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## Limited Liability Companies (LLCs)

In the early 1980s Florida became the second state to authorize the formation of limited liability companies ("LLCs"). Now more than 100,000 LLCs are formed in Florida annually.

LLC Basics: One or more persons may form an LLC. A single-member LLC is allowed in Florida.

### Benefits and advantages associated with an LLC

- The primary reason for forming a limited liability company is to limit the liability of the owners.
- Interests in LLCs, in addition, are protected from the claims of creditors of their members.
- Organizational changes related to the LLC can generally be made in the [operating agreement](#) alone (without amending the articles of organization).
- Managers and managing members are also protected from personal liability regarding claims pertaining to the exercise of their management authority except for more egregious conduct (criminal or reckless acts, deriving improper personal benefits, voting for unlawful distributions, etc.).
- Changes to Florida's corporate income tax laws in the 1990s effectively eliminated the corporate tax for LLCs.
- Generally, an LLC with multiple members is treated for Florida income tax purposes as a partnership (nontaxable entities that act as conduits for transferring income and loss directly to the individual partners) and a single-member LLC is "disregarded" as a separate entity for tax purpose, the same way it is disregarded for federal tax purposes. Thus, most LLCs are not subject to Florida's corporate income tax.
- LLCs are similar to S corporations for federal tax purposes and do not pay tax themselves, but pass their income through to their shareholders.

#### *Selected benefits over a corporation:*

- Flexibility: One of the benefits of an LLC over a corporation is the great latitude provided in the drafting of the operating agreement and the flexibility that is possible on such issues as members' contribution obligations, member and management voting powers, profit and loss allocations, governance structure, members' distribution rights, etc. Amendments may be made to the operating agreement as needed.
- A corporation requires that specific formalities be completed on a regular basis, including annual meetings of shareholders and directors each year, meeting minutes which are kept with the corporation's records, etc. It is a good business practice to document major decisions regardless of the structure of your business; however these formalities are not required for LLCs.

- The interest a member owns in an LLC can be protected from creditors while the stock a person has in a corporation may be seized and sold by creditors.
- LLCs can make special allocations of profits and losses among members; S corporations cannot. S corporations have one class of ownership with profits and losses allocated according to the percentage ownership.

### *LLC Disadvantages*

The main disadvantage of the LLC as compared with an S corporation has to do with the tax treatment for profits that are taken out of the business. If yours is a smaller company, you may want to consider the LLC carefully as the disadvantage primarily affects smaller companies.

### **What are the costs to form an LLC?**

State filing fees are currently \$125.00 for an LLC.

### **Naming Your LLC**

The name of your LLC must comply with requirements of the Florida Department of State. We will perform a preliminary name check for you at no additional charge as you form your company to help make sure you meet the following requirements.

There may be times when the name you wish to select for your LLC is not available. Please submit up to three name choices to be sure to get a company name that you like.

As a minimum, keep these points in mind as you select a company name:

- The name cannot be the same as another company (LLC or corporation) on file with the State of Florida.
- The name should not be confusingly similar to that of an existing LLC or corporation, i.e., the name should be distinguishable.
- For an LLC, please select a designator for the last part of the name (use either “LLC” or “Limited Liability Company”) to identify your company as an LLC.
- The name you select may not contain language implying that your company is connected with a government agency or that it is chartered under United States law.

If you have selected a company name that has been used previously and is listed as “inactive” by the Division of Corporations, this name will not be available for registration for **one full year from the last activity date**. If you select a name that is not available for registration, this will delay your paperwork until a new name is selected. Please use the search feature provided from our website to search for names that are currently available for registration.

Important Liability Issue for LLCs: You should make a point of using the correct name of your company, including the “LLC” or “Limited Liability Company” designation at the end of the name, as you conduct your business. Once you form your LLC, keep in mind that omission of the designation in the use of the name shall render any person who knowingly participates in the omission, or knowingly acquiesces in the omission, liable for any indebtedness, damage, or liability caused by the omission (Florida Statutes, Chapter 608.406).

## Company Management

### LLC Member Manager vs. External Manager

An LLC can be run by Members or External Managers.

#### What is a member?

A member is an owner of the company. An LLC can be run by a member (owner) or several members (owners) of the company. Thus, where a member or several members run the company, the people who own the company also run the company. **Most Limited Liability Companies are member managed in this way.**

#### What does it mean to have external managers?

If not managed by its members, you will choose to hire an outside person to run the company who does NOT own a part of the company. This would be termed an "External Manager." You may have one external manager or several external managers.

#### What is a Registered Agent and is one needed?

Florida requires that an individual, or service company, be responsible for receiving important legal and tax documents. This service is provided by an "agent" of the company who is "registered" within Florida, thus the term "Registered Agent."

