

## What is a Limited Liability Company?

A Limited Liability Company or LLC is a hybrid of a partnership and a corporation, offering an alternative to partnerships and corporations by combining the corporate advantages of limited liability with the advantages of pass-through taxation that exist in a partnership. It is also a rather recent creation, with some states creating statutes acknowledging LLCs within the last 10 years, where as corporate statutes have been in existence in states such as Delaware for over 200 years.

## What are the differences between an INC vs. an LLC?

An INC and LLC have many differences. Here are a few of them:

- LLC's often have a finite life time vs. INC's are perpetual
- INC's have shareholders (owners) vs. LLC's have members
- Some states require at least two members (owners)
- LLC members are often not able to transfer their LLC interest

without consent of other members vs. INC shareholders are generally free to transfer their shares

- Those in authority are called either Members or Managers vs. Officers or Directors for a Corp.
- LLC's are granted the flexibility to be taxed as a partnership (default) or a corporation by the IRS. See IRS Form 8832

## What is required to form an LLC?

To file an LLC, most states require only the filing of Articles of Organization along with paying the states filing fees.

Through the [online module](#) we can prepare your Articles of Organization, files them with the state of your choice, and pays the minimum initial filing fees (Expedited Service may include additional state fees). You only need to complete our simple online order form, which asks only what the state requires to form your LLC.

## Do I need an attorney to form an LLC?

No! An attorney is not a legal requirement for forming an LLC in any state. You can prepare and file the articles of organization yourself; however, you need to be thoroughly versed in the laws of your state.

In spite of their seemingly high hourly fees, a good corporate attorney can be a valuable resource to your small biz. If you are unsure of what steps your business should take and you don't have the time to research the mater yourself, even the cost of one hour's consultation can pay off handsomely later. Just remember to bring lots of questions.

Once you have decided, [we can form](#) your LLC and save you money.

## How do I name my LLC?

First and most important, we recommend that you spend some time coming up with a name for your LLC. Although each state has different rules concerning the naming of your LLC, the most common rule is that it must

not be deceptively similar to another already formed company. The LLC name must include a suffix. Some examples are "Limited Liability Company", "LLC", and "L.L.C." However, your state may have different suffix requirements.

### **How many people are needed to form an LLC?**

Other than in Massachusetts, only one member is required to form an LLC. The IRS looks at single member LLCs a little different than they do multi-member. By De The IRS does allow one member LLCs to qualify for pass-through tax treatment; however, taxation of one person LLCs at the state level may be different.

**In what state should I form my LLC?**  
In most circumstances, it is best to form your LLC in the state in which you are operating. However, there may be good reasons to form in another state, such as Delaware or Nevada.

### **If I form in one state, can I do business in another state?**

Even though your LLC was formed in one state, you will be recognized as a valid LLC in other states. However, if you are operating in another state, you may be required to register your LLC in that other state.

### **Are the members of an LLC responsible for the LLC debts?**

Although there are exceptions, generally the LLC is responsible for the company's debts, protecting the members from individual liability.

**Guarantor Liability:** When someone or some entity provides a guarantee for an obligation or debt, he/she/it will be liable for that debt or obligation. For example, if an INC or LLC is fairly new and has no credit history, a prospective lender will usually require a personal guarantee from one or more of the entities principals before executing a loan.

**Alter Ego Liability:** The judicial doctrine where a court may hold individual shareholders of a corporation liable where the business entity is merely the "Alter Ego" of its

shareholders. This often happens when a corporation does not remain active by fulfilling its obligations of holding annual meetings, recording minutes, having bylaws, etc. This doctrine may also be imposed on the members of an LLC.

### **What is an Operating Agreement?**

Like corporate bylaws & a partnership agreement, an Operating Agreement spells out how your LLC is managed, who has authority to do what, how ownership is registered, the percentage of ownership, etc. Although generally not a requirement, an Operating Agreement is vital in a multi-member LLC. An Operating Agreement is generally a private document and unlike articles of organization, no state agency requires it's filing or publication.

