Lending to Your Own Company

A loan from you to your company can protect you, or it can be ignored the first time anyone tests it. The paperwork decides which.

Owners put money into their companies all the time. Most of it goes in with no paperwork at all, and nobody can say later whether it was a contribution or a loan. That question matters for your taxes, for what you get back on a sale, and for where you stand if the company fails.

A documented loan with real security does something a contribution cannot: it puts you in line as a creditor, ahead of the owners and sometimes ahead of other creditors. Done properly, it is one of the more useful tools in a small structure. Done casually, it is a contribution with a note stapled to it.

Everything here applies whether your company is a limited liability company (a member loan) or a corporation (a shareholder loan).

Contribution or Loan: Decide Before the Money Moves

A capital contribution buys ownership. It increases your basis, it comes back to you only through distributions, dividends, or a sale, and it ranks last if the company winds down.

A loan creates a debt. The company owes it back on stated terms, with interest, whether or not it is profitable, and you rank as a creditor.

The label you choose at the time is the starting point, not the conclusion. Courts and the IRS look at how the arrangement actually works. A "loan" with no repayment schedule, no interest, no security, and no enforcement looks like equity, and it will be treated as equity.

What Makes It a Real Loan

- **A written promissory note.** Principal, interest rate, payment schedule, maturity date, and what happens on default.
- **An interest rate the IRS will accept.** Related-party loans should carry at least the applicable federal rate for the month and term of the loan. A below-market loan to your own company can produce imputed interest you did not plan for.
- **Payments that actually get made.** On schedule, from the company account to yours, and recorded as principal and interest. A note nobody pays is evidence against you.
- **Authorization on both sides.** A written consent or board resolution of the company approving the borrowing, signed by whoever has authority under the operating agreement or bylaws. If the lender is another entity you own, that entity needs its own consent to make the loan.
- **Terms a stranger would accept.** Arm's-length terms are what separate a loan from a

disguised contribution or a disguised distribution.

Securing the Loan

An unsecured note makes you a general creditor, standing in line with everyone else. Security moves you up.

Real estate. Security is a deed of trust or a mortgage, depending on the state where the property sits, recorded in that county. Recording is what gives the lien priority. An unrecorded deed of trust protects you against the company and almost nobody else.

Equipment, inventory, receivables, and other personal property. Security is a security agreement plus a UCC-1 financing statement. For a borrower that is a registered organization, such as a limited liability company or a corporation, file the UCC-1 with the central filing office of the state where the company is organized, which in most states is the Secretary of State. File there even if the collateral and the business sit in another state. The filing is what perfects the interest against other creditors.

Existing lenders. If the property already carries a bank loan, read that loan's documents before you add a second lien. Many prohibit additional encumbrances without the lender's consent.

The Owner-Lender as a Privacy and Protection Layer

A common structure: the property sits in one company, and a separate holding company (often one with less public information about its owners) makes a secured loan to it and records the lien.

What it can do:

- **Reduce the equity a plaintiff sees.** A property carrying a recorded lien in favor of a related lender is a less attractive target than one owned free and clear.
- **Put a friendly creditor first.** If the property company is sued, the secured lender's claim ranks ahead of a later judgment creditor on that property.
- **Keep your name off one more public record,** since the recorded lien names the lending company, not you.

What it cannot do:

- **Survive a transfer made to dodge a known claim.** Under the voidable transaction laws most states have adopted, a lien granted after a claim arises, for little or no real value, can be unwound. Timing and genuine consideration are everything.
- **Survive sloppiness.** No payments, no interest, an unrecorded lien, or terms no lender would accept, and a court can disregard it or recharacterize it as equity.
- **Make you anonymous to the government, a court, or your bank.** A lien changes what the public record shows. It does not change who has to answer questions under oath.

The Tax Side

Interest the company pays you is income to you. If the company is taxed as a partnership or an S corporation, the interest deduction and your interest income generally run through to the same people, so the loan does not create tax savings by itself. It creates clarity, priority, and a repayment stream that is not a distribution.

Repayment of principal is not income. That is a real advantage over dividends in a company taxed as a C corporation, and it is one reason the IRS scrutinizes shareholder loans there most closely.

S corporations: the loan creates debt basis. An S corporation shareholder can deduct the company's losses only up to their basis. A loan made directly from you to the corporation adds debt basis on top of your stock basis, which can let you deduct losses you otherwise could not. Two cautions. The loan has to run from you personally; a loan from another company you own, or your guarantee of a bank loan, generally does not count. And when the corporation repays a loan whose basis was reduced by losses, part of the repayment can be taxable to you.

Keep the related-party record clean: the note, the consents, the payment history, and the recorded lien, all in the company file.

Before You Lend

Decide which person or entity lends, and confirm the lender has the money without borrowing it back from you. Confirm the borrowing company's operating agreement or bylaws permit the loan and identify who must approve it. Check every existing loan for restrictions on additional liens. Then sign the note, record the lien, and start the payments.

Related reading at bjoffrionconsult.com/blog: "Is the money you put into your business a contribution or a loan?" and "What can a creditor actually reach if they sue you personally?"

If You Want This Structured and Papered for Your Company

Multi-State or Holding Company Plan — from $2,600. Which entity should hold, which should lend, which states require registration, and a written account of what the structure does not protect against.

Signature Authority & Resolutions — from $450. The written consents each company needs to approve the loan and the lien, and who has authority to sign them.

Document Review — from $650. Whether an existing note, security agreement, operating agreement, or bylaws support the arrangement you think you have, with specific recommended revisions.

The fee for a consultation is credited in full toward any written work you commission within 30 days.

Full service list and current pricing: www.bjoffrionconsult.com/services

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