The registered agent for the company must have a valid street address within Florida and be available during normal business hours to receive documents. The services performed by a registered agent may include:

- Receiving and forwarding legal documents;
- Receiving and forwarding franchise tax and annual report forms; and,
- Accepting and forwarding service of process.

A Registered Agent must be an adult, residing within Florida and provide a physical address (PO Box is not acceptable).

### Records Requirements; Right to Information

Each limited liability company is responsible for keeping the following records at its principal office:

- A current list of the full names and last known business, residence, or mailing addresses of all members, managers, and managing members.
- A copy of the articles of organization, all certificates of conversion, and any other documents filed with the Department of State concerning the limited liability company, together with executed copies of any powers of attorney pursuant to which any articles of organization or certificates were executed.
- Copies of the limited liability company's federal, state, and local income tax returns and reports, if any, for the 3 most recent years.
- Copies of any then-effective operating agreement and any financial statements of the limited liability company for the 3 most recent years.

Unless contained in the articles of organization or the operating agreement, a writing setting out:

- The amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute.
- The times at which or events on the happening of which any additional contributions agreed to be made by each member are to be made.
- Any events upon the happening of which the limited liability company is to be dissolved and its affairs wound up.

## **Office Location**

**Principal Office:** This is where the company's main office will be located in Florida.

If you have not yet established your principal office, you may file using a home or other physical address in Florida. If you file in this manner, please be sure to file for a change of address with the Division of Corporations once your principal business address has been established.

## **Business Activity**

### **Business Descriptions for IRS Tax Purposes**

You must check select one of the descriptions one of the boxes that best describes the principal activity of your business. For example, if you will operate kiosks selling jewelry, select “retail”. If you are unsure what category your company falls under, please consult the category list provided on this page.

### **Business Activity Category List**

#### **What do all these selections mean? And why do I have to select one of these?**

These are broad categories the IRS provides to help you select what type of company you are creating. If your company does not fall into any of these categories, choose “other”, then tell us specifically what you will be doing in the blank next to “other”.

**Accommodation & food services.** Engaged in providing customers with lodging, meal preparation, snacks, or beverages for immediate consumption.

**Construction.** Engaged in erecting buildings or other structures, (e.g., streets, highways, bridges, tunnels). The term “construction” also includes special trade contractors, (e.g., plumbing, HVAC, electrical, carpentry, concrete, excavation, etc.)

**Finance & insurance.** Engaged in transactions involving the creation, liquidation, or change of ownership of financial assets and/or facilitating such financial transactions; underwriting annuities/insurance policies; facilitating such underwriting by selling insurance policies; or by providing other insurance or employee-benefit related services.

**Health care and social assistance.** Engaged in providing physical, medical, or psychiatric care using licensed health care professionals or providing social assistance activities such as youth centers, adoption agencies, individual/family services, temporary shelters, etc.

**Manufacturing.** Engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products. The assembling of component parts of manufactured products is also considered to be manufacturing.

**Real estate.** Engaged in renting or leasing real estate to others; managing, selling, buying or renting real estate for others; or providing related real estate services (e.g., appraisal services).

**Rental and leasing.** Engaged in providing tangible goods such as autos, computers, consumer goods, or industrial machinery and equipment to customers in return for a periodic rental or lease payment.

**Retail.** Engaged in selling merchandise to the general public from a fixed store; by direct, mail-order, or electronic sales; or by using vending machines.

**Transportation & warehousing.** Providing transportation of passengers or cargo; warehousing or storage of goods; scenic or sight-seeing transportation; or support activities related to these modes of transportation.

**Wholesale-agent/broker.** Engaged in arranging for the purchase or sale of goods owned by others or purchasing goods on a commission basis for goods traded in the wholesale market, usually between businesses.

**Wholesale-other.** Engaged in selling goods in the wholesale market generally to other businesses for resale on their own account.

**Other.** If engaged in an activity not described above. Describe the applicant's principal business activity in the space provided.

## **Why do I need a Federal Tax Identification Number (EIN)?**

An Employer Identification Number (EIN), also known as a federal tax identification number, is a nine-digit number that the IRS assigns to business entities.

- This number is used to identify a business entity and to identify taxpayers that are required to file various business tax returns.
- A business will need to apply for a new EIN if the business is sold or is otherwise transferred.

Filing for your new EIN is included. Simply provide the required information and we will complete the EIN application with the IRS for you.

## **Entity Classification**

For Federal tax purposes, an LLC business entity must file as either a corporation, partnership or sole proprietorship. This classification depends on Depending on the type of business and the number of owners.

A business with at least 2 members can choose to be classified as an association taxable as a corporation or a partnership, and a business entity with a single member can choose to be classified as either an association taxable as a corporation or disregarded as an entity separate from its owner, a “disregarded entity”. The Form 8832 is also filed to change the LLC’s classification.

## Classification of an LLC for Florida tax purposes

A **limited liability company** that is classified as a **corporation** for Florida and federal tax purposes is subject to the Florida Income Tax Code and must file a Florida corporate income tax return.

