

Starting a Business? Consider Forming an LLC

By Mathew B. Tully

Question:

I'm preparing to open my own business, a hair salon. What do I have to do from a legal standpoint?

Answer:

Opening a business has its own set of risks, but unnecessarily exposing yourself to personal liability does not have to be one of them. Generally, my recommendation to entrepreneurs is for them to form a limited liability company, or "LLC." The members of an LLC have limited exposure for the business' liabilities, which include debts, judgments and contractual obligations. If a customer is injured or the business goes bankrupt, the parties generally cannot hold LLC members personally liable for damages beyond what is covered by liability insurance plans.

Basically, forming an LLC requires filing paperwork with the New York Department of State's Division of Corporations. Once filed with the Department of State, the LLC is required to publish notices regarding the company's formation for six weeks in two publications: a daily publication and a weekly publication, designated by the county clerk where the company is headquartered.

While it sounds like a simple process, I caution entrepreneurs about attempting to form an LLC without consulting a lawyer. With one misstep, they could end up improperly forming the company and finding out too late that their exposure is not limited to the LLC. A business law or corporate attorney can ensure LLC members are protected to the greatest extent possible.

Entrepreneurs who are biting at the bit to get their business running should not put off forming an LLC under the belief that this step would slow them down. My law firm, for example, has developed its own system for preparing articles of organization for clients and getting them filed within a day, sometimes the very same day. Once these articles of organization are filed with the state, the LLC can begin operating immediately and apply with the IRS for an Employer Identification Number so they can open up their LLC's bank accounts.

While the LLC may begin its operations, it is crucial for LLC operators to follow up this filing by properly publishing notices in the designated publications or risk losing their LLC status. Also during this timeframe, when waiting to receive their certificate of organization, LLC members should have their attorney draft an operating agreement to spell out such items as each member's responsibilities, role in the business and the amount of profits and debts to which they are entitled or obligated.

It is important for entrepreneurs to remember that while the LLC limits their liability, they are not impervious to risks. Under New York's Limited Liability Law, people who knowingly make

false statements in the articles of organization, certification, or amending documents could be held liable for losses stemming from a “reasonable reliance” on such statements.

Managers aware of the falsehoods in these documents could also be held liable. Under New York’s Tax Law, members can also be held personally liable for unpaid sales taxes. Furthermore, members can undermine their limited liability if they co-mingle personal funds with LLC funds or make personal charges to an LLC account.

As demonstrated above, an LLC may be the ideal vehicle for some new business owners. While the LLC is a safeguard for liability, however, it can be undermined by the actions of its membership. A consultation with a corporate or business law attorney before starting the company would be a great start to a bright future.

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. The information in this column is not intended as legal advice.