

Missouri LLC User Guide

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Introduction

The main purpose of operating your business through a limited liability company is to limit your personal liability in the operation of the business. Under Missouri's Limited Liability Company Act, the owner of a Missouri LLC is not personally liable for the debts or obligations of the LLC, or for judgments against the LLC. However, this protection is not absolute. Making sure that you properly form and operate your LLC will reduce the risk of you incurring personal liability for the debts and obligations of the LLC. This Missouri LLC User Guide introduces you to some of the principles of the proper formation and operation of your Missouri LLC. The information in this guide is basic but critical to maintaining the liability protection afforded by your LLC. We hope you find it helpful.

LLC Formation

Properly forming your LLC is the first step in maintaining your LLC protection. Your LLC will provide no protection to you if a court finds that it was not properly formed. Registering your LLC with the state of Missouri does not alone form your LLC. In addition to properly registering the LLC, you must enter into a valid operating agreement to complete the process of forming your Missouri LLC, even if you will be the sole owner of the LLC. Among other things, the operating agreement identifies the owners of the LLC, who has the authority to act on behalf of the LLC and the scope of that authority. It additionally describes the obligations and rights of the owners and managers of the LLC, and it will provide for either the continued operation of the LLC, or its dissolution, in the event one of the owners becomes incapacitated or dies. Retaining legal counsel to assist you in properly registering

the LLC and in drafting a valid operating agreement is usually money well spent.

LLC Management

After properly forming your LLC, you need to properly manage it in order to maintain the personal liability protection afforded by your LLC. First and foremost, you must operate the LLC separately from your own personal money and assets. This means that you must open a bank account in the name of the LLC. You can contribute your personal money to the account of the LLC (we suggest that you formalize this by a promissory note), but once you deposit the money into the bank account of the LLC, you should never use that money for your own personal benefit. Once you deposit money into the account of the LLC, it belongs to the LLC. That means that you can use that money only for the expenses of the business. Never use LLC money to pay for your personal expenses, like groceries, utilities for your house, your home mortgage or the payment of a loan for a vehicle titled in your name.

There are generally two ways to take money from the LLC for your own personal use: 1) pay yourself a salary as an employee of the LLC, or (2) cause the LLC to make a distribution to you. Regardless of which method you use, make sure you properly document the transfer. In the case of payment of salary, create an employee file for yourself, like you would if you hired another person to work for the LLC. Draft a job description that describes in some detail what you will provide to the LLC in exchange for the salary. Track your performance, such as hours worked per week, as you would for a regular employee, and pay yourself a regular salary like a typical employee. You can also build in bonuses and commission. If the LLC is your employer, then set up all of the systems necessary to clearly demonstrate this.

If you want to transfer money from the LLC by a distribution, then you should clearly document such transfer as a distribution. One method is to issue a check from the account of the LLC made payable to you and writing “distribution” in the memo line. (If the LLC has multiple owners, then typically whenever any distribution is made, each owner will be entitled to receive a portion of the distribution according to their percentage ownership of the LLC.) Maintain a financial ledger for the LLC and make an entry for each distribution made by the LLC. If possible, take distributions from the LLC at regular intervals, such as monthly, quarterly or biannually, rather than only when you need cash for your personal use. This will make the distributions look more like a return on investment rather than you dipping into the LLC bank account to cover personal expenses.

Additionally, although the business revenue of the LLC might vary significantly from time to time, because of seasonality or other factors, you should try to keep in the LLC’s bank account funds that are sufficient to pay for the expenses and financial obligations of the LLC. In Missouri, and many other states, a creditor can “pierce the LLC veil” by showing that the LLC obtained credit by fraudulent means. Having insufficient funds in the bank account of the LLC at the time the LLC obtained credit is presumed fraud, which could lead to a piercing of the LLC veil and a judgment entered against you and the other owners individually. Such under capitalization of the LLC, coupled with the comingling of your personal funds with the funds of the LLC, would in many cases lead to a court stripping you of your LLC protection. Therefore, it is critical that you keep the LLC solvent by not causing it to incur more debt than it can repay and by not using LLC funds for your own personal use.