A **limited liability company** that is classified as a **partnership** for Florida and federal tax purposes is required to file Form F-1065 if one or more of its owners is a corporation. In addition, the corporate owner of a limited liability company that is classified as a partnership for Florida and federal tax purposes must file a Florida corporate income tax return.

A **single member limited liability** company that is disregarded for Florida and federal tax purposes is not required to file a separate Florida corporate income tax return. However, the income of the company is not exempt from tax if it is owned by a corporation, whether directly or indirectly. In this case, the corporation is required to file Form F-1120 reporting its own income, together with the income of the single member limited liability company.

*Source: FL Dept Revenue*

## Additional LLC Information

A **limited liability company may be organized for any lawful purpose**, and remains subject to statutes and regulations of the laws of the State of Florida for regulating and controlling its business.

Unless its articles of organization or operating agreement provide otherwise, each limited liability company organized and existing under Florida law shall have the same powers as an individual to do all things necessary to carry out its business and affairs, including, without limitation, the power to:

- (1) Sue and be sued, and defend, in its name.
- (2) Purchase, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal with real or personal property, or any legal or equitable interest in property, wherever located.
- (3) Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property.
- (4) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity.
- (5) Make contracts or guarantees, or incur liabilities; borrow money; issue its notes, bonds, or other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company; or make contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion, or attainment of the business of a corporation the majority of the outstanding stock of which is owned, directly or indirectly, by the contracting limited liability company; a corporation which owns, directly or indirectly, a majority of the outstanding membership interests of the contracting limited liability company; or a corporation the majority of the outstanding stock of which is owned, directly or indirectly, by a corporation which owns, directly or indirectly, the majority of the outstanding membership interests of the contracting limited liability company, which contracts of guaranty and suretyship shall be deemed to be necessary or convenient to the conduct, promotion, or attainment of the business of the contracting limited liability company; or make other contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion, or attainment of the business of the contracting limited liability company.

(6) Lend money, invest or reinvest its funds, and receive and hold real or personal property as security for repayment.

(7) Conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state.

(8) Select managers or managing members and appoint officers, directors, employees, and agents of the limited liability company, define their duties, fix their compensation, and lend them money and credit.

(9) Make donations for the public welfare or for charitable, scientific, or educational purposes.

(10) Pay pensions and establish pension plans, pension trusts, profit-sharing plans, bonus plans, option plans, and benefit or incentive plans for any or all of its current or former managers, members, officers, agents, and employees.

(11) Be a promoter, incorporator, shareholder, partner, member, associate, or manager of any corporation, partnership, joint venture, trust, or other entity.

(12) Make payments or donations or do any other act not inconsistent with law that furthers the business of the limited liability company.

### **Additional Definitions**

**Authorized Representative** - One or more persons acting to form a limited liability company by executing and filing the [articles of organization](#), as authorized by a member of such limited liability company. The authorized representative may, but is not required to be, a member of the limited liability company that is being formed.

**Capital Account** - The agreed value of the initial contributions, increased by the agreed value of subsequent contributions to capital, if any, and reduced by distributions of capital, unless otherwise provided in the articles of organization or the operating agreement.

**Contribution** - Any cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to the limited liability company as a member.

**Distribution** - A direct or indirect transfer of money or other property or incurrence of indebtedness by a limited liability company to or for the benefit of its members in respect of their economic interests.

**Foreign limited liability company** - A limited liability company formed under the laws of any state other than Florida or under the laws of any foreign country or other foreign jurisdiction.

**Majority-in-interest of the members** means, unless otherwise provided in the articles of organization or operating agreement, members owning more than 50 percent of the then-current percentage or other interest in the profits of the limited liability company.

**Manager** - A person who is appointed or elected to manage a manager-managed company and, unless otherwise provided in the articles of organization or operating agreement, a manager may be, but need not be, a member of the limited liability company.

**Manager-managed company** means a limited liability company that is designated to be managed by one or more managers.

**Managing member** means a member appointed or elected as a managing member of a member-managed company.

**Management agreement** - If the LLC will be managed by a subset of its members or by someone who is not a member, there should be a management agreement in place which spells out the rights and duties of both the members and managers.

**Member** - Any person who has been admitted to a limited liability company as a member and has an economic interest in a limited liability company which may, but need not, be represented by a capital account or, in the case of a foreign limited liability company, has been admitted to a limited liability company as a member in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized. The member need not reside in Florida. See also [Management of a Limited Liability Company](#).

**Membership interest, member's interest, or interest** means a member's share of the profits and the losses of the limited liability company, the right to receive distributions of the limited liability company's assets, voting rights, management rights, or any other rights under this chapter or the articles of organization or operating agreement.

**Additional information regarding Limited Liability Company requirements can be located in Florida Statutes, Chapter 608: Limited Liability Companies.**