

DEMPSEY, ROBERTS & SMITH, LTD.

ATTORNEYS AT LAW

1130 WIGWAM PARKWAY ♦ HENDERSON, NEVADA 89074
(702) 388-1216 TELEPHONE ♦ (702) 388-2514 FACSIMILE

www.drsltd.com

JOSEPH F. DEMPSEY
KENNETH M. ROBERTS
DAVID B. MATHENY

DAVID E. KRAWCZYK
KRISTYN J. TRAVIS

EDUARDO J. RIVERA
SHAUN P. HALEY

OF COUNSEL:
BILLY SMITH, JR.

Sender's Direct Email: JosephDempsey@drsltd.com

INSTRUCTIONS AND INFORMATION REGARDING FORMING A NEVADA LIMITED LIABILITY COMPANY

When completing the LLC formation documents, you will have two (2) options. You can complete the documents on the NV SOS web page Silver Flume, following the instructions I have provided below. I recommend you print these instructions I have sent you so you can use them as a reference when completing the LLC formation documents on Silver Flume. Your other option is to go to the Nevada (NV) Secretary of State (SOS) web site. On the home page you will see the State Seal for the State of Nevada. There is a small white box to the right of the State Seal and there is a small magnifying glass in the right hand portion of the white box. In that white box, type in Articles of Organization, and then click on the little magnifying glass. Then double click on the first search results that appear, which reads Articles of Organization. The Instructions for completing the documents will appear first, which you should read before you get started completing the forms. After reading the Instructions, you should scroll down to the next page and to get started completing the documents. You will see a form entitled Articles of Organization Limited Liability Company. Print these instructions, so you can refer to them while completing the forms needed to form a NV LLC. Once you have completed the documents, you can print, sign, date and mail them to the NV SOS. Needless to say, you will need to have a printer available for you to do that.

For # 1, **Name of Limited Liability Company:** (must contain approved limited-liability company wording: see instructions) This is where you are going to type the name of your company. If you have not done so yet, please check with the SOS to verify if the name you have chosen is available. Once you have verified the availability of the name, type it in #1. You will however need to have some sort of corporate designation associated with the name. In Nevada you can use: Limited-Liability Company, Limited Liability Company, or Limited or these abbreviations, Ltd., LLC, L.L.C., L.C. or LC. You can place a comma between the name of the Company and the corporate designation if you like, but that is strictly your choice, it is not a requirement. I do not recommend using L,L.C., as it would become tiresome typing in those periods each time after the initials LLC. To the right of the name you will see two options, one is **Series Limited Liability Company** and the other is

Restricted Limited Liability Company. If you are interested in forming a Series LLC, please call our office (702) 388-4401 so I can explain why you may want to re-think that). If you decide not to form a Series LLC, you can ignore both of those options, so do **not** check either of the boxes.

For # 2, **Registered Agent for Service of Process** (check only one box): You can be your own Registered Agent For Service of Process, (RAFSOP), if you reside in Nevada on a permanent basis. There is no need to hire a RAFSOP at an annual cost of approximately \$175.00. However, you may not use a Post Office Box or a Mail Boxes Etcetera type of company which offers mail box services. You have to use an address where you are physically present on a regular basis. If you have an office where you will be conducting your business, you may of course use the address of that office. Many people mistakenly believe they have to hire an attorney or a company offering RAFSOP services, but that is not the case at all, just so long as you are a Nevada resident. However, if you are **NOT** a Nevada resident, then you will have to hire an attorney or a company to act as your RAFSOP. PLEASE NOTE: Our firm, Dempsey, Roberts & Smith, Ltd., does **NOT** offer RAFSOP services, and we do not recommend one RAFSOP over any others. If you are going to be your own RAFSOP, you should check the box labeled **Noncommercial Registered Agent**, and then you need to write your name and put the address you intend to use. You can always change that address at a later date if you would like. (As an example, you would like to form the LLC right away, but you have not yet chosen an office location). Just put your home address, and if you get an office address by the time you need to renew your LLC the following year, just put the new address on the **ANNUAL LIST OF MEMBERS AND MANAGERS** which the NV SOS will send you. For the Mailing address on # 2, if it is the same as the address you have written above, just write "SAME AS ABOVE". If it is different, then you would of course provide that mailing address.

