



Tax & Legal Issues for Foreigners Investing in U.S. Real Estate

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Notice: The following slides consist of general information, and are not meant to be used to analyze any specific situation. These slides should not be relied upon to resolve any specific legal issue. Please seek legal counsel as warranted.



About Prof. Eduardo “Ed” R. Arista, CPA, Esq.

- Assisting domestic and foreign businesses and individuals investing and doing business in the U.S. for almost 20 years
- Attorney licensed in Florida, Washington, D.C., and U.S. Tax Court; Licensed CPA
- Prior professional experience with law firms in Miami and Washington, D.C., a U.S. Tax Court Judge and as a Senior Consultant in Ernst & Young’s International Tax Services group
- Former Chair of the Florida Bar Committee on Relations with CPAs, and member of the LLC Statute Drafting Task Force
- Fully bilingual and bicultural Spanish speaker regularly handling sophisticated tax and legal matters for clients and other advisors who prefer to communicate entirely in Spanish
- Graduate Tax Professor at Florida International University
- Published numerous articles and regularly lectures at continuing education seminars for attorneys, CPAs, bankers and business people, both in English and Spanish
- More than 400 endorsements on [LinkedIn](#)

Agenda



- Spotting Non-Tax, Legal Issues
- Getting it right from the beginning
- Repairing an incorrect or incomplete structure
- Closing the deal

Business Planning

- Co-ownership Agreement
- Management agreement
- Lease agreement
- Loan documentation
- Agreements with related entities

Estate Planning Considerations

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- Who will manage the property and how when you are gone?
 - Succession planning
 - Giving the appreciation to one heir and the income stream to another.
 - Co-management by next generation
- Who will manage the property and how if you are temporarily incapacitated?
- Providing liquidity to cover estate taxes without selling or leveraging the property

Limiting Personal Liability

- Insurance is only the first line of defense
 - Are you really covered?
 - What are your limits?
- Exposure to tenants, guests and others.
- Who gets sued when they “sue the owner”?
- How a properly drafted lease can help protect you.
- Pitfalls of personal involvement in property management

Asset Protection

- Getting it right from the beginning
- Don't put all your eggs in one basket; Structuring your real estate portfolio.
- Investment Property is not protected by the "Homestead Exemption"
- Joint tenants (aka Joint targets)

Income Tax Planning

- 1031 tax-deferred, like-kind exchanges
- Capital Gain vs. Ordinary Income
- Depreciation Recapture



What is the estate tax?

- Scope
- Gift Tax
- Generation Skipping Transfer Tax
- Exemption
- Reporting



How does the estate tax apply to foreigners?

- Situs
- Exemption
- Liabilities
- Non-Citizen Spouses



Who is a foreigner for estate tax purposes?

- Not “count the days” Test used for income taxes
- Domicile based on intent
- Managing domicile



Example of estate tax savings

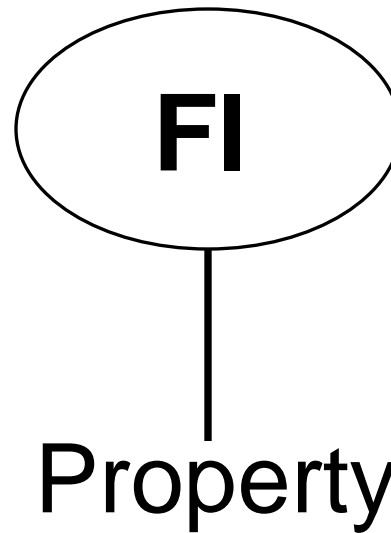
Total US Assets	\$1,000,000
Exemptions	(60,000)
Deductions	0
<hr/>	
Net Taxable Estate	\$940,000
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- Tax Due in 2013: \$376,000 at 40%
- Non-deductability of expenses and liabilities without disclosing foreign assets.