Finally, the above suggestions relating to the money of the LLC apply equally to the tangible and intangible personal property, and the real estate, owned by the LLC. The LLC will typically acquire ownership of property through a conveyance of title. The LLC

might also acquire certain rights to property by assignment or other means. Property acquired by the LLC can come from you or from one of your partners by way of contribution, the LLC can purchase the property with its own money, or the LLC can acquire property in exchange for property owned by the LLC. (Always consider the tax consequences before transferring property into or out of the LLC.) For example, you can contribute your personal car to the LLC by signing the title over to the LLC just as you would if you sold it to another person. Once title to any property is signed and delivered to the LLC, or an interest or right is assigned to the LLC, it becomes the property of the LLC. Just as you may not use money of the LLC for your personal benefit, you may not use the property of the LLC for your personal benefit. Using money or property of the LLC for your personal benefit places your LLC protections at significant risk.

If you want to use LLC property for your personal benefit, then you might structure such arrangement so that you are compensating the LLC for your use of the property. For example, you might consider causing the LLC to lease a vehicle that you would then use for your personal benefit, but you should do this only if such arrangement is properly structured, such as perhaps as part of your compensation package. Consult a licensed attorney and CPA before structuring the personal use of LLC property, as such structure will likely involve legal and tax consequences.

Accounting

Properly accounting for the revenue, expenses, liabilities and assets of the LLC will help you avoid comingling the money and property of the LLC with your personal money and property, thereby helping to maintain the personal liability protection afforded by your LLC. Maintaining accurate and current accounting books is also good evidence in court of the existence of the LLC as a legal entity separate from you, thereby reducing the risk of a piercing of

the LLC veil and the elimination of your personal liability protection.

Fraud

The personal liability protection provided by your LLC will not shield you from personal liability for your acts of fraud. You could also in some circumstances be personally liable for the fraud committed by others acting on behalf of the LLC. Missouri courts generally define fraud as a willful act of deceit done for the purpose of inducing another person to act to their own detriment. False statements or misrepresentations regarding material facts are fraud, as is the concealment of facts material to a transaction. Providing false financial records of the LLC to a creditor in order to induce the creditor to lend money to the LLC is fraud. The personal liability protection of the LLC will not shield you from personal liability for such acts. There are many degrees and shades of fraud. Therefore, in order to avoid the risk of losing the personal liability protection of the LLC, you must at all times conduct yourself with integrity and avoid the perception of misleading those with whom you interact on behalf of the LLC.

Document Execution

Finally, how you sign documents on behalf of the LLC is critical. Whenever you sign anything on behalf of the LLC, you must always make it clear that you are acting solely on behalf of the LLC and not on behalf of yourself individually. Therefore, whenever you sign anything on behalf of the LLC, always include the full legal name of the LLC along with the title given to you in the operating agreement. For example, if you are a member of the LLC with the authority, as a member, to enter into the transaction on behalf of the LLC, then above your signature line, if it is not

already printed, you will write out the full legal name of the LLC, then sign your name below the full legal name of the LLC followed by a comma and the word “Member”. The same applies if you are signing on behalf of the LLC as its manager, except you will write “Manager” after your name rather than member.

The operating agreement can provide for traditional officer titles such as president, vice president, secretary, etc. If the operating agreement provides such title to you, and if the operating agreement grants to you, in that capacity, the authority to enter into the transaction on behalf of the LLC, then you will use that title after your signature.

Signing your name as described above clearly demonstrates that you are acting on behalf of the LLC only and not on behalf of yourself individually. Failing to clearly indicate next to your signature the capacity in which you are signing the document can lead to you being sued individually in the event that the LLC fails to perform its obligations described in the document. Once sued individually, the court could enter a judgment against you for which you would be personally liable. This risk can be significantly reduced by making it clear, whenever you sign a document on behalf of the LLC, that you are acting solely on behalf of the LLC and not on behalf of yourself individually

About Us

Sewell Law, LC, d/b/a Sewell Law, is dedicated to helping small business owners and startups succeed by offering high quality legal services at an affordable price. Sewell Law, LC is owned by Michael Sewell. Michael earned his MBA in 1988, and he earned his JD in 1997 at St. Louis University School of Law. Michael has litigated numerous business and real estate matters, formed limited liability companies, and advises clients on a wide range of business

issues. Michael is licensed to practice law in all Missouri state courts, in the U.S. Eastern District Court of Missouri, in the U.S. Eighth Circuit Court, and in the U.S. Bankruptcy Court for the Eastern District of Missouri.

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