



A flexible estate planning technique

**Tax advantages for you and your
family business — the Family LLC**



If you'd like to help reduce your estate taxes to the next generation...

consider a technique that can provide flexibility for your family business, asset protection, and control with valuable estate and gift tax advantages.

It's called a Family Limited Liability Company (also known as a Family LLC, or FLLC).

You've worked hard to achieve your success, and it's understandable that you want to reduce your transfer (i.e., estate) taxes.¹ One way that affluent individuals consider paying for their transfer taxes is through the use of life insurance. But that approach could present issues, because if you own your policy outright, it could become includable in your gross estate, making your policy's death benefit subject to estate taxes — and leaving less of your policy's proceeds for your loved ones.

One commonly used tool that can help keep life insurance proceeds out of a wealthy individual's estate is an Irrevocable Life Insurance Trust (ILIT). Generally, ILITs are known as "grantor" trusts: The grantor and the ILIT are the same entity for income tax purposes, but separate entities for estate tax purposes. This structure creates an arrangement where the trust assets (such as life insurance) can be kept out of the estate.

In 2021, however, several different tax proposals targeted the use of grantor trusts. Had they passed, estate tax laws would have changed so that the assets (including life insurance) in newly established grantor trusts would have to be included in the grantor's estate. While the tax proposal had some grandfathering for existing trusts, if an existing grantor trust was funded after the date of the law's enactment, some of the trust assets would have been included in the grantor's estate.

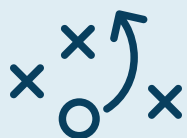
A Family LLC may be an alternative for you

Some individuals have begun considering a Family LLC (FLLC) as an alternative to an ILIT. A Family LLC is a limited liability company (LLC) that includes only related individuals as members. As with any LLC, the Family LLC can:

- Provide limited liability protection
- Pass through the business income to the members' personal income tax returns

A Family LLC can enable its members to do many things, such as:

- Operate a business
- Manage investments
- Pursue a commercial activity, such as the management of rental properties



Could this strategy
be right for you?

You may wish to consider implementing an FLLC if:

- Your estate is worth at least \$12.06M — or, if married, \$24.12M
- You're interested in reducing your transfer taxes to the next generation
- You're considering purchasing life insurance to be owned by a trust — but are concerned about future changes to grantor trust and estate tax laws
- You're interested in using a technique that has a good deal of flexibility
- You'd like to retain a good deal of control over your assets, while keeping a majority of those assets out of your gross estate

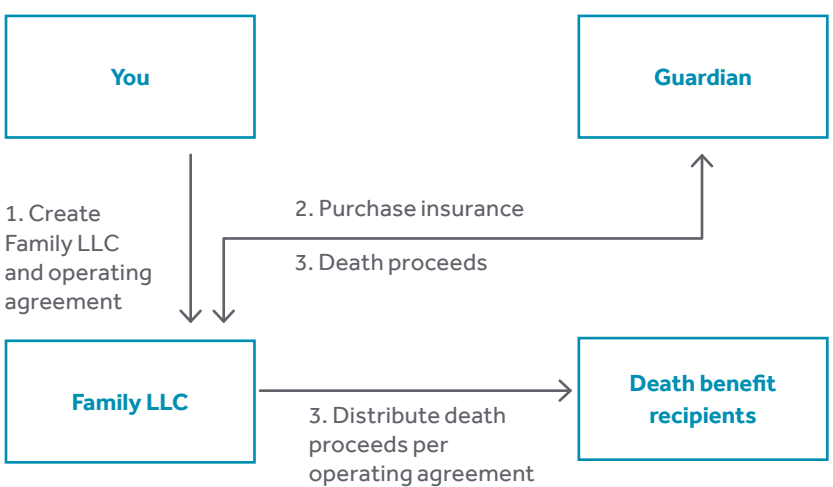
What you need to know about the Family LLC

- All the members of your FLLC should be related by blood, adoption, or marriage.
- When you draft an operating agreement for your FLLC, it should be prepared by an attorney familiar with the laws of the state in which your Family LLC is established. Your operating agreement will:
 - cover the rights and responsibilities of your FLLC members
 - set ground rules for the operation of your FLLC, describing how the ownership of your FLLC is managed and how the members can transfer their rights
 - designate managers, who will make decisions about purchasing assets, selling assets, and distributing funds
- Your Family LLC then purchases life insurance on its members, usually the senior ones. When an insured member passes away, the insurance proceeds will be received by your FLLC and can be distributed according to the operating agreement and the discretion of the manager. If you establish a Family LLC that purchases life insurance, you may want to consider drafting the operating agreement to appoint an independent manager.²



- 1 You work with your Guardian Financial Representative and attorney to create the operating agreement and to form your Family LLC.
- 2 Your Family LLC is the applicant, owner, and beneficiary of life insurance on each insured member's life.
- 3 Upon the death of an insured member, income tax-free life insurance proceeds³ are received by the Family LLC and distributed from the LLC to the individuals specified to receive the death benefit in your operating agreement, or the death benefit can be kept in the Family LLC and distributed to its members as needed.

