

# ***“Maintaining Your Nevada Limited-Liability Company”***

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## ***Advantages of the Nevada LLC***

There are many advantages available to business owners by conducting business as a Nevada limited-liability company (“LLC”). Nevada has no business level state income tax on the profits of a Nevada LLC. Nevada provides the flexibility and advantages of either being classified as a corporation or a partnership for federal income tax purposes. The initial business filing fees are inexpensive, and annual filing fees are very reasonable. Management of a LLC can be centralized in a manager-managed corporate style or in a member-managed partnership style arrangement. The LLC offers limited-liability for all of its members when properly formed and managed. Nevada offers a charging order as the sole exclusive remedy to the judgment creditor of the LLC, which may act as a deterrent to potential lawsuits.

## ***Taxation of the Nevada LLC***

Business level state income tax on profits of a domestic company will mimic the effect of the federal corporate income tax on C-corporations, which has led many businesses to avoid this tax treatment. Nevada has adopted a favorable tax environment for its business owners, which has led to sustained business growth. Nevada does not have a corporate income tax. A Nevada LLC can be structured as a C-corporation, an S-corporation, or as a partnership for federal income tax purposes. If no classification is elected under federal income tax law the following federal tax treatment apply: i) a single member LLC will be treated as a sole proprietorship, ii) two or more members of the LLC will be treated as partnership. Elections to be classified as other than your default classification are made by filing the appropriate entity election with the Internal Revenue Service using IRS Form 8832. You may also change your designated classification by filing IRS Form 8832.

## ***Establishing the Nevada LLC***

A Nevada LLC is established by filing the articles of organization with the Secretary of State together with the appropriate filing fee. The initial list of officers must then be filed with the appropriate filing fee at the Secretary of State. Failing to make the appropriate filings and payment of fees will result in a default and/or revocation status being applied to your LLC, and additional late fees will be assessed against your LLC for further renewal. If your LLC transacts business in another state or jurisdiction outside of Nevada, you may be required to register to do business in that particular state or jurisdiction. Failing to register your Nevada LLC in another state or jurisdiction in which you are conducting business can result in substantial penalties being assessed against your Nevada LLC by the foreign state or jurisdiction.

After the LLC has been filed, the Secretary of State will send a formal certificate acknowledging your status as a Nevada LLC. At that point, a tax identification number (EIN) should be obtained by you or your accountant from the IRS (using IRS Form SS-4), after which your business may begin to operate. Thereafter, proper maintenance of your LLC is imperative in preserving the limited-liability protections afforded to its members.

### **Proper Management of the Nevada LLC**

Management structure and operating guidelines of your LLC will be set forth by your company governance documents, which include your articles of organization, operating agreement, and company resolutions and agreements. The articles of organization provide notice of the basic structure of your company to the whole world, while the operating agreement and subsequent resolutions and agreements are the road map and rules for governing the company by and between its management and ownership. It is imperative that your LLC have a properly drafted operating agreement, which sets forth the responsibilities and obligations of each manager, member, and officer. A permanent written record of all meetings and resolutions should be recorded in the company record book, and maintained throughout the existence of your LLC.

### **Proper Treatment of the Nevada LLC**

Proper treatment of your Nevada LLC will preserve the limited-liability protections afforded to its members. All company documents, including stationery, other documents bearing a letterhead, checks, and contracts should include the full name of the company so that others dealing with it know that it is a LLC. Any assets that are to be owned by the LLC should be formally transferred to the company. It is imperative that the operating agreement be signed by all members and that accounting records be properly established to show each member's interest in the company and the contribution to the company made for that interest.

### **Proper Transactions under the Nevada LLC**

The company you are forming is intended to be a separate legal entity, and all transactions should be consistent with that intent. Cash or other assets should only be transferred to members of the LLC to make distributions consistent with the terms of the operating agreement and/or under applicable law, including the payment of reasonable compensation for services performed by the members on behalf of the LLC, and/or reimbursement to members for reasonable expenses incurred on behalf of the LLC. If assets owned by a member of your LLC are used for the benefit of the LLC, these circumstances should be memorialized in written form (i.e. written lease, written licensing agreements, written rental agreements, written loans, etc.). The company may be disregarded as a separate legal entity if legal formalities are not followed, especially with respect to the ownership of assets, accounting and loan records, and tax returns.

### **Creditor Protection of the Nevada LLC**

A properly maintained and managed Nevada LLC can effectively shield its members from liability to third party creditors. In Nevada, the sole exclusive remedy of a judgment creditor is the receipt of a charging order. The charging order is designed to limit the judgment creditor of a member to that particular member's share of distributions from the LLC, without conferring any voting or management rights upon the judgment creditor. The underlying premise of the charging order is to prevent the judgment creditor from seizing the actual assets of the LLC through execution and levy, which enables the LLC to continue to conduct business with its assets. The prospect of waiting for a distribution from a LLC after the expense of a lawsuit and judgment is generally unappealing to the judgment creditor, and may even discourage the filing of a lawsuit altogether.

### **Conclusion**

Through proper maintenance of your Nevada LLC, the statutory protections of limited liability are made available to you in your business endeavors. If you need any further information or would like to discuss these issues with one of our attorneys, please contact us at (702) 438-7878 or write to [office@anthonybarney.com](mailto:office@anthonybarney.com).