

From the desk of:
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MEMO RE LIMITED LIABILITY COMPANY STATUS

1. **INTRODUCTION.** This Memo should be read in conjunction with our “Memo Regarding Choice Of Business Entity.” This Memo is an introduction to various issues. In this memo we:
 - Summarize what it means to be an **LLC**.
 - Discuss guidelines for maintaining an **LLC’s** separate status.
 - Describe various **LLC Documents**.
2. **DEFINED TERMS.** Defined terms (capitalized and/or in bold) have the following meanings:
 - 2.1. **Act.** The Washington Limited Liability Company Act, as codified in Title 23.15 of the Revised Code Of Washington.
 - 2.2. **Company.** 1201 W Nickerson LLC, a Washington limited liability company.
 - 2.3. **Company’s Professionals.** The **Company’s** accountant, attorney and other consultants.
 - 2.4. **Company Documents.** Written evidence of the **Company’s** creation, existence and decisions. This term does not include contracts with third parties, nor financial records.
 - 2.5. **Interested Persons. Members** and/or **Managers**.
 - 2.6. **LLC.** Washington limited liability companies in general.
 - 2.7. **Management.** The **Member(s)** charged with managing the **Company**. Management may be a **Manager**, some of the **Members**, or all of the **Members**. The **Operating Agreement** controls.
 - 2.8. **Manager.** A person vested with management of the **Company**, as defined by the **Act**.
 - 2.9. **Member(s).** A **Unitholder** who have the right to vote and participate in the affairs of the **Company**.
 - 2.10. **Minutes.** Memorialization of the **Company’s** deliberations and decisions.
 - 2.11. **Operating Agreement.** The agreement between **Members** establishing and defining the **Company**.
 - 2.12. **Unit.** Units of ownership in the **Company**.
 - 2.13. **Unitholder.** One of the owners of the **Company**.
3. **FORM OF ORGANIZATION.**
 - 3.1. **Entity.** The characteristics of a **Company** include:
 - **Administration.** It has flexibility of **Management**. **Management** can be delegated to a **Manager**, centralized in a “Board Of Directors,” or shared by all of the **Members**.
 - **Existence.** It can be perpetual.
 - **Shield.** It provides a shield/limitation against personal liability.
 - **Status.** It is a separate legal entity.
 - **Units.** It’s ownership is evidenced by **Units**, which is easily transferable (subject to legal and contractual limitations).
 - 3.2. **Tax Impact.** The **Company** is treated, for federal income tax purposes, as if it were a partnership. Any tax impacts depend upon elections made by the “Tax Matters Partner.” There will be little, if any, tax advantage or detriment (compared to being taxed individually) with the **Company** format.
 - 3.3. **Technical Requirements.** You must comply with the technical requirements of maintaining a separate entity to benefit from having an **LLC**. The following are guidelines in order to maintain your **Company** as an independent entity.

4. **DOCUMENTS.** The **Company's** existence and activities are evidenced by numerous **Company Documents**. **Company Documents** should be kept where they are readily accessible, such as in a "Company Minute Book." Copies of all **Company Documents** should be kept off-site. The **Company Documents** include the following (the ones with '*' are optional):

- 4.1. **Certificate Of Formation.** These are required by the **Act** to establish the **Company**. They contain minimum information. The "Certificate Of Formation" must be filed with the Secretary Of State.
- 4.2. **Annual Report.** An "Annual Report" will have to be completed and filed with the Secretary of State, subject to an annual fee.
- 4.3. **Company License.** This is evidence from the State that the **Company** is a validly existing entity. The license is valid for one year and is renewed through the filing of the "Annual Report."
- 4.4. **Indemnity Agreement*.** An agreement between the **Members** sharing the risk of personal liability by requiring allocation of all personal liability between the **Members** in proportion to their respective **Unit** ownership.
- 4.5. **Minutes.** The **Company** should create and maintain **Minutes** of its annual meeting and in order to memorialize material decisions.
- 4.6. **Operating Agreement.** The **Operating Agreement** contains the nuts and bolts of the **Company**. It includes, amongst other things, provisions regulating the:
 - Issuance of **Units**.
 - Rights and obligations of each **Unitholders** with regard to the **Company**.
 - Rights and obligations of each **Unitholders** with regard to each other **Unitholder**.
 - Transfer of **Units**.
 - **Management**.
- 4.7. **Unit Certificates*.** The physical evidence of ownership of the **Company**.
- 4.8. **Receipt For Units*.** An acknowledgment from each **Unitholder** that their **Units** have not been registered with the Securities Exchange Commission and is not readily transferable. This creates a blueprint for resolving differences and withdrawing as a **Member**.