For # 3, **Dissolution Date:** It asks the latest date upon which the Company is to dissolve (if existence is not perpetual). Just ignore that and move on to the next question, unless of course you would like the Company to be dissolved on a certain date in the future.

For # 4, **Managers:** (required). It will ask if the Company is managed by **Manager(s)** **OR** **Member(s)**. This is very important. Always check the box next to the word **Manager(s)**, never check the box next to the word Member(s). Many people think, well since I am a Manager and I am also a Member of the LLC, I will just indicate the Company is managed by Members. Even though that may be true, it is not recommended you check the box for Member(s). The reason why is that in Nevada, ownership of an LLC is anonymous, but only if you check the right box, which is **Manager(s)**. if you check the wrong box next to the word Member(s), indicating the LLC is managed by Members, then anyone looking on the Nevada SOS web site will be able to tell that the person/people or corporate entity(ies) you have listed as the Managing Member(s), are also the owners of the LLC. You do not want to do that! So always check the box **Manager(s)**.

For # 5, **Name and Address of each Manager or Managing Member:** (attach additional page if more than 3). This is where you provide the address of the person/people or corporate entity(ies) who/which is/are listed as the **Manager(s)**.

For #6, **Name, Address and Signature of Organizer:** (attach additional page if more than 1 organizer). This is where you provide the name and address of the person who is Organizing the Company. This may be you, or it may be someone else who wants to be recognized as the Organizer. Be sure to sign at the **X**.

For # 7, **Certificate of Acceptance of Appointment of Registered Agent:** This is where the RAFSOP signs the Articles of Organization.

Scroll down to the next page which is titled **INITIAL/ANNUAL LIST OF MANAGERS OR MANAGING MEMBERS AND STATE BUSINESS LICENSE APPLICATION OF:** On the first line, where it is asking for the name of the Company, you will need to again type the name of the Company.

Next it will ask, FOR THE FILING PERIOD OF _____ TO _____. If for example, you formed your LLC on January 15, 2020, you would write that date in the first box and then in the second box, you would write January 14, 2021. But you need to make sure you use the actual date you formed the Company, and not the example I just provided.

Next you need to check the box, Return one file stamped copy.

Next it states: **IMPORTANT:** Read instructions before completing and returning this form. **PLEASE NOTE: YOU NEED TO READ THE EIGHT (8) ITEMS THAT FOLLOW, AS WELL AS THE FEE SCHEDULE THAT APPLIES TO FORMING AN LLC.**

In the block below, it states **CHECK ONLY IF APPLICABLE AND ENTER EXEMPTION CODE IN BOX BELOW** Only check the box below if you are a Government Entity or an Insurance Company. It will be very unlikely you will be able to qualify for an exemption for paying the State Business License fee.

Next, just again type in the Name(s) and Address(es) of the Manager(s) of the Company.

There are two paragraphs, in small print, that follow the space where the Name(s) and Address(es) of the Manager(s) goes/go. **YOU NEED TO READ THOSE PARAGRAPHS.**

Below that, be sure to sign the document, put your title as Manager in the box to the right, and the date you signed the document to the right of that.

Scroll down to the next document entitled **REGISTERED AGENT ACCEPTANCE**

(Pursuant to NRS 77.310)

Below that you will find the following language: **Certificate of Acceptance of Appointment by Registered Agent.**

Below that, it states, In the matter of: In the box provided to the right, you again type the complete name of the Company.

Below that it states: **I** (There will be a box provided where you type in the Name of Appointed Registered Agent OR Represented Entity Serving as Own Agent. If an entity is serving as the RAFSOP, type in the name of that entity, otherwise just type in the name of the individual acting as the RAFSOP). **am a:**

Below that you will find three (3) options and you need to select **only** one.

