

The Limited Liability Corporation: Is It for You?

by Joan E. Lisante

Limited liability corporations (LLCs) have become “hot” during the past decade, with more and more businesses adopting the form. What’s the appeal?

The biggest reason to switch from a plain-vanilla sole proprietorship is to limit liability, as the name says. If you’re a sole proprietor, both your business and your personal assets are at risk if someone sues you and wins a judgment against you. Incorporating your business as an LLC puts a wall around personal assets such as your house, retirement account, or kid’s college savings. Payment for business debts or legal judgments can only be satisfied from capital paid into your business. An LLC won’t protect your assets if you personally guarantee a debt, however. For example, a lot of loans and lease agreements you might be asked to sign on behalf of your company contain language stipulating that you will personally guarantee the debt. If you sign one of those things, you lose the protection afforded by the LLC.

How It Works

Under the LLC format, shareholders, or owners, are called “members.” Each member gets a percentage ownership, which can be decided any way you choose. Most one- or two-member LLCs manage themselves, but you’re free to hire outside management help if members are too busy working to keep a careful eye on the big picture.

Unlike a traditional corporation (“C” or “subchapter S”), an LLC doesn’t have to slavishly match profits or losses to the

capital each member puts in. A member who’s contributed 40% of operating capital could, for example, take 50% of the profits, depending on your setup.

Tax simplicity. You don’t have to file a separate business return with an LLC. Profits and losses can be reported on Schedule C of your individual tax return. If there’s more than one person in your LLC, one more piece of paper is required — form 1065, which tells the

IRS how much each person earned. Also, there’s no “double taxation” — taxing both your business and you as an individual — as there is with a traditional “C” corporation.

The Downside

Of course, some aspects of operating as an LLC are less appealing than others. A lot depends on your goals and the amount of time you’re willing to spend on corporate housekeeping. Here are some things to keep in mind when deciding if an LLC is right for you.

Paperwork. Every LLC has to write an operating agreement and file forms with the state corporation commission or secretary of state. This includes legal papers such as “articles of organization” or a “certificate of formation.” The forms would include the LLC’s name, address, agent for service of process, and the names and addresses of managers. Most states post the rules and required forms online.

You’ll need to write an operating agreement listing the rights and responsibilities of members. In a regular corporation, these would be contained in the bylaws. Items typically covered would include each member’s percentage interest, how you’ll allocate profits and losses, rules for meetings and voting, and “buy-sell” arrangements for members who leave the LLC.

Offering benefits. You’ll also need to decide how important it is to have fringe benefits. Unlike a “C” corporation, an LLC cannot deduct benefits

INSTRUCTIONS

§ 13.1-1302 of the Code of Virginia requires that this document be in the English language, handwritten or printed in black, legible and reproducible.

This registered office address must include the complete post office address, including a street address, if any, or a route and box number. Also, state the name of the city or county in which the office is physically located. Cities and counties in Virginia are separate local jurisdictions.

The document must be executed in the name of the limited liability company by the person forming the company (see § 13.1-1305 of the Code of Virginia).

Submit the original articles to the Clerk of the State Corporation Commission, 1305 S. Main Street, First Building, 17th Floor, Richmond, Virginia 23219 or P.O. Box 1187, Richmond, Virginia 23219-1187, along with a filing fee check for \$100.00 payable to the State Corporation Commission. **PLEASE DO NOT SEND CASH.** If you have questions, call (804) 571-8725.

LLC-1000.1 (2/10)

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

ARTICLES OF ORGANIZATION FOR CONVERSION
OF A DOMESTIC OR FOREIGN PARTNERSHIP OR
LIMITED PARTNERSHIP TO A LIMITED LIABILITY COMPANY

Pursuant to Chapter 12 of Title 13.1 of the Code of Virginia the undersigned states as follows:

1. The name of the former () partnership or () limited partnership is (mark one):
2. If the former partnership or limited partnership is a registered limited liability partnership, the date and place of filing of the initial registration or of statement of registered limited liability partnership are: date _____ place of filing _____
3. The name of the limited liability company is: _____
(The name must comply with Article 1 of the Virginia Code, Title 13.1, Chapter 12, § 13.1-1302.)
4. A. The registered agent's name is: _____
whose business office is identical with the registered office:
B. The registered agent is: (mark appropriate box)
(1) an individual who is a resident of Virginia and:
 () a member/manager of the limited liability company
 () an officer/director of a corporate member/manager of the limited liability company
 () a general partner of a general or limited partnership, member/manager of the limited liability company
 () a trustee of a trust that is a member of the limited liability company
(2) _____ OR
(3) () a professional corporation, professional limited liability company or registered limited liability partnership registered with the Virginia State Bar under § 54-7-1302 of the Code of Virginia.
5. The address of the initial registered office in Virginia is:
 (understanding) _____
 city or town _____ state _____ (zip)
 located in the () city or () county of _____
6. The post office address of the principal office is:
 (understanding) _____
 city or town _____ state _____ (zip)
7. Signature: _____
 (understanding) _____ (date) _____
 (understanding) _____
 (understanding) _____


SEE INSTRUCTIONS ON THE REVERSE

Legal

like health insurance and a retirement plan as business expenses. Incentives like stock bonuses don't work well under the LLC format, because there's no stock. Of course, in a small company, that may not matter at all.

Unlike a "C" corporation, an LLC is a "pass-through entity," the same as a partnership or sole proprietorship. Members of LLCs have to pay Medicare and Social Security tax on their entire share of the earnings. This includes salary and profits, even if the profits are not distributed to you. Self-employment taxes for 2003 are 15.3% up to \$87,000 and 2.9% of everything above that amount. Members who are not active in the business may not be subject to this tax.

Something to Think About

An LLC is not for everybody. Only you, with the help of a lawyer and accountant familiar with your business, can pick the best blueprint for your company. Look at your own needs, talk with other contractors, and run the numbers. You need to decide if liability protection and flexibility in running the business and allocating income have enough value to offset the tax consequences (if there are any) and added paperwork. Then follow through so your setup is legal. 

Joan E. Lisante is an attorney and freelance writer who lives in the Washington, D.C., area.

For More Information on LLCs

Form Your Own Limited Liability Company

Book and disk, by attorney
Anthony Mancuso (Nolo, 3rd
edition, 2002), \$44.99

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A good all-around limited liability
corporation source, including an
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