How a Family LLC can work



A Family LLC case study

The following hypothetical case study describes how an individual used an FLLC as part of her estate plan, helping to consolidate and manage wealth, provide asset protection, and transfer property to future generations at a reduced transfer tax cost.

Patty Parent owns a small business, marketable securities, and rental real estate (with no debt) and has a \$30M net worth. She expects that her net worth will continue to increase. Patty decides to transfer her marketable securities and real estate to an FLLC. The FLLC will be manager-managed and will have an independent manager. After formation of the FLLC, she uses some of her lifetime gift tax exemption to gift FLLC interests to her children. Patty was able to remove the value of the FLLC interests gifted to her children from her gross estate and remove the appreciation as well.

Patty's FLLC may provide some degree of creditor protection because often a creditor's only remedy against an LLC interest is a charging order against that LLC member's interest. With a charging order, distributions from the LLC to the debtor-member will be paid to the creditor, but the creditor may not receive any cash or property if the LLC does not make any distributions to its members.

The manager of the FLLC determined to purchase life insurance on Patty's life. The FLLC is the owner and beneficiary of the policy. Generally, if the FLLC is the owner and beneficiary of the policy, Patty's gross estate will only include the portion of the death benefit that represents her proportional interest in the FLLC. She worked closely with her tax advisors who concluded that Patty, primarily because the FLLC is managed by an independent manager, would **not** have an incident of ownership over the life insurance policy that would result in all of the death benefit being includable in her gross estate. Upon Patty's death, the FLLC will receive the life insurance proceeds income tax free³ and the FLLC manager may distribute them to the surviving members as needed pursuant to the FLLC operating agreement, similar to how a trustee of a trust would make distributions to trust beneficiaries as needed pursuant to the trust document.

Some advantages of an FLLC

- It keeps property within your family. As an FLLC member, you can pass your membership interests to other family members, including your spouse.
- It gives you flexibility. If your circumstances change, for example, your FLLC may allow for the amendment of your operating agreement.
- It can help you reduce transfer taxes: This may be the case if your FLLC was structured so that you only own a small percentage of the FLLC and the rest is owned by other family members or trusts.
- It can give you more control: Based on the terms of your operating agreement, you may still be able to retain managerial control over your FLLC during your lifetime.
- It can give you creditor protection.⁴

Special considerations

- An FLLC may be more costly to create and run than an ILIT.
- An FLLC must be established for a legitimate purpose — such as asset management — and any local laws and requirements should be kept in mind.
- You and your family members should not commingle personal assets with the FLLC assets.

Could a Family LLC be right for you?

Only you can decide. But a Family LLC can help you reduce your transfer taxes, provide financial protection for your loved ones, and involve your family in a common goal. And, during your lifetime, it can give you a great deal of flexibility and control to help meet your business needs and future goals.

Because the techniques discussed in this guide can be complex, you may wish to seek the advice of your tax and legal advisors to help ensure that the solution you choose is best for you. A Guardian Financial Professional can work with your trusted legal and tax professionals to help create a customized approach based on your objectives. Contact a Guardian Financial Professional to start the conversation today.



¹ Guardian, its subsidiaries, agents, and employees do not provide tax, legal, or accounting advice. Consult your tax, legal, or accounting professional regarding your individual situation.

² The IRS has privately ruled that an insured member will not have an incident of ownership over a life insurance policy owned by an insurance LLC that has an independent manager and where the insured member cannot exercise any control over the policy. So, it may be possible to structure an FLLC to own life insurance on the members' lives and avoid estate tax inclusion without having to use an ILIT. Private letter rulings may not be relied on as precedent, except by the requesting taxpayer.

³ In some circumstances, life insurance owned by an FLLC could be considered employer-owned life insurance, which is received income tax free by the business only if IRC 101(j) is complied with.

⁴ State creditor protection laws vary by state. Consult your legal advisor regarding your individual situation.

The foregoing information regarding Family LLC techniques is not intended to be tax, legal, or investment advice and is provided for general educational purposes only.

All scenarios and names mentioned herein are purely fictional and have been created solely for educational purposes. Any resemblance to existing situations, persons or fictional characters is coincidental. The information presented should not be used as the basis for any specific investment advice.

Guardian® is a registered trademark of The Guardian Life Insurance Company of America.

© Copyright 2022 The Guardian Life Insurance Company of America.



**The Guardian Life Insurance
Company of America**

guardianlife.com