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The Limited Liability Company

Three principal benefits are: 1) protection of the owners' interests in the company from their personal liabilities ("asset protection"); 2) protection of the assets of the owners from the liabilities of the enterprise ("limited liability"); and 3) the lowest federal employment tax liability for owners employed by the business, and avoidance of state corporate income tax.

Asset Protection Benefits

F.S. §608.433(4) safeguards the membership interest of an LLC owner from loss by limiting a creditor to the remedy of a "charging order. The charging order entitles a creditor to receive distributions to which the debtor-owner would otherwise be entitled, but the debtor-owner will continue to own its membership interest in the LLC and, operate its business without interference from the creditor. The owners of a corporation (both S and C) have no similar benefit. Shares of stock are subject to levy and loss to shareholder-creditors, who may thereafter exercise control over the business to the same extent as was exercised by the debtor-shareholder. However, in *In Re Albright*, 291 B.R. 538 (Bankr. D. Colo. 2003), the bankruptcy court held that a creditor of a member of a single member LLC was not limited to the charging order remedy.

Limited Liability Benefits

F.S. §608.701 provides that in any case in which a party seeks to pierce the veil of an LLC, the court must apply the same case law as would apply to the piercing of a corporate veil under similar circumstances. The Florida Supreme Court case *Dania Jai-Alai Palace, Inc. v. Sykes*, 450 So. 2d 1114 (Fla. 1984), held that a corporate veil could not be pierced without a showing of fraud or an improper purpose. Mere disregard of corporate formalities, inadequate capitalization, informal loan transactions, and similar poor practices will not justify piercing the corporate veil in Florida. In addition, an LLC is not subject to loss of limited liability as a result of an inadvertent administrative failure.

State & Federal Tax Benefits

Two principal Federal tax advantages. First, the Internal Revenue Code of 1986, as amended, provides that the profits and losses of an S corporation flow through to the owners in a manner similar to a partnership, thus avoiding double taxation. Second, employee-owners may be able to reduce federal employment taxes. This tax strategy, which is a function of reducing wages and increasing distributions, is only available to entities taxed as S corporations. Pursuant to Code §162(l), beginning in 2003 all self-employed individuals can deduct 100 percent of the amount paid for accident and health insurance premiums. Effective July 1, 1998, the Florida Legislature repealed the imposition of the Florida corporate income tax on a limited liability company (LLC).

Conclusion

Some general rules for choosing between an LLC, limited partnership, and S corporation. First, with respect to an operating business, the general preference should be an LLC for the flexibility in profit allocation and ownership that are not available to an S corporation and the limited liability and simplicity not available to a limited partnership. Second, with respect to a real estate development entity or for estate planning, the general preference is still a limited partnership in order to avoid the Florida annual intangible tax if the parties anticipate significant equity. If the Florida annual intangible tax is not a significant concern, then you should consider an LLC.

Records to be Kept

- (1) Each limited liability company shall keep at its principal office the following records:
- (a) A current list of the full names and last known business, residence, or mailing addresses of all members, managers, and managing members.
 - (b) 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.
 - (c) Copies of the limited liability company's federal, state, and local income tax returns and reports, if any, for the 3 most recent years.
 - (d) Copies of any then-effective operating agreement and any financial statements of the limited liability company for the 3 most recent years.
 - (e) Unless contained in the articles of organization or the operating agreement, a writing setting out:
 - 1. 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.
 - 2. 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.
 - 3. Any events upon the happening of which the limited liability company is to be dissolved and its affairs wound up.

(2) A limited liability company shall provide members and their agents and attorneys access to its records at the limited liability company's principal office or other reasonable locations specified in the operating agreement. The limited liability company shall provide former members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were members. The right of access provides the opportunity to inspect and copy records during ordinary business hours. The limited liability company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

Management

Unless otherwise provided in its articles of organization or the operating agreement, the limited liability company shall be a **member-managed company**. Management shall be vested in its members or elected managing members in proportion to the then-current percentage or other interest of members in the profits of the limited liability company owned by all of the members or elected managing members. The decision of a majority-in-interest of the members or elected managing members shall be controlling. If the articles of organization or the operating agreement provide for the management of the limited liability company by a manager or managers, the management of the limited liability company shall be vested in a manager or managers, and the limited liability company shall be a **manager-managed company**.

Registered Office & Agent

Each limited liability company shall have and continuously maintain in this state:

- (a) A registered office, which may be the same as its place of business; and
- (b) A registered agent, which agent may be either:
 - 1. An individual who resides in this state whose business office is identical with such registered office.
 - 2. A foreign or domestic entity authorized to transact business in this state, having a business office identical with such registered office.

Initial Consult Information

Your name and contact information:

Name & Mailing Address:

_____	Home # _____
_____	Other # _____
_____	E-mail _____

The name of the Limited Liability Company is (List 3 in order of preference):

The mailing address and street address of the principal office of the Limited Liability Company is:

Principal Office Address:

Mailing Address:

_____	_____
_____	_____
_____	_____

The name and the Florida **street** address of the registered agent are: ***Initials:** _____

_____	Home # _____
_____	Other # _____
_____	E-mail _____

The name and address of each Manager or Managing Member is as follows:

<u>Title:</u>	<u>Name and Address:</u>	<u>*Initials</u>
"MGR" = Manager		
"MGRM" = Managing Member		
_____	_____	_____

_____	_____	_____

_____	_____	_____

_____	_____	_____
(Use attachment if necessary)	_____	

** Please have all persons initial in the spaces provided in order to grant to Michael S. Wilson, Esq., a limited power of attorney to sign on their behalf the LLC Articles of Organization for the purpose of electronic filing with the State of Florida.*