5. **ENTITY MATTERS.**

5.1. **Separate Entity.** You must deal with the **Company** as a separate legal entity. Transactions between the **Company** and **Interested Persons** should have the same formalities that would be observed when transacting business with a stranger. Transactions between the **Company** and **Interested Persons** should be approved by non-interested **Members**.

5.2. **Registered Agent And Office.** The **Act** requires that the **Company** maintain a "Registered Office" with a "Registered Agent." The Registered Agent is the legal recipient of formal correspondence from the State and of legal process (such as law suits). The "Registered Agent" must maintain a "Registered Office." The initial "Registered Agent" and initial "Registered Office" are set in the "Articles Of Incorporation." Either may be changed by formal notice to the Secretary of State.

5.3. **Company Name.** You must use your **Company** name exactly as it appears in your "Certificate Of Formation," letter for letter and symbol for symbol. Any deviation must be registered as a "Trade Name" with the State. The "Trade Name" registration is part of the "Master Business Application." In this connection, use the **Company's** name on ALL:

- Accounts, including those with financial institutions, vendors, governmental entities, utility providers, etc.
- All contracts to which the **Company** is a party.
- Directories, such as building, telephone, internet and professional.
- Government forms, including licenses and tax returns.
- Printed materials, including stationary, business cards, checks, statements, purchase orders, invoices, etc.
- Other situations that require the use of a firm name

If you were doing business prior to incorporating, you should send a written notice to all persons and entities

with whom you do business, informing them of the **Company's** existence.

5.4. **Signing Documents.** Any and all documents signed on behalf of the **Company** must be signed in your representative capacity. Every signature must be in your capacity as an officer, director or other authorized agent of the **Company**. The following is an example of a proper **Company** signature:

“MY COMPANY LLC” (official **Company** name)

By: _____
Janet Jones, its “Manager “(name **and** title of person signing)

5.5. **Licenses And Permits.** All necessary governmental business licenses and permits (Federal, State, County and/or City) should be obtained prior to engaging in business activities. Each registration must be in the name of the **Company**. Confirm with the **Company's Professionals**.

5.6. **Termination And Dissolution.** A **Company** is dissolved by the **Members, Managers, Court** order or State action, e.g. failure to timely file or pay the annual report and renewal fee. Neither the **Company**, its employee benefit plans, nor any contractual obligation should be entered into, terminated or amended before consulting with the **Company's Professionals**.

5.7. **Transfer Of Units.** Transfer of **Units** is controlled by the **Operating Agreement, State** and federal law.

6. **FINANCES.**

6.1. **Capitalization.** The **Company** must be capitalized (funded) as follows:

- The initial capitalization is through the contribution of cash or other assets in exchange for the issuance of **Units** to the contributor.
- Additional capital may be through the contribution of cash or other assets in exchange for the issuance of **Units** to the contributor (either increasing the investment of an existing **Unitholder** or to a new **Unitholder**).
- Issuing **Company** debt in exchange for money. The **Company** cannot borrow funds until after the initial **Units** have been issued.

Unitholders must transfer the appropriate assets/amount of cash to the **Company** prior to the **Units** being issued. These transactions are limited by State statute, taxing statutes, securities laws and **Company Documents**. These transactions must be reviewed in advance by **Company's Professionals** and properly memorialized.

6.2. **Tax Status.** The **Company** must have an Employer's Tax Identification Number (“EIN”) issued by the Internal Revenue Service. The **Company** must register with state taxing authorities (through the “Master Business License Application”) and with local authorities. The **Company's** accountant can assist you in preparing the necessary forms. We do not provide any tax services, unless set forth specifically in writing by us.

6.3. **Segregation Of Assets.** The **Company's** assets and affairs must be kept separate from the personal assets and affairs of **Interested Persons**. **Company** bank accounts must be established and used for all **Company** receipts and disbursements. All assets owned by the **Company** should be entered upon the books of the **Company**. All personal disbursements should be paid through personal accounts. All **Company** disbursements should be paid through **Company** accounts. If you are short of funds, transfer to where needed and have the proper party make the disbursements. Prepare and maintain written evidence of all transfers between **Interested Persons** and the **Company**. Do not commingle personal and **Company** assets.

6.4. **Accounting.** Proper accounting is mandatory. **Management** is responsible for timely complying with appropriate accounting practices.

7. **MEETINGS/MINUTES.**

7.1. **Overview.** Material **Company** decisions should be memorialized through “Resolutions” contained in **Minutes**. **Minutes** can be of a meeting, or of an agreed decision without a meeting. The **Minutes**:

- **Liability.** Provide a basis for avoiding personal liability.
- **Record.** Provide a reference regarding past decisions.
- **Taxes.** Assist in supporting tax deductions and obligations.

7.2. **Mechanics.** The **Minutes** should be transcribed by a **Manager**, a designated **Member**, or transcribed by the **Company's** attorney under the direction of **Management**. **Member's** Meetings should be held as set forth in the **Operating Agreement**, but at least once each year.

