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BUSINESS FORMATION

1. CORPORATION:

A. What is a corporation?

A corporation is an entity formed and authorized by law to act as a single person although constituted by one or more persons and legally endowed with various rights and duties including the ownership of property and succession.

A corporation is a distinct legal entity that is separate from its shareholders.

B. Why incorporate?

- (1) Limited liability for the owners.
- (2) Perpetual existence of the business.
- (3) Free transferability of ownership interest.
- (4) Simplicity in organization and governance.

C. Drawbacks:

The double taxation of corporate revenue. However, federal law does permit the choice of pass-through tax treatment through selection of S corporation status.

D. Incorporation:

A business is incorporated upon the filing of prepared and executed Articles of Incorporation with the Michigan Department of Consumer and Industry Services Bureau of Commercial Services. In short, the Articles of Incorporation reserves the name of your corporation and identifies its address, the amount of shares issued and states its lawful business purpose.

E. Operation and Management:

The Preparation of By-Laws

The by-laws are the governing rules for the operation of your corporation. The by-laws set forth rules concerning voting meetings, director and officer elections as well as policies concerning management duties, finances and record keeping.

Minutes.

The minutes represent the record of shareholder and board of meetings as well as the approval of corporate actions.

2. LIMITED LIABILITY COMPANY:

A. What is a Limited Liability Company?

A LLC is basically a cross between a corporation and partnership that combines the favorable attributes of both entities.

An LLC is an unincorporated entity under which neither its members nor its managers are personally liable for its obligations and debts. The Michigan Limited Liability Company Act governs a LLC.

An LLC can own and transfer property.

B. Why form a LLC?

An LLC not only provides its members with the protection from individual liability, but also avoids the hazard of double taxation. An LLC, for tax purposes, is treated as a pass through entity and is not subject to federal income tax at the entity level. All items of income, gain loss, deduction and credit pass through directly to the owners of the business.

The liability protection and pass through tax attributes are very desirable to a sole proprietor.

The LLC has basically replaced the joint venture that is a contractual vehicle between individuals or businesses that wish to conduct business for a limited purpose and duration. The joint venture arrangement cannot protect its individual members from personal liability.

C. Formation:

Articles of Organization:

The Articles of Organization create the LLC and must be filed with the Michigan Department of Consumer & Industry Services. This document identifies the distinct name of the LLC, its lawful business purpose and identity and location of resident agent as well as duration of the LLC if other than perpetual.

D. Operation and Management:

Articles of Organization:

The Articles of Organization provides the basic rules that the LLC managers and members must follow in the operation management and dissolution of the LLC. The Articles can be crafted to suit the individual needs of your business.

3. **PARTNERSHIPS:**

A. **What is a Partnership?**

In Michigan, partnerships are defined and governed by the Michigan Uniform Partnership Act. A partnership is an association of 2 or more persons who carry on as co-owners of a business for profit. MCLA 449.6. Under Michigan law, a partnership is a distinct legal entity separate from the individual partners.

B. **Why Form a Partnership?**

A partnership offers its partners with flexibility as all partners have the authority to act on behalf of the partnership. Further, partnerships have the benefit of avoiding the double taxation consequences found with corporations. A partnership can own and transfer property.

C. **Drawbacks:**

All of the partners are personally liable for the debts and obligations of the partnership. A limited liability partnership can be formed to shield an individual partner from personal liability arising out of the negligence and omissions of other partners and employees not under his direct control or supervision. However, that partner is still personally liable for his own wrongdoing as well as that of employees under his direct supervision

D. **Formation:**

-A partnership can be expressly formed or implied by law.

Certificate of Co-Partnership

A Certificate of Co-Partnership identifies the existence of the partnership, the identity of the partners and the primary business purpose. The Certificate if filed in the county in which the business is conducted or primary office is located.

E. **Operation and Management:**

Partnership Agreements:

Partnership Agreements set forth the rights and obligations of the individual partners, allocation of ownership interests, amount of capital contributions, transferability of ownership, allocation of profits and losses as well as dissolution issues. Limited liability language can be included as well.