

BUSINESS LAW REPORT

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COMPLY WITH CORPORATE FORMALITIES !

Business and Personal Protection Planning

By Jay D. Fullman, Esq.

Many people and established business entities choose to own assets and operate businesses as corporations, limited liability companies ("LLC's"), or limited partnerships. One of the key benefits of owning assets or operating businesses as corporations, LLC's, and limited partnerships is that the law allows each owner (shareholder, member, or limited partner) to be protected from personal liability for the actions of the entity. However, personal protection from the actions of the business entity is NOT automatic. Avoiding personal liability for the actions of the corporation, LLC, or limited partnership requires diligence and legal compliance. The cost of failing to comply with "corporate" formalities can be personal liability for the acts of the business entity, or other liability exposure.

LEGAL COMPLIANCE UPON FORMATION

For the separate existence of a corporation, LLC, and limited partnership to be fully recognized (and provide the benefits of doing business as a separate entity), the entity must be properly formed. Legal compliance upon formation includes:

1. File the Articles with the Secretary of State;
2. Properly adopt the operating document (corporate bylaws, LLC operating agreement, or agreement of limited partnership);
3. Pay the agreed capital (cash, property, or other assets) to the entity in exchange for the shares or interest acquired;
4. Assure that the entity is set up with sufficient capital to meet its anticipated obligations;
5. Issue shares of stock, or other certificates of ownership;
6. Obtain qualification from the Department of Corporations to issue the securities;
7. Elect or appoint the officers, managers, or general partners who are responsible for operating the entity.

The attorney responsible for incorporating (or otherwise forming) the entity should either do each of these, or assure that each is properly completed.

LEGAL COMPLIANCE IN OPERATION

Once a corporation, LLC, or limited partnership is properly formed and organized, continuing legal compliance is required to maintain the protection and benefits the entity was formed to provide. Operational compliance requirements include:

1. Establish separate bank accounts for the entity;
2. Do not pay any personal expenses from the entity's accounts;

3. Do not pay the entity's expenses from personal accounts, unless an expense reimbursement system is used;
4. Document with promissory notes any loans made to, or from, the entity;
5. Always conduct business (including all contracts, letterhead, and business cards) in the correct legal name of the entity (or use a properly filed Fictitious Business Name);
6. All contracts for the entity must be signed in the name of the entity, by an appropriate person, in their official capacity, using their official title;
7. If at all possible, no personal guaranty should be provided for entity obligations;
8. Have all Shareholder Meeting Minutes, Board of Director Meeting Minutes, and other required meeting minutes timely and properly prepared;
9. Maintain sufficient insurance to cover the probable risks of the nature of the business conducted by the entity;
10. Maintain adequate financial records;
11. File the annual Statement of Information with the State;
12. Seek the advice of experienced legal counsel in significant or unusual transactions, and upon the occurrence of events that might expose the entity to unusual risks.

Although these recommendations are not exhaustive and will not prevent all liability, compliance will help. Contact Jay D. Fullman for specific advice and representation.