (A)(4) of Section 102.02 of the Revised Code provides that individuals who are required to file financial disclosure statements must disclose all fee simple and leasehold interests to which the person holds legal title or a beneficial interest in real property within the state, excluding the person's residence and property used primarily for personal recreation;
- (2) A financial disclosure filer who is a member of a limited liability company that owns real property does not hold individual legal title to, but does hold a beneficial interest in, real property owned by the company;
- (3) Because a financial disclosure filer who is a member of a limited liability company that owns real property holds a beneficial interest in real property interests owned by the company, she is required to disclose company property on her financial disclosure statement.

* * * * *

You have asked whether you are required by law to disclose, on your financial disclosure statement, an interest in real property owned by a limited liability company (LLC) of which you are a member. You explained that you are a public college trustee and that you and your husband jointly own an LLC. You indicated that the LLC transacts business in Ohio and the real property owned by the company is located in Ohio.

Brief Answer

As explained more fully below, a financial disclosure filer who is a member of an LLC that owns real property has a beneficial interest in the real property interests owned by the company and is required by R.C. 102.02 to disclose company property on her financial disclosure statement.

Financial Disclosure Law

A public college or university trustee is required by Section 102.02(B) of the Revised Code to file a financial disclosure statement. Among the items to be disclosed on the financial disclosure statement are various real property holdings as required by Section 102.02(A)(4) of the Revised Code:

All fee simple and leasehold interest to which the person holds legal title to or a beneficial interest in real property located within this state, excluding the person's residence and property used primarily for personal recreation, . . ." (Emphasis added.)

A "fee simple" interest in real property is "the highest right, title and interest that one can have in land. It is the full and absolute estate in all that can be granted." *Masheter v. Diver* (1969), 20 Ohio St. 2d 74, 75. For purposes of commercial transactions in Ohio, the term "leasehold interest" is defined as the interest of a lessor or a lessee under a lease contract. R.C. 1310.01(A)(13). A "lease" is a transfer of the rights to exclusive possession of a certain quantity of land for a term certain that is a less term than that of the party conveying the property. *Cuvier Press Club v. Fourth & Race Street Associates, Ltd.* (1981), 1 Ohio App. 3d 30, 33-34.

The question before the Commission is whether a financial disclosure filer holds legal title or a beneficial interest in real property if an LLC of which she is a member has a fee simple interest in the property.

Legal Title

An LLC is a relatively new business structure that, under Ohio law, is neither a partnership nor a corporation but has attributes of both. *In re: ICLNDS Notes Acquisition, LLC* (Bkrtcy. N.D. Ohio 2001), 259 B.R. 289. Generally, an LLC has the limited liability features of a corporation and the tax features of a partnership. *Id.* at 292-93.

In Advisory Opinion No. 76-012, the Ethics Commission was asked to consider whether a financial disclosure filer is required to disclose property held by a partnership in which he is a general partner. Adv. Op. No. 76-012. In making its determination, the Commission first looked at whether a partner holds legal title to partnership property pursuant to R.C. 102.02(A)(4). The Commission explained that, under the law of partnerships, property brought into a partnership or subsequently acquired with partnership funds, is partnership property legally held by the partnership. *Id.* and R.C. 1775.07.

Similarly, according to R.C. 1705.34, which governs the holding and conveyances of property owned by an LLC, real and personal property owned or purchased by an LLC shall be held and owned in the name of the company and conveyance of that property must be made in the name of the company. Therefore, a member of an LLC does not hold individual legal title to company property. *Plaza 45, Ltd. vs. Cuyahoga County Board of Revision*, (May 14, 1999), B.T.A. No. 96-P-1316, 1999 Ohio Tax LEXIS 596, (quoting, *Board of Education for Toledo Public Schools*, B.T.A. No. 97-P-1299, 1998 Ohio Tax LEXIS 507).

Beneficial Interest

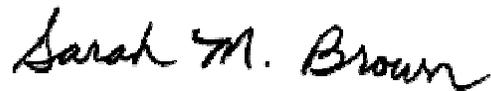
The more difficult issue is whether a member of an LLC has a “beneficial interest” in real property held by the company. As discussed in Advisory Opinion No. 76-012, the term “beneficial interest” is not defined within Chapter 102 of the Revised Code, nor is it defined elsewhere in the Code. In Advisory Opinion No. 76-008, the Commission held that, pursuant to the rules of statutory construction, in the absence of a statutory definition, words of a statute are given a plain, commonly understood meaning. *Black’s Law Dictionary* (5th ed. 1979), defines “beneficial interest” as “profit, benefit, or advantage resulting from a contract, or the ownership of an estate as distinct from the legal ownership or control.” Similarly, in *Refreshment Serv. Co. v. Lindley* (1981), 67 Ohio St. 2d 400, 403, the Ohio Supreme Court determined that, for tax purposes, the term “beneficial interest” includes the interest of one who is in possession of all characteristics of ownership other than legal title of taxable property. The plain, commonly understood meaning of the term “beneficial interest” is an advantageous or favorable right or claim to something.

In Advisory Opinion No. 76-012, the Commission determined that, although a person who is a partner in a partnership that holds title to real property does not, by virtue thereof, hold legal title to the property as an individual, he does have a beneficial interest in partnership property. *Adv. Op. No. 76-012*. The Commission considered R.C. 1775.25, which provides: “A partner’s interest in the partnership is his share of the profits and surplus, and the same is personal property.” In this sense, a partner can assert that he has a favorable right or claim to partnership property through his partnership relationship. Therefore, the Commission concluded that a partner is required to disclose, pursuant to Section 102.02(A)(4) of the Revised Code, the real property owned by the partnership.

Much like a partner’s interest in a partnership, a “membership interest” in an LLC is a member’s share of the profits and losses of the LLC and the right to receive distribution. R.C. 1705.01(H). A membership interest in an LLC is personal property. R.C. 1705.17. Therefore, a member of an LLC could also claim that she has an advantageous or favorable claim to company property. For that reason, a member of an LLC does have a “beneficial interest” in LLC property and as such, pursuant to R.C. 102.02(A)(4), is required to disclose the real property owned by the LLC.

This advisory opinion is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code, and does not purport to interpret other laws or rules.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: (1) Division (A)(4) of Section 102.02 of the Revised Code provides that individuals who are required to file financial disclosure statements must disclose all fee simple and leasehold interests to which the person holds legal title or a beneficial interest in real property within the state, excluding the person's residence and property used primarily for personal recreation; (2) A financial disclosure filer who is a member of a limited liability company that owns real property does not hold individual legal title to, but does hold a beneficial interest in, real property owned by the company; and (3) Because a financial disclosure filer who is a member of a limited liability company that owns real property holds a beneficial interest in real property interests owned by the company, she is required to disclose company property on her financial disclosure statement.



Sarah M. Brown, Chairman
Ohio Ethics Commission