

## HOW TO OPERATE YOUR COMPANY TO MINIMIZE TAXES AND PROTECT FROM LIABILITY



Designing the right legal entity with proper drafting and “key words” is the essential starting point for protecting oneself from lawsuits and minimizing taxes. Forming a Limited Liability Company or Corporation establishes a presumption of the company’s separate existence.

Your responsibility is now to maintain the presumption of the company’s separate existence by operating your company following well-established guidelines. Doing so will allow your company to protect you from personal liability and to allow you to pay the legal minimum in taxes. Failure to operate your company properly will “undo” the advantages you now have from a properly structured company.

The key point is to maintain the company as an entity separate from you and with its own identity and existence. In a lawsuit, the plaintiff will attempt to argue that your company is nothing more than your “alter ego”; i.e, that it has no separate existence from you. If this argument is successful, the plaintiff will “pierce the veil” of your company and be able to seize your personal assets to pay a judgment against the company.

The following are ways you must operate and maintain your company so that it clearly has its own identity and existence separate from you.

1. Ensure that your company is in good standing with the state in which it was filed by checking with the state website every 8-12 months. In most states you can search under your state’s name followed by “secretary of state”. Under the “business” or “corporation” tabs you can do a “business search” by entering your company’s name. You will then see all of the company information and will want to see that your company’s status is “active.”
2. Timely file any reports required by your state and pay any renewal fees. This is necessary to maintain active status described in “1” above.

3. Make sure that the registered agent address is current. If you are the registered agent and you move, file the required form with the state to update your address.
4. Open a bank account for the company. Have checks printed with the company name. Pay for company expenses out of company accounts – never from your personal account.
5. Register the company with any other state agency necessary to maintain compliance with state law, such as with the state Department of Revenue, i.e., the taxing authority of the state. Also apply for a business license if required. .
6. Obtain from the IRS an EIN (Employer Identification Number) for the company, also called a “taxpayer identification number”.
7. At all times, hold the company out to all third parties as a legal entity separate from its members and any other person or entity. Thus when signing agreements, sign in the name of the company: “Such and Such LLC, John Doe, Manager.” This indicates that the company is conducting business in its own name.
8. Correct any known misunderstanding regarding the company’s separate identity. Do not allow the company to be identified as a department or division of any other person or entity.
9. Do not commingle the company’s funds with your personal funds. Pay members or employees out of company accounts. Never pay a member’s personal expenses from company accounts.
10. Pay company expenses using company checks and invoice receivables in the company’s name.
11. Maintain separate books and records for the company. If maintaining financial records is not your strong point, hire a bookkeeper to do so. Also, hire an accountant to file the company’s tax returns and advise you on deductions you should take. If you need a good CPA, we can refer you to one.
12. Keep all company documents, such as Articles of Organization, Operating Agreement, Minutes, Resolutions, Membership Certificates and EIN letter in a binder or file.
13. Ensure that the company is solvent and maintain adequate capital for its intended business purpose. Obtain the appropriate kind of insurance for your business, such as Premises Liability insurance for real property owners or Errors and Omissions insurance for other kinds of businesses.
14. Do not pledge or guarantee the company’s assets for the benefit of any other person or entity.

15. Document major actions and decisions of the company with a written Resolution, such as opening a bank account, applying for credit, purchasing real property, etc. We have provided you with Resolutions of this kind in the documents we have sent you and you may use them as a template for future resolutions.

16. You should read and be familiar with the company's operating agreement and then operate the company in accordance with the terms of the operating agreement.

17. Draft annual Minutes of the company documenting what the company has done and plans to do in the coming year. We have provided Minutes in the documents we sent you and you may use these as a template for future minutes.

18. Apply for a business debit or credit card to allow you to pay business expenses and more easily keep a record of your business expenses.