- a) **commercial registered agent listed with the Nevada Secretary of State.**
- b) **noncommercial registered agent with the following address for service of process:**

If you will be acting as your own RAFSOP, check box **b** and provide your complete address. Please remember, you cannot use a post office box number.

- c) **represented entity accepting own service of process at the following address.** Only applies if a domestic or foreign entity will be the RAFSOP. (If you plan to be your own RAFSOP, you will select box **b**, and therefore ignore this option)

You will then sign and date the document. Sign at the **X** above the language: **Authorized Signature of R.A. or on behalf of R.A. Company.**

Scroll down to the next page entitled **Customer Order Instructions**. In the box with the language "Processing Service Required", you will find 2 options. Regular and 24-Hour Expedite (additional fee included). Be sure to check the box that applies. If you are not in a rush to get your Company formed, just check the box in front of the word Regular. If you use Silver Flume to file your Articles of Organization, it should not take that long at all to get your Company formed.

Below that you will again type in the complete name of your LLC, and again provide the Date.

Below that you will see the language Return to: In that box provide your mailing address.

Below that, you will see Contact Name: This is where you type in your name and to the

right of that type your Phone number in the box provided.

Below that you will see the words **Return Delivery:** (email or fax options do not receive a copy via mail, must be ordered Separately).

Below that you will see the following options: Email to: with a box to the right where you can provide your email address. You should check that box and type your email address **only** if you want the filed documents sent to you via email. To the right is: Fax to: and a box is provided where you can type your facsimile number. Use that option **only** if you want your documents sent to you via facsimile.

Below that you will see the following options: Hold for Pick up; Mail to Address Above; FedEx: Acct#; and Other (explain below). Just be sure to check the box for the option you want. If you want to have the file stamped documents mailed to you, just check Mail to Address Above.

Below that you will see the words Order Description: (include items being ordered and fee breakdown) Please be sure to read the language following the asterisk (*), which is found below the Order Description box.

In the box provided, type “Filing of Articles of Incorporation for a Nevada Limited Liability Company”. Then space over about 10 spaces. Do not try to tab over as that will take you to the bottom of the page. After spacing the 10 spaces, type \$75.00. Then hit the enter key twice.

Then type “Certification of Articles of Organization for a Nevada Limited Liability Company”. Then space over until you are directly under the \$75.00 and type \$30.00.

Below where you have typed that information, to the right you will see the language Total Amount: You need to type \$105.00 in the box provided.

Below that you will see Method of Payment. Check/Money Order; Credit Card (attach ePayment checklist); Trust Account; and Use balance remaining in job #. Just select the method you wish to use.

Congratulations! You are done. In addition to the \$105.00, you will need to pay \$125.00 to file the Initial List of Managers or Managing Members. And an additional \$200.00 for the State Business License. The total fees with the NV SOS for filing the Articles of Organization are \$430.00.

Once you have received confirmation from the NV SOS your LLC has been formed, go to the web site www.attorneyscorpsservice.com to order your Company Kit. These are not

expensive, approximately \$75.00 to \$100.00. You can order a brown binder with gold lettering, (a little more expensive) or a black binder with white lettering, (a little less expensive). However the two options I absolutely recommend you order for an additional fee are: An Operating Agreement and a metal crimper for the Company Seal instead of a rubber stamp.

Your Company Kit will come with Membership Certificates, which you will need to complete. At the bottom of the Certificate you will find a colored disk, which is printed in the same color ink as the Certificate. The Kit also comes with gold counter foils. You need to paste a gold counter foil over the colored disk at the bottom of the Certificate and then crimp it using the metal crimper. Doing that makes the Certificate look more formal, as that gold counter foil will have the Company Seal embossed upon it.

