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INFORMATION REGARDING

OPERATING A NEVADA LIMITED LIABILITY COMPANY

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 advice 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.