

# Why To Consider An LLC

By Elizabeth Green

## What is an LLC?

A limited liability company (LLC) is a formal business arrangement similar to a corporation where the assets and debts of the business are separate from the personal assets and debts of the owners. It can be viewed as a middle ground between a simple partnership and a corporation. While commonly used for small businesses, they can also be effective tools in estate planning.

## Benefits

1. Taxes: LLCs provide pass-through taxation. The members are considered self-employed and any taxes from profits or losses are reported on their personal income tax returns, avoiding the double taxation on profits required of corporations. Single-member LLCs need not file federal tax returns.
2. Limited liability: As the name suggests, LLC members are largely shielded from any liability taken on by the company. The entity is considered separate, and members' personal assets are protected from creditors in the event of the business accumulating debt, and from damages resulting from lawsuits. Most LLC operating agreements include a liability clause stating this.
3. Flexibility: Compared with corporations, LLCs have greater flexibility in management requirements. It can be member-managed or managed by a manager selected by the members, and there are no legal requirements for annual meetings. An S-Corp, another pass-through entity option for small businesses, has greater restrictions on membership.
4. Credibility: The initials at the end of the business name give it an air of respectability that may not be afforded to a simple sole proprietorship.
5. Easy to form: Many states now have portals on their official government websites to register new LLCs, such as Maryland Business Express. The site also serves as a platform to receive the Articles of Organization and file annual reports.

## Drawbacks

1. Cost: Forming and maintaining an LLC is more expensive than a sole proprietorship or partnership. In addition to the initial formation fee, many states also require ongoing fees such as annual reports or franchise tax fees.
2. Transferring membership: LLC membership can be difficult to transfer. In a corporation, shareholders can sell their shares to another party, absent a shareholder agreement to the contrary. However, LLCs usually require that all members approve of any changes in membership. Adding a clause in the operating agreement outlining the process for transfers is a possible solution.

## Creating an LLC

There are five general steps in creating an LLC. Some specifics in the process may vary depending on the state where the LLC is registered.

1. Step 1. Choose a state for incorporation: The state of incorporation need not be the same state where the members live or conduct business, though this is the easiest and most popular option. If the LLC is registered in a state different from where business is conducted, registering as a foreign LLC may be required.
2. Step 2. Choose a name: Each state has specific requirements for LLC names, but they generally state that the name must include "limited liability company" or "LLC", or some variation; must differ from other business names registered in the state (most states have databases of already incorporated names); and must not contain offensive or misleading words (such as implying that the business is affiliated with the government).
3. Step 3. Choose a registered agent: Every state requires an LLC to have a registered agent to receive important documents and notices on behalf of the business. This person or company must be in the same state as the business. The owner can be the registered

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## LLCs and Estate Planning

LLCs are useful for estate planning due to the ability to bypass taxes.

Almost any asset can be transferred into an LLC, including cash from personal bank accounts, property (this might require approval from the mortgage holder), and personal possessions. The values of these shares can be transferred to heirs as non-managing members of the LLC and incurring less in gift taxes, along with the previously stated tax benefits afforded to LLCs. Also, as manager of an LLC, the owner can maintain control over the distribution of estate assets.

Like a trust, an LLC is an effective method to pass assets on to heirs without going through probate. While trusts are a better choice for avoiding probate and reducing estate taxes, they are best suited for personal assets. However LLCs are more effective at managing business assets such as investment property and offer protection from legal liability that trusts do not. While assets in the form of LLC shares can be distributed during the owner's lifetime, trusts hold assets until the owner's death, when they are then passed on to beneficiaries.

It could be beneficial to utilize both trusts and LLCs, transferring personal assets into a trust and creating an LLC for property or family-owned businesses. Trusts themselves can be named as members of LLCs so the LLC assets avoid probate.

## Corporate Transparency Act

Anyone planning on creating an LLC should remember the Corporate Transparency Act (CTA). Enacted in 2021 but officially going into effect January 1, 2024, the new law requires detailed reporting of beneficial ownership information (BOI), such as names and addresses of the company, and the name, address, date of birth, and identification of the owner, to the Financial Crimes Enforcement Network (FinCEN). Some

companies, such as banks and insurance companies, are exempt from the reporting requirements, but most other business entities need to submit BOI reports, including LLCs. Making this report, and any needed amendments or corrections, is an added responsibility for LLC owners.

Due to the legal and financial complexities involved in creating and maintaining an LLC, it is wise to speak with an attorney and financial advisor before pursuing this path for either business or estate planning purposes. It is also important to review specific state requirements to ensure compliance with local laws and regulations.

We highly recommend speaking with your estate attorney or financial advisor should you have already created an LLC and are not aware of the requirements of the Corporate Transparency Act. Contact our team at [301-468-3220](tel:301-468-3220) or fill out our [contact form](#).

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