Once you receive your Kit, you will find a CD. Put that into your computer and complete all of the documents you find on the disk with the specific information relating to your LLC. In the Operating Agreement, be sure to indicate the percentage interest that each Member will have in the Company. If there are only two (2) Members, and they are not husband and wife, I recommend assigning each Member a 49% interest in the Company and then select a neutral third party you both trust, who will be given a 2% voting interest in the Company, so as to break any deadlocks which may occur at Member Meeting. This neutral third party will only have a voting interest and not an economic interest in the Company. You will need to add a paragraph to your Operating Agreement which states the Members who have a majority interest in the Company are entitled to a 50/50 economic interest in the Company, but each will have only a 49% voting interest in the Company. The person holding a minority interest in the Company will have a voting interest only and will not share in the profits of the Company.

Before indicating in the Operating Agreement the amount of Initial Capital Investment each Member will contribute to the LLC, be sure to first consult with a good CPA to get advise on that. By keeping the amount of the initial investment low, that could have potential financial benefits for the Member(s) in the future. So be sure to consult with a good CPA first.

If your Company is a single Member LLC, it may be taxed by the IRS as a Disregarded Entity; a C Corporation; a Sub-S Corporation; or a Partnership. If your Company is a multi-Member LLC, then all of the above options, except Disregarded Entity, may be used. Before selecting any of the above options, please consult with a good CPA for advice. If the CPA recommends that the Company should be taxed as a Sub S Corporation, your CPA can assist you with preparing and then filing the required 2553 Form with the Internal Revenue Service. While you are at it, you should have your CPA also fill out IRS SS-4 Form. This is the form that is used to establish an Employer Identification Number (EIN) for your Company.

Please Note: Even if your Company is a single Member LLC, it may still have the Charging Order Protection afforded LLC's. (Please see document created by Dempsey, Roberts & Smith, Ltd., entitled Comparison of Corporation with an LLC, which will explain that concept.

One nice thing about forming an LLC is that unlike a corporation, you do not have to have annual meetings of the Members. Of course, you may have annual meetings if you like, but you are not required to have them. If you decide to have annual meetings, just be sure to establish a date for the Annual Meeting in the Operating Agreement. I do not recommend selecting a specific date, such as the 20th of January, as the date upon which to have the meeting. Instead, I recommend you pick a day of the week, such as the third Wednesday of January; the Second Tuesday of January, etc. That way, your Annual Meeting will always be on a weekday.

However, just be aware, the Member(s) will have to have occasional Special Member Meetings when situations warrant it. As an example, If the Member(s) of the Company is/are thinking about expanding into the international arena, the Member(s) should have a Special Meeting and vote, thereby agreeing to hire an international market analyst to evaluate that market place for him/her/them. That Meeting should then be reduced to Minutes. You can find a sample of Special Meeting Minutes in the Company Kit. After the **analyst** conducts his evaluation and recommends expanding into the international arena, the Member(s) would then have another meeting to vote on whether to hire an international market **strategist** to advise what would be the best way for the Company to enter into the international arena. That Meeting also needs to be reduced to Minutes. The Member(s) of the LLC may not need to have another Special Meeting for a year, or he/she/they may need to have a Special Meeting in a month or so, it all depends on circumstances. I know it may seem odd that only one (1) Member of an LLC needs to conduct a Special or Annual Meeting to vote on important decisions that affect the Company, and reduce that Meeting to Minutes. But you need to keep in mind, you are forming an LLC and it is important that you follow **Corporate Formalities**, and act as a corporate entity would act, and not act as an individual.

It is very important to have a Company Kit with all of the documents that comes with it and to have periodic meetings of the Member(s), when warranted. I suggest you also keep all of your other important corporate documents in the Kit, such as your EIN application, the appropriate business licenses, etc. Even if the Company has only one (1) Member, that Member still needs to follow Corporate Formalities and have periodic meetings of the Member(s) and vote on important issues that concern the Company.

