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As we briefly discussed on the telephone, you get additional benefits by being a limited liability company (LLC), as opposed to a corporation, particularly in the State of Nevada. I highly recommend the Nevada limited liability company over the corporation. In fact, about the only benefit I am aware of that a corporation has over an LLC is that a corporation can issue shares of stock to the corporation's owners, whereas an LLC does not issue stock in the company. An LLC on the other hand does assign a percentage interest in the company to the LLC's Members (owners). An example of this would be as follows: Four (4) Members of an LLC could each own a 25% interest in the company. It should also be noted that an LLC may issue units in the company, (which are similar to shares of stock in a corporation), to its Members, rather than issuing them a percentage interest in the company. The main distinction between stock in a corporation and units in an LLC is stock may be publicly traded, whereas units issued by an LLC may not. If your intention is to eventually take your Company public, i.e. sell the corporation's stock publicly, then it would be recommended you form a corporation instead of an LLC. If that is the case, then there is no

need for you to continue reading this document. If on the other hand, you do not intend to take your Company public, then what I have provided below is an outline of some of the benefits a Nevada Limited Liability Company has over a corporation.

Nevada is one of 21 states and the District of Columbia that have adopted what is called the Uniform Limited Partnership Act, (2001), an acronym for that is the U.L.P.A. The U.L.P.A. offers benefits that do not apply to a corporation. Those benefits only apply to a Limited Liability Company. As an example, let's say, somebody sues you personally, not your Company, but you personally, and the Plaintiff gets a \$30,000.00 judgment against you. The Plaintiff's attorney will more than likely invite you to either his office or to Court and ask you what assets you have - car, house, plane, boat, whatever. This process is called an Examination of Judgement Debtor. He/she might ask if you have any stocks and/or bonds? Suppose you have 1,000 shares of General Motors stock, which is publicly traded, so the Plaintiff's attorney would say, hand that over, and you would have to do that in an attempt to begin satisfying the Judgement. But suppose you also have 100% ownership in a Nevada Limited Liability Company. The attorney cannot say, OK sign the membership certificate over to my client. He/She cannot say, OK give me the name of the bank where your Company transacts business and the account information, I am going to go to that bank and clean out your Company's bank account. And he/she cannot say, what is the business address - I am going there and start collecting assets, such as computers, desks, cars, and anything else the Company has of value. He cannot do any of those things. The only thing he can do is go back into Court and ask the Court to issue a document called a Charging Order, and with this Charging Order, the only way he/she

can legitimately obtain monies from your Nevada Limited Liability Company is if he/she is able to intercept funds when they are transferred from the LLC to you as the Judgement Debtor. So essentially, all the Plaintiff has been able to obtain is a "lien" on the LLC, whereas with a corporation, the Plaintiff would actually be able to access assets of the corporation.

I also want to make you aware of the Series Limited Liability Company. As of 2006, the state legislature of Nevada has adopted legislation allowing for the formation of a Series Limited Liability Company. And what that allows you to do is have multiple businesses under one Limited Liability Company. And if one of the businesses is sued, the assets of the other businesses are protected. There is liability insulation among the businesses. The classic example is, multiple rental property ownership. Prior to 2006, people called our office wanting to put all of their rental properties into one Limited Liability Company or corporation, and they asked if I could help them do that. I would tell them that is the last thing they should do because it is like putting all of your eggs into one basket. If one property is sued, all of the remaining properties are also subject to that suit. What is the solution they would ask? I tell them one solution is the formation of separate companies for each property. They would say - oh, don't tell me that, and I would say, unfortunately, if you want to get asset protection for all of your rental properties, that is exactly what you have to do.

But as of 2006, that is no longer required. With the new Series Limited Liability Company, you can now place all of the rental properties into one Series Limited Liability Company, and if one of

the properties is sued, the Plaintiff can obtain a judgment on the assets of that Series Business only, and all of the other Series Businesses would be insulated from that lawsuit. Another option is to purchase a very large umbrella insurance policy, covering all of the rental properties.

However, there are several caveats that need to be mentioned with respect to the Series Limited Liability Company: The first is, you have to maintain as much separation among the various Series Businesses as possible. Suppose for example you have five (5) rental properties and each is a separate Series Business. You should have five (5) separate Employer Identification Numbers (EIN's) issued by the IRS. However, the IRS only issues one EIN to the Series LLC and not five (5) separate numbers. That may change some day, so I always recommend you apply for an EIN for each separate Series Business. Even if the IRS rejects the 5 applications, and only issues one (1) EIN, if your LLC is sued, you can at least show the Judge you tried to obtain separate EIN's for each Series Business, but the IRS did not comply. You also need to have separate County or City Business Licenses, depending on where you will be conducting business, the County or the City; separate bank accounts; separate employees, separate County tax application, etc., for each Series Business. You must have as much separation among the various Series Businesses as possible, and you are not permitted to co-mingle the assets of the multiple Series Businesses, nor can you co-mingle the proceeds from the operation of those Businesses. If on the other hand all the five (5) of the Series Businesses have the same County or City business license, the same bank account, the same EIN, the same employees, etc., and one of the Series Businesses is sued, a Plaintiff may ask the Judge to allow him to Pierce the Corporate Veil, alleging that the Series Businesses are not operating independently but rather are