Getting it right from the beginning



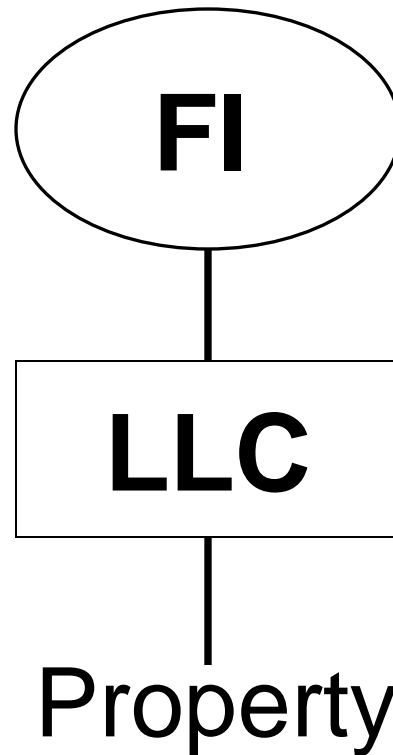
Foreign individual (FI) on title



Getting it right from the beginning



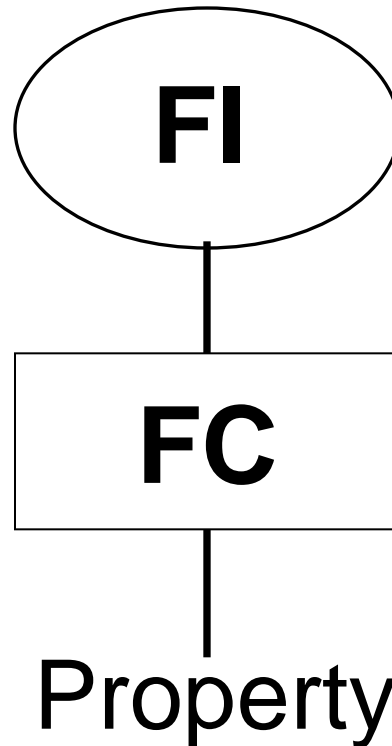
LLC on title



Getting it right from the beginning



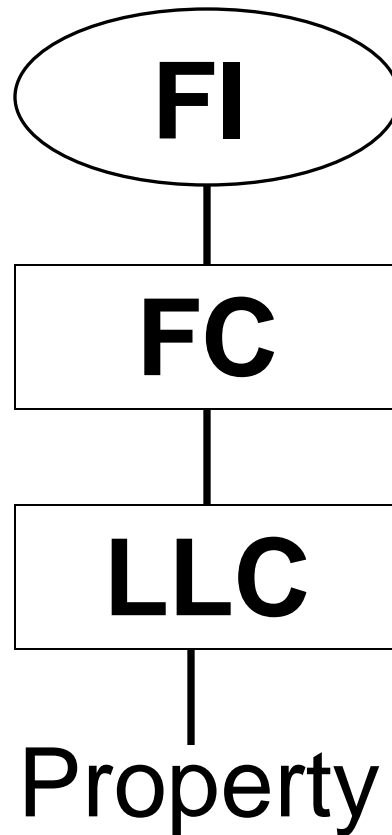
Foreign Corporation (FC) on title



Getting it right from the beginning



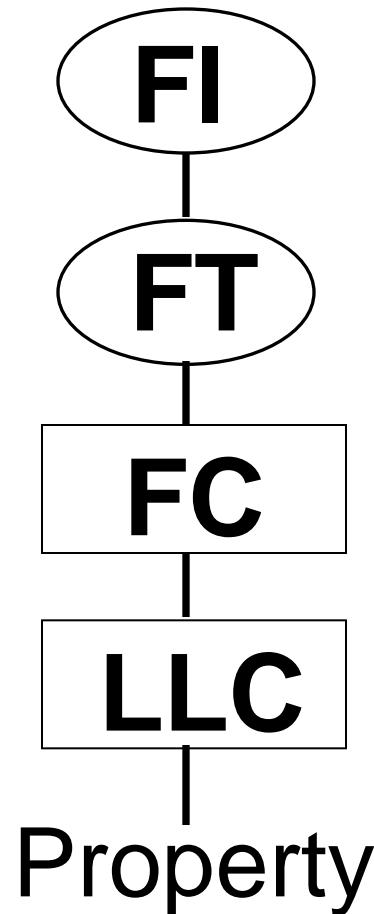
FC on LLC on title



Getting it right from the beginning



FT on FC on LLC on title



Getting it right from the beginning



Connecting the dots

- Experienced professionals can set up in one to two weeks
- Purchase contract
- Coordinate with Closing Agent
- Cash Flow
- Advanced Structures

Repairing an incorrect or incomplete structure



LLC Structuring Pitfalls

- Member vs. Manager Managed?
- Tax Elections and default classifications
- Operating Agreement
- Corporations vs. LLC

Repairing an incorrect or incomplete structure



FC Structuring Pitfalls

- “Per Se” Corporations
- Individual/Joint Ownership
- U.S. reporting?

Repairing an incorrect or incomplete structure



FIRPTA Withholding

- U.S. Real Property Interest
- Withholding Requirement
- Withholding Certificate
- New deed vs. Assignment of Interest

Repairing an incorrect or incomplete structure



Being prepared to overcome an IRS audit

- Purchase Agreement
- Closing Statement
- Appraisal
- Lease

Repairing an incorrect or incomplete structure



Why bother go through this trouble?

- Most foreigners know there are tax issues or will find out soon after closing
- The more they pay in taxes and lawsuits, the less they have to buy more real estate
- They trust you.
- With the right help, there is plenty of time to set up a structure between contract and closing.

Why hire an Attorney to handle your Real Estate deal?

Why hire an obstetrician to deliver your baby?

1. Reviewing Contract
2. Negotiation Support
3. Checking Title
4. Preparing and Attending Closing
5. Business Planning
6. Tax & Estate Planning / Asset Protection



We look forward to an opportunity to be of assistance.

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