

THE BASICS OF LIMITED LIABILITY COMPANY FORMATION

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Are you interested in starting your own business and forming a Maryland limited liability company (also known by its abbreviation “LLC”)? Do you presently operate a business as a sole proprietorship or as a general partnership and are interested in attaining the benefits of operating as a limited liability company? Below is a quick, easy to read crash course on the basics of the formation of a new Maryland limited liability company.

As the name suggests, a limited liability company limits the liability of its members to the general public. In many ways, it is similar to a Maryland corporation or a Maryland limited liability partnership. Many business owners and entrepreneurs have come to McEvoy & Dean, P.C., to form Maryland limited liability companies over the years. The formation of a limited liability company can be a painless, cost-effective process and could result in valuable protection of your personal assets. Additionally, if you have more than one independent business, dividing your businesses into multiple limited liability companies can protect the assets of each business from one another.

There are some basic documents with which you should familiarize yourself if you are considering forming a new Maryland limited liability company. These documents will each play an important role in the formation of your company and are as follows:

1. Articles of Organization. The Articles of Organization for your company are a basic document setting forth the name of your company, the purpose for which it is formed, its principal office address, and the name and address of a Maryland resident agent for your company. A Maryland resident agent is a person who is a resident of the state of Maryland who is authorized by a limited liability company to receive service on its behalf. This document is filed with the Maryland State Department of Assessments and Taxation, and it begins the legal existence of a limited liability company.
2. Operating Agreement. This document sets forth the guidelines and rules of the routine operation of a limited liability company, the allocation of the profits and tax attributes, and the rights and obligations of the sole member in connection with the management of the company. This agreement grants authority to its members (and any officers that the members may appoint) to run the daily and routine operations of the Company, and establishes basic administrative rules for the day to day legal operation of the Company. It covers such matters as conduct of member affairs, election and power and duties of officers independent of the sole member, general financial authorizations, procedures for amendments to the Operating Agreement, and tax matters.

While the Operating Agreement may be viewed merely as the implementation of a number of formalities, it is essential to resolving potential future problems, as well as evidencing the company's adherence to its Articles of Organization and other legal requirements. Operating Agreements can range from very simple documents for single member limited liability companies to voluminous documents governing the rights of several members.

3. IRS Form SS-4. This is the application for a taxpayer identification number or an employer identification number ("EIN") for a company. An employer identification number is important because you will likely be required to include it on various business documents for your Company, including income tax returns.

4. IRS Form 8832. The treatment of a limited liability company by default is that of a disregarded entity for tax purposes. A single member limited liability company is treated as a sole proprietorship, and a multimember limited liability company is treated as a partnership. As such, the filing of this form in many circumstances is not required. However, one of the benefits of the limited liability company is that it may be taxed as either an S corporation or a C corporation. This is done by filing IRS Form 8832. As a disregarded entity, a limited liability company would not file its own tax return, and it would not have a status as a separate entity for income tax purposes. However, it remains important that you keep separate books and records for the income and expenses of the Company. You should work closely with an accountant to develop a bookkeeping system and method of taxation that is appropriate for you.

5. Maryland Combined Registration Application. This is a State of Maryland application for registration for employer withholding tax, unemployment insurance accounts, and a sales and use tax license for the Company. Such registration would be necessary if you intend to hire employees or to conduct certain kinds of business. Again, you should consult with an accountant to determine whether they might be necessary for your particular company.

There are a few details that you should observe to operate and to continue to obtain the tax and legal benefits and protections of a limited liability company. The precise company name should appear on all materials used in your business, such as bank checks, bank accounts, contracts, stationery, envelopes, statements, professional cards, and receipts. The name should also be used in telephone and internet listings. You should always use the suffix "LLC" or "Limited Liability Company" after the name so that all third parties are on notice that they are dealing with a limited liability entity. All agreements (such as leases, contracts and employment agreements) should be made in the Company name, and all checks should be signed in the Company name. For example, you may sign your checks as "John Doe, Member". Each of these reminders is vital to maintaining the Company's distinct integrity, separate and apart from you as its sole member.

If you have ever considered starting your own business, or if you presently operate a business as a sole proprietorship or a general partnership, we would be happy to discuss the formation of a limited liability company with you and work with you as your company grows.

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