### **Does my LLC require an operating agreement?**

Although most states' LLC laws don't require a written operating agreement, you shouldn't consider starting your business without one.

Here are a few reasons why having an operating agreement is necessary:

- Sometimes banks or vendors will require seeing your Operating Agreement before doing business with you.
- Sets out rules that govern how profits will be split up, how major business decisions will be made, and the procedures for handling the departure and addition of members.
- Keeps your LLC from being governed by your state's default LLC laws, which might cause adverse taxation.
- Helps to avert misunderstandings between the owners over finances and management.
- Courts will be more likely to respect your personal liability protection by showing that you have been careful about organizing your LLC.

To help you out, we can provide an Operating Agreement on CD for only a nominal charge or FREE with the purchase of our Premium LLC

Package. Once you have decided on a name, begin by clicking [here](#) or call us at 480-367-6633.

### **How is an LLC organized and managed?**

An LLC is owned by its members vs. shareholders in a corporation or partners in a partnership. A member's ownership of an LLC is represented by their "interests", just as partners have "interest" in a partnership and shareholders have stock in a corporation.

An LLC may be managed by its members (owners) or by managers. If the LLC is to be managed by its members, it operates like a partnership, with each member having an equal say in the decision making process of the company. If the members choose to elect a manager or managers, then the managers will be acting in a capacity similar to a corporation's board of directors or the general partners of a limited partnership. These managers are in charge of the overall affairs of the LLC.

Member management is the normal default rule of state law. In other words, if managers are not selected in the articles of organization the members will direct the affairs of the LLC. Also, if the articles do not name the members or managers of the LLC, the Operating Agreement will do so.

How will my LLC be taxed?  
Keep in mind that taxation of LLCs are handled differently by each state. Some look at LLCs as the same as a corporation, some as if it were a partnership, and some base their taxation on how the IRS views your LLC.

The IRS has granted some flexibility in this area although by default they will tax your LLC this way:

Disregarded Entity - As a single member LLC, the IRS will consider all income and expenses to pass through to your personal return. Your expenses will be shown on a Schedule C and your income on front page of your 1040, just like a sole

proprietorship. Self-employment taxes on LLC net income must be paid just as you would with any self-employment business.

Partnership - As a multi-member LLC, the IRS will expect that you file a Form 1065 Partnership Informational Return and K1's for each member spelling out the distributive net profit or loss each member shall show on their 1040. Therefore, each member experiences a similar pass through benefit, which simply reported differently.

If you want your LLC to be taxed as a corporation instead of the "default" you must file an IRS Form 8832 Entity Classification form. The IRS will then tax your LLC's net income just as a corporation. Please note: The state you are in may regard your LLC differently than the IRS does. In California, the state requires ALL LLCs to pay the minimum franchise tax of \$800, regardless of income, 3 months AFTER formation of your LLC. If you do not pay this tax within the 3-

month period, they will penalize your LLC and potentially revoke its charter.

## **What are the advantages of an LLC?**

LLCs offer numerous advantages.

- AN LLC is not required to have annual meetings and keep minutes of meetings like a corporation.
- LLCs allow for pass-through taxation (LLC earnings are taxed only once). This is similar to the treatment of partnerships, sole proprietorships and most S corporations.
- The LLC owner's liability is generally limited to the assets of the LLC. This is similar to a corporation's shareholders
- LLCs (like general partnerships) are mostly free to establish any organizational structure agreed on by its members. Profit interests may be separated from voting interests; distribution percentages can be different than the percentage of ownership or investment; etc.

- What are the disadvantages of an LLC?

The disadvantages of an LLC include:

- The statutes governing LLCs are fairly new and more untested than corporations.
- Some countries may not recognize your LLC as a valid entity.
- LLC's are treated differently in each state causing some potential tax consequences to members.
- Which is better an LLC or an S corporation?
- Although both S corporations and LLCs offer the benefits of pass-through, thus eliminating double taxation, S corporations have less flexibility than an LLC. For instance:
- An LLC may offer several classes of membership interests while an S corporation may only have one class of stock.
- An LLC can have more than 75 members (the maximum of a S corporation).