7.3. **Management. Minutes** should address such matters as:

- **Banking.** Approving banking relationships and requirements and the borrowing of funds.
- **Committees.** Designating and appointing committees.
- **Contracts.** Negotiating and approving contracts that bind the **Company**.
- **Dispositions.** Disposing of assets other than in regular course of business.
- **Distributions.** Approving the distribution of assets to **Unitholders**.
- **Employment.** Hiring or firing of key employees and appointing or revoking agents.
- **Every Day.** Conducting the everyday business and affairs of the **Company**.
- **Licensing.** Complying with licensing requirements.
- **Membership.** Determining if **Unitholders** can become **Members**.
- **Ratifying.** Ratifying the prior years' activities.
- **Status.** Approving changes in status, including mergers and liquidations/or consolidations.
- **Taxes.** Authorizing the preparation of all necessary tax and other governmental returns and timely paying all taxes due.
- **Units.** Creating and issuing **Units**.

8. **INDIVIDUAL DUTIES.**

8.1. **Interested Persons.** The **Interested Persons** are key to the **Company's** success, and have the most to gain by its success.

8.1.1. **Unitholder(s).** The **Company** is wholly owned by its **Unitholders**.

8.1.2. **Members.** Management of an **LLC** is usually vested in the **Members**.

8.1.3. **Managers.** **LLC's** have the option to be managed by **Managers**. The **Operating Agreement** controls the division of **Management** between **Members** and **Managers**.

8.2. **Responsibilities.** The responsibilities of **Interested Persons** include:

8.2.1. **Administrative.** Each **Member/Manager** has potential personally liability for:

- **Company Transactions.** Improperly declaring dividends or repurchasing **Units**.
- **Employee.** Failing to pay any employment salary, benefits or taxes when due.
- **Fraud.** Fraudulent entries in the **Company Documents**.
- **Insurance.** Failing to maintain adequate insurance coverage.
- **Legal.** Failing to comply with applicable statutes, ordinances, rules and regulations.
- **Licenses.** Failing to properly maintain the **Company** and all other required licenses.
- **Supervision.** Failing to properly supervise operations.

8.2.2. **Compensation.** Elaborate compensation plans, such as profit sharing plans, pension plans, and the like should be submitted to **Management** for their approval.

8.2.3. **Conflicts-Potential.** An **Interested Person** may not compete with the **Company** nor personally profit from business opportunities available to the **Company**, unless first approved in writing by the **Company** and the other **Unitholders**.

8.2.4. **Disbursements, Salaries And Units.** **Management** may declare dividends, establish salaries and issue **Units**. There are complex statutory and tax implications upon the issuance of **Units** and the declaration of disbursements.

8.2.5. **Duty To Inspect.** A **Member** has the right to inspect all of the **Company's** books, records, documents, and property at any reasonable time. A **Member** and/or **Manager** can be personally liable if the **Company** or its creditors suffer loss due to **Management's** failure to exercise diligence.

8.2.6. *Loans To Directors Or Officers.* If the **Company** loans money to any **Unitholder** or **Manager**, the loan first must be approved by a super majority (over 50%) of the **Member's** votes and recorded in the **Minutes**.

9. **LIABILITY/INSURANCE/INDEMNITY.**

9.1. *General Rule.* One of the main advantages of establishing an **LLC** is that it limits the individual liability of **Unitholders** for obligations of the **Company**.

9.2. *Ignoring Company Form.* Sometimes the **Company** entity is disregarded by the Courts, and **Interested Persons** are individually liable for the **Company's** obligations. Some of the factors that can create personal liability include where:

- *Co-Mingling.* A **Unitholder** treats the assets of the **Company** as his/her own and/or treats personal assets as belonging to the **Company**.
- *Capitalization.* The **Company** does not have sufficient capitalization for normal operations.
- *Formalities.* Failure to follow **Company** formalities, such as not naming **Company**.
- *Statutes.* Statutes that create personal liability under a variety of circumstances, such as willful failure to pay salaries to employees, failure to pay certain taxes and environmental.
- *Torts.* A **Unitholder** acts or does not act.
- *Voluntary.* A **Unitholder** agrees to be personally liable for **Company** obligations.

9.3. *Insurance Coverage.* The **Company** should carry sufficient insurance for all property and operations. You should consult with a qualified insurance professional and review all risks and coverages to protect the **Company** and its **Interested Persons**, employees and agents.

9.4. *Indemnification.* The **Company**, in the **Operating Agreement** and subject to the **Act** can and usually indemnifies its **Members** and **Managers** where they act in good faith and there is no violation of a duty owed to the **Company**.

10. **CONCLUSION.** We hope these comments have been of some help to you. If you need further elaboration, have questions, or need our assistance, please feel free to contact me.

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