

Why is a well written Limited Liability Company Operating Agreement so important?

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You filed a certificate of formation if you're a New Jersey Limited Liability Company ("LLC"), you got a tax identification number, and many people think they are ready to do business. The reality is that you just missed the most important step if you don't have a well written Limited Liability Company Operating Agreement.

You can decide to use one of the free Operating Agreements that comes in your Company Kit, provided by your incorporation agent or it can be prepared by someone without intimate knowledge of New Jersey's New Revised Uniform Limited Liability Company Act. However, these are not wise options, as you would be putting the fate of your company into a document that most likely is a generic form for any LLC (possibly not specific to any state) and it would not consider the unique issues presented by your company or the intricacies of New Jersey's Revised Uniform Limited Liability Company Act.

Remember that every company is unique. Every company's owners, known as members in a LLC, have unique concerns which should be addressed in an Operating Agreement. For example:

1. Who will be responsible for running the company on a day to day basis;

2. Do you want to allow ownership in the company to be freely transferable to anyone, including possibly your competitor;

3. How do you resolve disputes between members: and

4. What happens to a member's interest if they die or are disabled?

These are just a few of the questions that a good business lawyer will ask you prior to drafting your Operating Agreement. Be wary of attorneys who claim they can do an Operating Agreement for a fixed price, or those who do not draft Operating Agreements on a regular basis. The most important thing in preparing a well written Operating Agreement is that the attorney writing the Operating Agreement is asking the right questions, so that the Operating Agreement created for your Company ultimately matches your members' needs as well as your business needs in the long run.

The bottom line is that the Operating Agreement sets forth the rules and regulations that govern your company. In my opinion, a well drafted Operating Agreement is one of the most important documents a Limited Liability Company needs so that it runs smoothly in years to come. I therefore highly recommend you seek out the guidance of an attorney well versed in drafting Operating Agreements.

If you need guidance with drafting a well written Limited Liability Company Operating Agreement, feel free to call me at 732-792-3397 or via email at david@weinsteinlawyer.com.

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