operating as a single and not multiple companies. If the Judge allows that, then the Plaintiff would be able to collect the judgment from all of the Series Businesses and not just the business that was the subject of the lawsuit. I therefore recommend the Series LLC if you are planning on having multiple businesses AND you are hyper organized and are extremely good at keeping track of all of the Series Businesses, separate business licenses, bank accounts, employees, etc., that exit under the Series LLC. If you plan to operate only one (1) business under your LLC, or if you plan to operate multiple businesses, but are not really well organized and good at keeping all aspects of your multiple businesses separate, then I would definitely recommend a standard LLC for only the one business you plan to operate, and multiple, standard LLC's for the multiple businesses you intend to operate. Finally, the Federal, U.S. Bankruptcy Court has not yet ruled on whether it will allow an individual Series Business to file for bankruptcy, excluding the remaining Series Businesses, or whether the Court will insist that the Series LLC itself, including all of the Series Businesses, has/have to file for bankruptcy. When the Series LLC was first introduced in Nevada, the Series form of LLC was very popular, but since that time, interest in the Series LLC has greatly diminished.

The other caveat is, that I do not recommend registering a Series Nevada LLC in a state that has not yet adopted the Series form of LLC. There are only eight (8) states in total as of April of 2020 that have adopted the Series form of Limited Liability Company. Nevada is one of those states, California on the other hand is not. So suppose you owns five (5) rental properties, and suppose four (4) of those are located in Nevada, and one (1) is located in California, and all of the businesses are operated under a Nevada Series LLC. The Series LLC is registered in California as a foreign corporate entity

doing business in that state. That property is then rented to a family of six (6). There is defective wiring in the house, the house burns down, three (3) people die in the resulting fire and three (3) survive, but are severely burned, and end up in a burn clinic. The Plaintiff will sue the Nevada Series LLC. Suppose the Plaintiff's attorney obtains a five million dollar judgment against that LLC. The home should have a liability policy on it of at least one million dollars. The property has a net value after insurance pays to rebuild the home and the mortgage has been paid off of \$500,000.00. So that leaves a deficit of three and one-half million dollars on the Judgment. If the Plaintiff's attorney is clever he/she will argue to the Court that the Series LLC has additional assets in Nevada, (four homes), from which he/she can satisfy the Judgment. He will state correctly that California has not adopted the does not recognize the Series form of LLC, so he/she will argue to the Court it should rule that those Nevada assets are legitimately subject to the California Judgment. Your attorney will, of course, argue that those Nevada properties are protected by the laws of the State of Nevada, which have establish the Series form of LLC. At that point, the Judge will have one of two options, either agree with Plaintiff's attorney and rule that the Judgment applies to all assets of the LLC, no matter where they are located, or rule that even though California has not adopted the Series form of LLC, the California Court is nonetheless going to recognize the protections granted to the Defendant's LLC by the laws of the State of Nevada.

Truly, it could go either way. Nobody knows how a Judge is going to rule in such a case, but if he/she rules against you, at that point you are going to have a big problem. Now most people simply say, well, the Defendant can always appeal the Judge's decision, right? That is true, but the appeal would have to be submitted to the

California Appellate Court. If that Court rules in favor of the Plaintiff, then an appeal would have to be submitted to the California Supreme Court. If that Court rules in favor of the Plaintiff, then the Defendant would have to submit an appeal to the U.S. Supreme Court. If the U.S. Supreme Court takes the case, and that is by no means certain, the U.S. Supreme Court would, in my opinion, probably rule against the Plaintiff and in your favor, upholding the protections afforded to the Series LLC by the laws of the State of Nevada. The U.S. Supreme Court would base its decision on the Full Faith And Credit Clause of the U.S. Constitution, which says that every state must recognize and uphold the legitimate laws of each and every other state. However, unless the you had a huge war chest to pay the overwhelming cost of all of those appeals, you would more than likely have to sell the four Nevada properties just to pay the attorney fees and costs. So obviously, I do not recommend registering a Nevada Series LLC in a state that has not adopted the Series form of LLC.

In order to form an LLC in Nevada, I can either send you a document which provides detailed instructions on how to form and manage an LLC in Nevada, and I do not charge anything for sending you that document, or we can refer you to an attorney to form a Nevada Limited Liability Company for you. The attorney will provide a discount, due to your membership in LegalShield (LS) and the estimated fee is between \$2,60.00 and \$3,000.00 or possibly more. Needless to say, most of our LS Members request the instructions at no charge. However, if you do decide to retain an attorney to assist you, the fees quoted above do NOT include the attorney acting as your Company's resident agent for service of process, (RAFSOP), which will be an additional charge annually. But

I do not recommend paying an attorney or a company offering those services, to act as your Company's RAFSOP if you reside in Nevada. You can act as your own resident agent without having to pay anyone. If you are a Nevada resident without having to pay anyone to perform that service for you. The fee quoted also does NOT include obtaining the appropriate business licenses and other documentation required for your LLC, for which there is an additional charge. Since you can now complete most of those forms on the internet, you may want to just do that yourself anyway. In the document I can send you at no charge, I explain what licenses and other documents you may require. Many people at this point say well, I do not want to spend that kind of money. I am just going to go to the Nevada Secretary of State's office and fill out the one-page Articles of Organization, and that will take care of everything right?