If the Member(s) of the LLC do/does not follow Corporate Formalities, two (2) unpleasant issues may arise. If the Company is sued and the plaintiff's attorney asks to see the Company's Kit and you do not have one, the attorney will probably ask the Court to allow him to amend the Complaint which was filed against the Company, thereby allowing him to sue the Member(s) of the LLC in his/her/their individual capacity, in addition to suing the Company. That is called **PIERCING THE CORPORATE VEIL**. Granted, it is much more difficult to Pierce the Corporate Veil in Nevada than it is in other States, but it is not impossible. If the Member(s) has/have not followed **any** Corporate Formalities, then the Court would have no choice but allow the corporate veil to be pierced.

The other unpleasant thing that may happen is if the IRS conducts an unannounced audit of your Company, (which they do), and asks to see your Company Kit, and you do not have one, it would be assumed by the IRS that although you claim to be operating your business as an

LLC, because you have not been following Corporate Formalities. If the IRS comes to that conclusion, they will go all the way back to the date the Company was first formed and reassess the tax obligation of your Company from that date forward. The Company would be taxed as a **Sole Proprietorship** rather than an LLC. The IRS would therefore require you to pay 15% self employment tax, plus the difference between the amount you were taxed at as an LLC, and the amount you should have been taxed at as a Sole Proprietorship. That amount, plus the 15% self employment tax you would have to pay, might create quite a financial burden on your Company.

Next, you need to decide where your Company's principal place of business will be located. If you will be conducting business in a County in Nevada, and not within a City, then you may need to obtain a County Business License. If you will be conducting business in an Incorporated City in Nevada, you may need to obtain a City Business License, but please **do** confirm that with that City's Business and Licensing Department. If you plan to conduct business from your home, you need to inquire if the County or City requires you to obtain a Home Based Business Exemption.

If you are going to be conducting business in Clark County, then you would need a Clark County Business License, only. If you will be conducting business in Las Vegas or N. Las Vegas or Henderson, etc., then you will need a Business License for that jurisdiction only. If you will be conducting business all over the Las Vegas Valley, an example being an insect exterminator, then you will need a multi jurisdictional license. In the event your primary place of business is the City of Las Vegas, you would go to the Las Vegas City Business & Licensing Department and advise them you need a multi jurisdictional license and they will provide you with information on how to obtain that license. So you must apply for that multi jurisdictional license in the jurisdiction where you will be primarily conducting business.

If you plan to operate your business out of your home, you first need to determine in which jurisdiction your home is located, Clark County, City of Las Vegas, etc. Once you make that determination, when you may apply to the Business & Licensing Department for that jurisdiction for the home based business exemption. There is certainly no guarantee you will be granted that exemption to be allowed to operate your business from your home, but you certainly may apply nonetheless. If you are denied a license to operate your business from your home, you will have to find a location zoned commercial, from which to conduct your business. Next you need to decide where in the Las Vegas Valley you are going to be conducting business.

When you apply to the Business & Licensing Department for whatever jurisdiction which is applicable, you will be given additional forms to complete, such as a Workman's Compensation Insurance acceptance or waiver form. If you are planning on employing people, you cannot waive that Insurance, you have to apply for it. If the operation of your business does not require you to have employees, and you do not need to cover yourself, then you may waive that insurance.

Before you arrive at the conclusion that the people who will be providing services to your Company are 1099 Independent Contractors rather than employees, I recommend you review the 20 Factors the IRS uses to determine if an individual is indeed an Independent Contractor

or is an employee. You may find those 20 Factors at the IRS website. Please Note: If you guess wrong, it could cost your Company quite a bit of additional taxes at a later date. If you are uncertain about whether people would be Independent Contractors, I suggest you consult a good CPA.

Another form you will be given to complete is the Child Support Compliance Form. Since you are forming an LLC, you may check the box waiving the requirement to report Child Support Compliance.

Those are just a sample of the forms you will be required to complete and submit to the Business & Licensing Department in the jurisdiction where you will be conducting business.

