

FLORIDA LIMITED LIABILITY COMPANIES:

Information for the Consumer

(from the Florida Department of State Website)

A Florida Limited Liability Company is a very popular way to do business or hold property. Here are some important things to know about a Florida Limited Liability Company.

This information summarizes how a Florida Limited Liability Company ("LLC") operates and what needs to be done to preserve the limited liability company status once the LLC's Articles of Organization have been filed by the Florida Department of State and an organizational meeting has been held. To insure the continued existence of the separate limited liability company entity, the following considerations should be reviewed and observed by the limited liability company employees, managers, and members.

1. The managers or members should devise an operating agreement to govern the operations of the limited liability company, and should maintain proper records consistent with the forms contained herein.
2. A Florida limited liability company is neither a corporation or a partnership. It is instead a distinct type of entity mingling the characteristics and powers of a corporation and a partnership. The owners of an LLC are called "members", not partners or shareholders. Unlike a corporation, which has Articles of Incorporation accompanied by By-Laws, an LLC uses an "Operating Agreement" that details how the entity will be run. The Operating Agreement is not filed with the Florida Department of State and changes do not need to be filed with or approved by the state.
3. Once an LLC has been successfully formed under state law, if the LLC does not elect its classification, it will automatically be classified as a partnership (for a multi-member LLC) or a sole proprietorship (for a single-member LLC) for federal income tax purposes. Regulation 301, 26 CFR Part 1. Absent an election to be taxed like a corporation, an LLC will be required to file the same federal tax forms as a partnership or sole proprietorship and can take advantage of the tax allocation methods used for partnerships. Partnerships and LLC's specify in their partnership or Operating Agreement how the profits and losses of the company will be allocated among the members. This allows members to customize their allocations and not base them solely upon the percentage of ownership they possess in the company. Profits and losses from the LLC that are passed through to the members are reported on their individual income tax forms and paid at their individual tax rate.
4. Funds collected by a limited liability company as FICA taxes and payroll withholding taxes must be paid as provided by law, or the persons responsible for not doing so may be held personally liable. This liability is separate from that imposed upon the LLC as an employer. The statutes imposing such liability are broad in scope and may be enforced against all officers or other personnel whose duties relate to the withholding function.
5. All Limited Partnerships, Limited Liability Companies, and General Partnerships formed in the State of Florida are required to pay an annual fee of \$138.75. The annual fee is to be received no later than May 1st of each year (the fee is \$538.75 if filed late).
6. If the LLC plans to engage in retail or rental business or perform taxable services, it must register with the Florida Department of Revenue to make arrangements to pay sales and use taxes before it begins conducting business in the state.
7. A Florida LLC is required to have a registered agent and a registered office, both of which must be

reported the Florida Department of State. Florida Statutes, Section 608.415.

8. The LLC must conduct business at all times under the name specified in the Articles of Organization. There can be no deviation from use of this name unless an appropriate fictitious name registration has been filed. Letterhead, invoices, and stationary should be ordered to reflect the full, correct company name.

9. If the LLC opens an office or acquires property in another state, it may be required to qualify as a foreign limited liability company before it will be authorized to do business in that state. This will generally involve filing a Certificate of Authority in the other state and paying the required fees. Consult an attorney regarding the particular requirements in each state. Failure to qualify may prohibit the LLC from suing to enforce its contracts in that state or from receiving actual notice in the event it is being sued.

10. The LLC's tax professional should be kept informed about all of the limited liability company's business activities. All assets transferred to the limited liability company should be appropriately entered in the company's books, and any such assets become the property of the limited liability company. A tax professional should also advise the company regarding whether the company's fiscal year should end on a date other than the calendar year end, whether any tax elections should be made, and how to prepare and file required tax returns.

11. Make certain that any business insurance is transferred to the LLC, either by assignment or binder. Promptly consult with an insurance agent regarding how such transfers should be accomplished and what other forms of insurance may be recommended for the LLC.

12. It is extremely important to maintain the formal integrity of the limited liability company entity. The LLC is considered by the law to be a separate person, apart from its members and organizers. This structure, and the limited personal liability that goes with it, must be protected. To ensure proper adherence to limited liability company formalities, it is vital that all important transactions in the business be reflected in written minutes of meetings of managers or members, even where there is only one member.

13. Whenever people sign on behalf of or for the limited liability company, they should add their title next to the signature so that it will be clear that they are acting as an agent of the company rather than in their individual capacity. For instance, if you sign a contract with just your name and do not state your relationship to the limited liability company, next to your name in the contract, you may be held personally liable for the contract. An example of the correct signature would be:

ABC Farms, L.L.C.

By: _____
John Smith, Manager

14. Any LLC bank and checking accounts should also reflect the company name. If necessary, a new bank account should be opened in the name of the limited liability company. This transaction should be accomplished easily by completing a limited liability company resolution that authorizes the company to open a bank account.

15. Any loans or banking activities should be conducted in the company's name rather than in the name of any individual or that individual could become personally liable for the obligations. If a loan is made and the lender requires someone to endorse or guarantee the loan personally, such an action should be approved by the managers and reflect the approval in an appropriately drafted resolution that is adopted and inserted into the company's minute book.

16. Actions of the managers or members may be taken at an actual meeting or by unanimous written consent. Whenever a meeting is held, written minutes must be created documenting the actions taken at the meeting.

17. If the limited liability company proposes to engage in a transaction affecting the basic structure or existence of the limited liability company, such as a merger or conversion with or an acquisition of another limited liability company, a reorganization in another state, or a dissolution of the company, it is strongly recommended that counsel be consulted to insure that all of the necessary documents and consents are prepared, executed, and where necessary, filed with the appropriate governmental authorities.

18. The LLC will be a member-managed company, unless the Articles of Organization or the Operating Agreement state otherwise. In a member-managed company, management is vested in the members in proportion to the current percentage of the company owned by all the members.

19. Principal officers and managers of every limited liability company must be mindful of the following specific and important duties and responsibilities:

- Payments of Salaries to Employees. Officers responsible for the payment of salaries must see that the limited liability company pays those salaries. Managers establish salaries for the officers.
- Payroll Taxes. The limited liability company must pay all payroll taxes. Nonpayment may result in personal, civil or criminal liability to the officers and the managers.
- Duty to Inspect. Managers have the absolute right to inspect all company record books, records, documents and property at any time. If they do not exercise that right, they may be held liable for negligence in the event that the company suffers a loss or it's creditors suffer loss by reason of failure to exercise diligence in such matters.

20. Managers and managing members should remember that they owe a duty of loyalty and a duty of care to the business. They cannot compete with the business before dissolution, they must refrain from grossly negligent or reckless conduct, and they must account to the company for any property, profit or benefit derived by the member from the company. Florida Statutes Annotated, Section 6-18-405.

21. The limited liability company should hold an annual members' meeting. At that meeting, there should be a discussion and review of the business activities that have transpired during the previous year. The waiver of notice of the annual meeting should be used to set the time and place of the meeting and, if signed by all members, will dispense with the requirement of giving formal notice of the annual meeting.

22. The members of the company may develop the basic operating rules for the limited liability company, called the Operating Agreement. The Operating Agreement functions similarly to "by-laws" in a corporation. It reflects the structural framework of the limited liability company and should be consulted any time the limited liability company intends to take action. Members may not include provisions in the Operating Agreement that are contrary to the Act, but many of the default provisions in the Act can be modified by consent in the Operating Agreement.