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# Humber Property LLC.

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# Why a LLC for rental properties?



## Advantages

- Asset protection - tenants can't sue for personal assets
- taxes: "pass-through" entity, taxes are paid as an individual.

## Disadvantages

- Cost: legal/insurance fees
- harder to receive finance (loans) due to no personal liability

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# LLC (20a-20b)

## Formation

1. After creating a name, must meet with a registered agent
  - a. Must be located in location that you are forming LLC
2. Hire an attorney to work with to create an articles of organization
  - a. Should include basic details of organization, including name, address, purpose
  - b. Also should include information of how management will be organized
3. After an Operating Agreement must be formed
  - a. Put in writing, business plan, future plans, ownership percentages, rights and responsibilities

# LLC (20c-20d)

## Transferability of Interests:

- Existing members of LLC cannot transfer their ownership rights
- Can't admit new member without unanimous permission of other members.
- Members can share economic interests (right to share profits of the enterprise)

## Duration:

- Most states provide that LLC's existence is perpetual, even if member withdraws.
- Some states say that if one member withdraws (death, retire), the LLC dissolves.

# LLC (20e-20f)

## Going Public as an LLC

- Loses favorable tax status
- Taxed as a corporation
- No well-established set of statutory and case law that is consistent throughout states

## Changing Forms

- Corporations that want to change to LLCs:
  - IRS would consider this change to be a sale of corporate assets
  - Levy tax on these assets
- Others changes:
  - Partnership to LLC & LLC to corporations



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- Founded in 1998 as a private equity firm (LLC)
- First large-scale private equity firm to go public on the New York Stock Exchange in 2007
- Manages over \$43 billion in assets

# Case 1: Ridgaway v. Silk

- Costello and Giordano were members of Silk, LLC, which owned a bar and nightclub in Connecticut, called Silk Stockings.
- Anthony Sulls went drinking there one night and got very drunk.
- Employees at Silk Stockings continued to serve him even though he was obviously drunk.
- Costello and Giordano were working there that night and performed a number of tasks as supervisors.
- When Sulls left the nightclub at 1:45 a.m. with two friends, he drove off the highway at high speed, killing himself and one of his passengers, William Ridgaway, Jr.
- Ridgaway's estate sued Costello and Giordano personally.
- The defendants filed a motion for summary judgment seeking dismissal of the complaint.

*The Question: Are Costello and Giordano personally liable to Ridgaway's estate?*

# Case 1 Continued..

- Argument in favor of Costello and Giordano
  - The defendants did not own Silk Stockings; they were simply members of an LLC that owned the nightclub.
  - The whole point of an LLC is to protect members against personal liability, thus the assets of Silk, LLC, are at risk, but not the personal assets of Costello and Giordano.
- Argument for Ridgaway's estate
  - Defendants are liable for their own misdeeds as employees of the LLC which would be continual serving of alcoholic beverages and failure to recognize when to stop serving alcohol to a clearly drunk person
- Holding
  - Motion for summary judgement denied because the claims against them are not based on the fact that they were members of the LLC but were based on the fact that they were running the nightclub that evening.
  - Trial was held

## Case 2: Ferret v. Courtney

- Eric Ferret and Stephen Courtney founded Sci.X Science Studio a Delaware LLC.
- Sci.X's operating agreement required that all disagreements be decided by arbitration rather than litigation.
- However, neither member ever signed the agreement.
- Five years later, after a series of conflicts, Ferret sued Courtney.
- In response, Courtney filed a motion to dismiss, arguing that the operating agreement required Ferret's claim to be arbitrated.

*The question: Is the unsigned Sci.X operating agreement enforceable? Does Ferret have to arbitrate his claim?*



## Case 2 Continued..

- Ferret argues that the operating agreement is unenforceable because it is not signed by any of the members of Sci.X.
- However, under Delaware law, an LLC operating agreement need not be signed in order to be enforceable.
- Thus, the fact that the written operating agreement was unsigned does not render it unenforceable.
- Nevertheless, unsigned LLC operating agreements still remain subject to the statute of frauds.
- Ferret's only argument is that the operating agreement is incomplete, unsigned, and undated.
- Additionally, Ferret failed to argue as to why the statute of frauds would preclude enforcement of the operating agreement in this case.
- Thus the argument is meritless