Once your LLC has been formed and is actually conducting business in Nevada, you should visit the NV SOS web site again and apply for a Trade Name Registration. The form you will use is called a Trade Name, Trade Mark and Service Mark Registration. However, you will only fill out that portion of the application which pertains to Trade Name Registration. When submitting that application to the NV SOS, you will need to include a copy of the Company's letter head, an invoice and a business card. It is very inexpensive to register a Trade Name in Nevada - \$100.00 for the first 5 year and \$50.00 for every subsequent 5 years. The Trade Name Registration applies to the entire State of Nevada.

By now you are probably wondering, why do I need to register my Company's Trade Name? I have a Company Charter issued by the NV SOS with the name of my LLC on it. Wouldn't that be sufficient? You certainly would think so, but unfortunately such is not the case. Anyone can apply for a Trade Name Registration in the name of your Company and they would be granted it, even if they apply for it after the SOS has issued a Company Charter to you. Logic would dictate that the SOS would compare the application with the names of existing companies in their data base and if there was a match, they would tell the applicant sorry that name is taken. But the sad fact is, the SOS will issue a Trade Name Registration, in the name of your LLC, to whoever applies for it first. Shouldn't that be you? Very few people know about this, which is why I am taking the time to inform you about it. But remember, you must actually be conducting business in NV, using that name you are applying for, before you can file for the Trade Name Registration.

I am frequently asked why not just file a doing business as (d.b.a.), wouldn't that be just as good? The problem with a d.b.a. is, it is valid **only** in the County (such as Clark) where it is filed. The Trade Name Registration on the other hand covers the entire State. In addition, if you file a d.b.a. on say January 2, 2019 and someone else files a Trade Name Registration on January 2, 2020, that subsequent filing will take precedence over your d.b.a. filing.

It is true, if you use the name in commerce in Nevada first, you would establish a common law trade name usage in this State. If someone were to file a Trade Name Registration for the name of your Company and then told you to quit using that name or they would sue you, I am confident you would win. But the problem is, it might cost you \$10,000.00 or more in attorney's fees and costs to win. The cost of applying for a Trade Name Registration is very inexpensive in comparison.

Also, please be aware, your Nevada Trade name registration would be superseded by a Federal Trade Name Registration. So if you plan to conduct business throughout the U.S. using the name of your Company, or if you just want to make sure no one else in the U.S. secures that name, you should file a Federal Trade Name Registration with the U.S. Patent and Trade Mark Office. But be aware, that is a considerably more complex process than applying for a Trade Name Registration with the NV SOS. So you may want to start with the NV application and then later file for a Federal Trade Name Registration. If you decide to apply for a Federal Trade Name Registration, please contact our office (702) 388-4401 and we can refer you to an attorney to assist you with that, and the attorney will discount his/her services pursuant to your LegalShield Membership.

We do not recommend using retirement funds, such as IRA, 401(K), etc. to fund the start of your Company. It is allowed, but the rules and regulations governing the use of those funds are extremely complex. If you do not follow them to the letter, the penalties the IRS can impose upon you are daunting. As a fine, they charge you 3 times the amount you have withdrawn from one of those accounts to start your business. So as an example, if you withdrew \$50,000.00, and you failed to comply with the IRS rules precisely, your fine would be \$150,000.00. Not at all worth it, so we do not recommend using those funds to start your business.

Finally, just remember, you have formed a corporate entity and therefore you owe a fiduciary duty to your LLC. Your fiduciary obligation to your Company is even greater than any self interest which you may have. So as an example, if you become aware of a financial opportunity from which you could profit personally, but your LLC would also be able to profit from that opportunity, your fiduciary duty obligates you to defer that opportunity to your Company. Also, if your Company is a Multi-Member LLC, all of the Members of the LLC would owe a fiduciary duty to one another. This means you all would have to deal openly and fairly with each other and no one is allowed to deal with the others in secret or behind anyone's back. If you would like additional information regarding the Corporate Fiduciary Duty, there are numerous articles on that topic which you can find on the internet.

We wish you all the best in your new business endeavor.

Sincerely,

Joseph F. Dempsey, Esq.