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LIMITED LIABILITY COMPANIES IN FLORIDA

By: Gary A. Kahle
March, 2005

Limited liability companies have become increasingly popular alternatives to corporations or other business entities, particularly for real estate holdings, primarily because of their flexibility, tax treatment and asset protection capabilities.



Formation

A Florida limited liability company is formed by filing Articles of Organization with the Florida Department of State which set forth the following:

- The name of the limited liability company which must contain the words "limited liability company", "limited company", or the abbreviations, "L.L.C.", or "L.C.", or "LLC", or "LC", as the last words of the name of the company;
- The mailing and street addresses of its principal office and registered agent;
- Any other matters which the members elect to include.

Organization

The members may enter into an Operating Agreement, which may be written or oral, providing for the operation of the company. Profits and losses are allocated among the members as they decide.

Contribution for Membership Interest

Members of the company may make contributions to the company in the form of cash, property, or services in exchange for their respective membership interests in the company.

Management

A limited liability company may be managed by its members, in which case each member participates in management decisions.

Alternatively, the company is managed by a manager or managers who are elected by the



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members and who have the authority to bind the company except to the extent their authority is limited either in the Operating Agreement or by resolution of the members.

Transfer of Membership Interest

A membership interest in a limited liability company is assignable. However, an assignment does not give the assignee voting rights or entitle the assignee to participate in the management of the company. The assignment entitles the assignee only to share in the profits and losses of the company. An assignee may become a member of the company with voting rights only upon approval of all members and in compliance with any requirements set out in either the Articles of Organization or the Operating Agreement.

Liability of Members and Managers

In general, members and managers of a limited liability company are not liable for any obligations of the company. Members and managers are liable for their own wrongful acts and may become liable for obligations of the company under the same conditions that the "corporate veil" of a corporation may be pierced under Florida law.

Creditors of Members

A creditor of a member does not have the right to any property of a limited liability company and may not levy on a membership interest. The creditor of a member may only apply for a "charging order" under which the membership interest is "charged" with the payment of any unsatisfied amount of the creditor's judgment. In effect, the creditor becomes an assignee of the member's distributions from the company.

Tax Treatment

A single member limited liability company is taxed as a disregarded entity where all gains, losses, credits and deductions are reported directly on the individual's tax return. A two or more member limited liability company is taxed as a partnership where the entity files a return and reports each member's share, which is then filed on each member's return. However, a limited liability company, whether single or multiple member, may elect to be taxed as a corporation under the "check the box" regulations of the Internal Revenue Code. Further, a corporation may elect to be taxed as an s-corporation if certain requirements are met. Under partnership, disregarded entity, and s-corporation taxation, the company is not subject to federal or state corporate income tax. There are benefits and burdens to all three types of tax treatments, which should be discussed with your attorney or tax advisor before you select which way your company will be taxed.

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Comparison to S-Corporations

1. A Sub-Chapter S-Corporation is a corporation whose shareholders have elected to be taxed similarly to a partnership.
2. An S-Corporation is limited to seventy-five shareholders which cannot be nonresident aliens, corporations, limited liability companies, certain trusts and other entities. There is no such restriction either on the number or the qualification of members of a limited liability company.
3. An S-Corporation may only have a single class of stock and distributions to shareholders must be in accordance with their proportionate ownership interest. A limited liability company may establish any relationship between the members as the members desire.
4. Debt incurred by the corporation is not included in the shareholder's basis. The debt of a limited liability company is included in the basis of the members.
5. The distribution of property from a limited liability company to its members is generally not a taxable event for income tax purposes.
6. A limited liability company is not required to comply with the formalities of corporate operation and record keeping.
7. A limited liability company may afford superior asset protection from the claims of creditors.
8. Since dividends are normally not subject to self-employment taxes, all or a portion of the distributions from an S-Corporation may, under certain circumstances, not be subject to self-employment or payroll taxes. For that reason, an S-Corporation may be a better vehicle than a limited liability company for the operation of a small business.

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