

## **Creating a Limited Liability Company in Florida**

### **Why Should I Use an Attorney?**

The Florida Department of State Division of Corporations website, Sunbiz.org, contains forms and instructions to create a Florida LLC via mail or online. The website also has instructions on how to complete and file the forms.

So, why should you consider hiring an attorney to create your LLC? With so much information readily available online, a business owner may be tempted to create their own LLC to keep the costs of business low. However, attempting to create your own LLC can be more expensive in the long run by creating costly legal issues that are not discovered until you are running a successful business years later. Using an attorney to create an LLC can provide useful guidance for operating your business to reduce risk and liability from the outset. Florida Statutes Chapter 605 and relevant caselaw contains many more important provisions that apply to LLCs, provisions an experienced attorney will be familiar with and use to your benefit in drafting your LLC documents.

### **Common Mistakes**

Business owners often seek out an attorney after they are faced with a lawsuit or business dispute with a business partner, employee, or independent contractor. That is often the time many business owners learn the legal consequences the paperwork they filed to create their LLC. Here are just a few of the common mistakes attorneys see when analyzing LLC documentation in the midst of a dispute or lawsuit.

#### ***The Articles of Organization: What Can Go Wrong on a Simple Form?***

The form Articles of Organization available online from the Florida Department of State provide blanks for either Authorized Members or Managers to manage and control the limited liability company. However, what many non-lawyers do not realize is that the term “member” is the legal language for an owner of an LLC. It is not unusual that a business owner names a trusted employee as an authorized member and inadvertently creates the appearance that the employee is an owner of the business. This can create complicated legal issues in the future if the employee makes a claim to ownership of the business. Similarly, there are important considerations when naming a manager of an LLC, a term which has a specific legal meaning beyond the everyday business meaning of the term. The manager of an LLC has the authority provided under Florida Statutes Chapter 605 and the governing documents of the LLC, which should also include an Operating Agreement as discussed below.

So, if you are the owner, should you simply name yourself as an authorized member on the Articles of Organization? No, because unlike an Operating Agreement, Articles of Organization are a public document that anyone can view on Sunbiz.org. Generally, it is preferable to keep the members (and hence the ownership) of the LLC confidential and only disclose the managers in public filings. In the event you or your business are the subject of a lawsuit or involved in a legal dispute, it is wise to avoid making it any easier for the adverse party to obtain useful information prior to a lawsuit.

### ***The Operating Agreement: Do I Need One and Why?***

Another common misstep is the failure to have an appropriate Operating Agreement governing the LLC. A quick Google search will reveal many articles discussing whether an Operating Agreement is required to create an LLC in Florida. Sunbiz.org does not provide a form Operating Agreement but there are a variety of free forms of varying quality available online.

So, why should you consider having an attorney draft your Operating Agreement rather than operating without one or using a free form from the internet?

An Operating Agreement may be the most crucial document for your LLC. The Operating Agreement is the definitive document that governs the internal conduct of the LLC and states the owners and ownership percentages of the LLC (unless membership certificates have been issued, which is increasingly rare). Furthermore, the Operating Agreement can provide crucial provisions to protect against creditors and to govern the company in the event of unanticipated but common occurrences such as the death, bankruptcy, or medical incapacity of an owner. The Operating Agreement can also provide useful provisions to govern situations that may arise and thereby avoid future conflict amongst business owners, such as rights of first refusal, appropriate limits upon the authority of a manager acting unilaterally, and procedures to use when there is a deadlock amongst the members.

Many people believe they do not need a written agreement when entering a business relationship with friends or family because it indicates distrust. However, an Operating Agreement does more than create legal obligations, it allows everyone to make sure they are on the same page and helps to maintain healthy relationships while operating a business. Considering and deciding upon these procedures before a dispute arises allows the parties to negotiate and decide upon the appropriate procedures at the outset. In addition, the process can flush out misunderstandings where owners thought they understood and agreed with each other, allowing those matters to be discussed. This reduces the likelihood of disputes and provides for a clear procedure if a dispute does arise—all of which allows for a better working relationship amongst owners when the business is running successfully in the future.

### ***Get Customized Advice from an Experienced Attorney***

These are just a few of the pitfalls that can result from creating an LLC without appropriate legal guidance. The provisions that are useful for your particular business will vary with the circumstances. An experienced attorney can interview you and determine the provisions that will benefit your individual situation, providing appropriate protection from outside creditors and parties while helping to manage the internal operations of the company.

Contacting an experienced attorney can help you create and operate your LLC in the manner that is best for your business, whether you are starting with a clean slate or attempting to ensure your ongoing business is operating with appropriate protections.