

Forming Real Estate Syndicates

Chapter 1

A chronology for syndication

This chapter sets out a chronological list of the steps taken to select and acquire property for a group investment program to be formed and operated as a limited liability company (LLC).

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Guidelines for forming a group

A real estate broker who gathers investors into a group for the purpose of jointly buying, operating and ultimately selling an income-producing property is involved in a process known as *syndication* or *syndicate brokerage*. The broker who arranges the acquisition of property and organizes the group is known as a *syndicator* or *manager*.

Unlike sophisticated real estate investors who tend to operate alone, individuals who join together in syndication programs are generally uninformed and inexperienced about:

- the legal aspects and accounting of co-ownership;
- the economic factors that influence the movement of real estate rents and values;
- the responsibilities of property management; and

- the compensation a syndicator or manager is entitled to receive.

However, the broker acting as a syndicator undertakes the agency duty of fully informing each individual prospective investor of all aspects of the property and the investment program that might influence a prudent investor's decision to contribute funds.

A **chronological list of activities** the syndicator should review and consider adopting when forming a limited liability company (LLC) for the acquisition and ownership of an income-producing property includes:

1. Researching available residential or nonresidential rental properties and selecting one to be investigated and confirmed as suitable to purchase. (Non-income-producing property acquired by an LLC will require modification of the documents in this material.) [See **first tuesday** Form 185 or **first tuesday** Form 279]

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2. Analyzing the property selected, including its physical condition, the economic risks, environmental and natural hazards of the property's location, personal security, title conditions and property operating data. [See **first tuesday** Forms 304, 314, 321, 324 and 352]
3. Contracting to purchase the property in the name of the syndicator under a purchase agreement, an option to purchase or escrow instructions with a vesting provision allowing the syndicator to assign his right to purchase the selected property to the LLC. [See **first tuesday** Forms 161, 161-1, 401 and 159 §§10.6 and 13.3]
4. Opening escrow in the name of the syndicator, not the LLC, as the buyer. Prior to closing and after the LLC has been formed, the syndicator will assign his right to buy the property to the LLC. [See **first tuesday** Form 401]
5. Completing a due diligence analysis and confirming the seller's disclosures regarding the condition of the property's improvements, operations, location and title.
6. Applying for new financing or an assumption of the existing financing as called for in the purchase agreement.
7. Reviewing plans for the formation and management of an LLC entity with competent legal and accounting advisors.
8. Preparing the investment circular (IC), subscription agreement, LLC-1 (Articles of Organization) and LLC operating agreement, along with their exhibits and addenda, naming the syndicator as manager of the LLC. [See **first tuesday** Forms 371 and 372]
9. Delivering copies of the IC to prospective investors to solicit them to become members and fund the LLC so escrow can close and the property be acquired.
10. Obtaining the signature of each investor on a separate subscription agreement and the signature page of the LLC operating agreement, and delivering their funds to the syndicator or escrow. [See **first tuesday** Form 373]
11. Entering into a property management agreement to employ the syndicator to manage the day-to-day operations of the property. This agreement must be signed by each investor who became a member of the LLC. [See **first tuesday** Form 590]
12. Arranging mortgage financing and signing loan documents for an assumption of an existing loan(s) or the origination of a purchase-assist loan, either in the name of the syndicator or on behalf of the LLC, as demanded by the lender.
13. Filing the LLC-1 (Articles of Organization), prepared and signed by the syndicator, with the California Secretary of State.
14. Assigning the syndicator's right to purchase the property to the LLC in an amendment to the escrow instructions, vesting title to the property in the name of the LLC on closing. [See **first tuesday** Form 370 or 401-2]
15. Funding the purchase price and closing costs from cash contributions received from the members of the LLC and mortgage financing.
16. Closing escrow and taking possession of the property.

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17. Sending copies of all closing documents to each member.
18. Filing an LLC-12 with the Secretary of State within 90 days after filing the LLC-1 and biennially thereafter, and identifying the name and address of the manager as the agent for service.
19. Operating the property on behalf of the LLC during the LLC's ownership of the property and distributing earnings to the members.
20. Reselling the property when ownership of the property no longer meets the objectives of the investment group or when the initial goal was to sell or exchange the property after a period of time. The manager will negotiate the sale and the net proceeds will be distributed to the members on closing.