Unfortunately, it does not take care of everything. You should be aware of the legal term "piercing the corporate veil". If you are not, then let me explain what that means, by giving you an example. Suppose you form your Company in 2000, and in 2010 your Company is sued. From the day you formed your Company in 2000, until you are sued in 2010, the only thing you have done is file the one-page Articles of Organization with the Nevada Secretary of State to form the Company, and you have renewed your Company each year by filing the Annual List of Members and Managers, and that is it. You have formed an LLC, but you have not prepared an operating agreement, you have not completed the Company's Membership Certificates, you have not prepared the Membership Role, none of those things have been done. In essence, you have not been following corporate formalities. Now, this is what may happen. You

end up in the discovery process in the lawsuit. The Plaintiff's attorney asks you to please provide him/her with your Company Kit; and you will ask - what Company Kit? I do not have a Company Kit. He is going to say - "oh, this is good, ok what do you have?" You will say - I have just this one-page Articles of Organization, and the yearly filings of the Annual List of Members and Managers that have been filed with the Nevada Secretary of State. In several weeks or so your attorney will be served with a Motion taking you back to court and asking the Judge to allow the Plaintiff to amend the complaint that was filed against your Company, now naming the owners of the LLC individually as Defendant(s), in addition to your Company of course, because you have not been following corporate formalities. The Motion will ask the Court to allow the Plaintiff to sue the owner(s) of the Company personally because they have failed to follow corporate formalities. Granted, it is much more difficult to pierce the corporate veil in Nevada than in other states, but it certainly is not impossible. So, if your Company has not prepared any of the required documents that I have mentioned, the Judge is probably going to allow the Plaintiff to pierce the corporate veil and hold the owners personally responsible in the lawsuit. So that is one problem you may face by not following corporate formalities. Please note, Courts have been allowing Plaintiffs to pierce the corporate veil for almost as long as there have been corporations.

The other risk of not following corporate formalities is relatively new, and it is something that the Internal Revenue Service is now doing. Suppose for example you formed your Company in 2000, and in 2010, instead of being sued, the IRS performs a financial audit on your Company. And in the audit process they are probably going

to ask you to see your Company Kit. If you do not have a Company Kit, the IRS is going to tell you - well, because you have not been following corporate formalities, we are going to tax you as though you have been operating your business as a sole proprietorship as opposed to a corporation or LLC; so the first thing you owe us, right off the top, is 15% self-employment tax for the past ten years, and the next thing you owe us is difference between what we taxed you as a corporate entity and what you should have been taxed as a sole proprietorship. Plus you will have to pay all accrued penalties and interest for that time. You could be looking at quite a tax bite, taking into account unpaid taxes, penalties and interest over the past ten years, which may be enough to put many companies out of business. Many people ask - why would the IRS do that? One reason is, they know that about 75% of the people who own small businesses which are incorporated, do not follow corporate formalities, and secondly, it is the business of the IRS to collect money and they really do not care who they collect that money from. So, it is very important that if you are going to form a corporate entity, that you follow corporate formalities, not just to prevent the corporate veil from being pierced, but also to keep the IRS out of your pockets.

Finally, if you are going to have investors in your business, (either LLC or corporation), who will be contributing only capital and will not be involved in the day to day operation of the Company, you will need to have a Private Placement Memorandum (PPM) prepared for your corporate entity, in order to comply with Federal Securities and Exchange Commission (SEC) rules and regulations. If the investors are Certified Investors by the SEC, consult with an SEC attorney to see what the requirements are. If you will need to have

a PPM prepared, please call and I can make a referral to a LegalShield (LS) referral attorney to have that document drawn up for you. The LS referral attorney will, of course, give you a 25% discount off of the standard hourly fee that he or she charges. Please be aware however, attorneys charge \$25,000.00 to \$28,000.00, including the discount to prepare a PPM

You will need to have a Registered Agent for Service of Process (RAFSOP), for your business, (either LLC or corporation) in Nevada, who resides here. You may act as your own RAFSOP if you reside permanently in Nevada. If you do not, you will need to hire a RAFSOP. Please note, our firm does NOT provide that service, but there are many companies and attorneys in Nevada which do provide that service. The fee generally runs between \$135.00 to \$175.00 annually.

I hope this information has been helpful. Should you have questions, please do not hesitate to contact me.

Sincerely,
Joseph F. Dempsey, Esq.

JFD/cm