

Overview of Where to Form your Limited Liability Company

As with a corporation, you must also decide in which state it is best to organize your limited liability company. Consider several financial, organizational and legal issues. Where will you operate your primary business? For example, you can register in a state with low organizational fees – such as New Mexico – but if you will chiefly do business in another state, you must nevertheless register in those states. This can increase your filing, registration, and administrative costs. Also ask what it will cost to register in the state? What are their annual fees? Will your limited liability company pay state or local income taxes?

It is also important to evaluate five other key points which can differ between states:

- Can the members manage the LLC or must the limited liability company have a separate manager?
- Can the limited liability company merge with other types of organizations?
- Can company members be easily admitted or terminated?
- What standards does the state impose on managers for negligence, malfeasance, misfeasance, or misconduct? What are the standards for confidence, trust, and confidentiality?
- Most importantly, what are the rights of a member's creditors to claim a member's limited liability company ownership interests? For asset protection, the answer to this last question is critical. State laws and court rulings are not necessarily consistent on this vital issue.

Also to be considered are taxation issues. What are the organizational requirements for the LLC to qualify for partnership taxation? Some states allow only multi-member limited liability companies to be taxed as a partnership. Other states allow single-member limited liability companies to elect pass-through taxation.

Some states, such as New Mexico, Indiana, and Oklahoma, do not disclose the members or managers of their LLCs. LLCs formed in these states are anonymous. Used properly, they can provide tremendous financial privacy, even more than that provided by a Nevada corporation.

Unlike corporate law, LLC law allows most of the details regarding the operation of the company to be determined by its operating agreement. In other words, we can decide with broad latitude how the company is structured. This gives us tremendous flexibility from a business, asset protection, and estate planning standpoint.