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As an introduction, I am Joseph F. Dempsey, a Senior Partner with DEMPSEY, ROBERTS & SMITH, LTD. My experience and practice deals with Corporate Law, Contracts, International Law. The following is a comparison which can help you to decide whether to form a limited liability company or a corporation in the State of Nevada

This article explains how you can 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. In fact, the only benefits of a corporation over an LLC that I am aware of are that you cannot sell shares of stock with an LLC, you can only sell and issue shares of stock from a corporation. Let me now outline some of the benefits of the Nevada Limited Liability Company.

Nevada is only one of 12 states that has adopted what is called the Revised Uniform Limited Partnership Act, and acronym for that is the RULPA. The RULPA offers benefits that do not apply to a corporation. Those benefits only apply to a limited liability company. As an example, let's say, that somebody sues you personally, not your company, but you personally, and the plaintiff gets a \$100,000 judgment against you. The plaintiff's attorney will more than likely invite you to his office and ask you what assets you have - car, house, plane, boat, whatever. He might ask if you have any stocks and/or bonds - and suppose you have 1,000 shares of General Motors stock, and the attorney will say, hand it over, because that is the way it works. But suppose you also have 100% ownership in a Nevada limited liability company. The attorney cannot say, OK sign the membership certificate over to me. He 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 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 owns. He cannot do any of those things. The only thing he can do is go back into court and get what is called a Charging Order, and with this Charging Order, the only way he can obtain monies legitimately from a Nevada limited liability company is if he is able to intercept funds when they are transferred from the LLC to you. So essentially, all the plaintiff has been able to obtain is a "lien" on the LLC, whereas with a corporation, the plaintiff would 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 told them the 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 that property only, and all of the other properties are insulated from that lawsuit.

However, there are several caveats that need to be mentioned: The first is, you have to keep everything separate among the various businesses. So, suppose you have ten rental properties, you need to have separate EIN numbers, (assuming the IRS will issue separate numbers), separate business licenses, separate bank accounts, etc., for each business. You must have as much separation among the various businesses as possible, and you are not permitted to co-mingle the assets of the multiple businesses, nor can you co-mingle the proceeds from the operation of those businesses. If on the other hand all the various businesses of a series LLC have the same business license, the same bank account, the same EIN number, and one of businesses of the Series LLC is sued, the plaintiff may well be able to collect his judgment from all of the businesses of the series LLC 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 organized and good at keeping track of all the separate business licenses, bank accounts, etc., under the one Series LLC. If you plan to have only one business, or if you plan to have multiple businesses, but are not good at keeping everything separate under those businesses, then a standard LLC would be the best type of LLC for you.

The other caveat is that, I do not recommend registering a Nevada Series Limited Liability Company business in a state that has not yet adopted the Series form of LLC. There are only five states that I am aware of that have adopted the Series form of Limited Liability Company. Nevada is one of those states, California on the other hand is not. So let us go back to the example where a person owns ten rental properties, and suppose nine of those are located in Nevada, and one is located in California, and all of the businesses are under a Nevada Series LLC: The rental property in California is registered in that state as a foreign corporate entity (a Nevada Series LLC) doing business in California. That property is then rented to a family of five. There is defective wiring in the house, the house burns down, three people die in the resulting fire and two are severely burned. The plaintiff sues the business (a Nevada Series LLC), and gets a \$5M judgment against that business. The Nevada business registered in California has a value of only \$2M (when combining the value of the property and the insurance proceeds) so there is \$3M due and owing. The plaintiff's attorney is going to go back into court in California and tell the judge, the State of California has not yet adopted the Series form of LLC, the defendant is a Nevada Series LLC, and the defendant has nine other rental properties in Nevada, so please let the plaintiff take his \$5M California judgment into Nevada and make the defendant sell his other properties so the plaintiff can collect the \$3M he owes the plaintiff. The Judge is going to say one of two things. Either, ok sounds good to me - go help yourself, or no, even though California has not adopted the Series form of LLC, this court is nonetheless going to recognize the protections granted to the defendant's LLC by virtue of the fact it is a Nevada Series LLC.

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 the defendant, that defendant is going to have a major problem. Most people ask - well, the defendant could always appeal the judge's decision, right, and I tell them - certainly he/she can appeal the decision, it can be appealed to the California Appellate Court, to the California Supreme Court, and to the US Supreme Court, and it is my opinion that the US Supreme Court would probably rule in favor of the defendant. However, the defendant would have to sell his/her nine properties in Nevada just to pay the attorney fees to move the appeal through all three of those courts. So obviously I do not recommend registering a Nevada Series LLC in a state that has not adopted the Series form of LLC. So, those are the advantages of the Nevada Series LLC.

Our firm can form a Series Limited Liability Company for you here in Nevada. We provide a 25% discount to our LegalShield, Inc. (LSI) members. The fee essentially covers everything relating to the formation of the Series LLC. Feel free to contact me for a quote **Joseph F. Dempsey, Esq. / 702-388-1229**). Our fees are reasonable and competitive. The fees do not cover our firm acting as your company's resident agent for service of process, which is an additional modest charge annually. But I do not recommend paying our firm to act as your company's resident agent if you reside in Nevada. You can act as your own resident agent if you are a Nevada resident without having to pay anyone to perform that service for you. It also does not include obtaining the appropriate business licenses, which is an additional charge. But since you can now complete most of those forms on the internet, you may want to do that yourself anyway. 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.

Unfortunately, it does not take care of everything. Are you aware of the legal term "piercing the corporate veil?" Let me explain what piercing the corporate veil 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, and you have renewed your company annually by filing the annual list of members and managers, and that is it. You have formed an LLC and you have not prepared an operating agreement, you have not completed the membership certificates for your company, you have not prepared the membership role, none of those things have been done. In essence, you have not been following corporate formalities. Now, here is what may very well happen. You end up in the discovery process in the lawsuit. The Plaintiff's attorney is going to ask you to please provide him 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 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 he filed against your company, now naming you individually as a defendant, 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 of the company personally (you) because you have failed to follow corporate formalities. Granted, it is much more difficult to pierce the corporate veil in Nevada than other states, but it certainly is not impossible. So if your company has not prepared any of the required documents that I have previously mentioned, the judge is probably going to allow the plaintiff to pierce the corporate veil and hold you 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. You do not have a company kit. So 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 were 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, 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 80% to 85% 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 whose money they are really good at collecting is yours. So, it is very important that if you are going to form a corporate entity, that you follow the 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 development of product or providing of services and will not be involved in the management of the company or corporation, you will have to have a Private Placement Memorandum (PPM) prepared for your corporate entity, in order to comply with Federal Securities and Exchange Commission rules and regulations.

We hope this information helps you in making an informed decision. Should you have questions about this or other business and corporate matters, please do not hesitate to contact me, **Joseph F. Dempsey, Esq.**, at **702-388-1229**.