

HOT LEGAL TIPS: Foreign objects in food cases

Do You Need a Lawyer to Form a Corporation?



Do You Need a Lawyer to Form a Corporation?

The unequivocal answer is no, go online, fill out the form, give them a credit card. Twenty 20 minutes and \$125 later, you have a corporation. It's that easy.

Should you use a lawyer, is a much more complicated issue.

So, here are some war stories that might illustrate the points impactfully.

A client walks in. He has a business with \$5M in revenue and which is profitable. He formed the LLC himself. There is no operating agreement or any other documentation. He is in a battle with his partner who owns 50% and has locked him out.

So how do I counsel the client? Here's what I have to tell him. There is no operating agreement, so we don't have an agreed method to part ways or buy someone out. We have to look to Connecticut Law on Partnerships to determine what to do and how to do it.

What I'm thinking in my head is that not having an operating agreement means this is going to be difficult and cost a fair amount of money. The law never has the simplified and clear procedures of operating agreements.

In another case, a client walks in. He formed a C corporation himself 10 years ago. One of his tractor trailer trucks hit a car and 2 people were killed. He has insurance, but the limit is \$1 million. The potential liability is more like \$10 million. He is worried about the liability. He asks me about the assets of the corporation being exposed and about his personal liability.

I discover, there is no shareholder agreement, no bylaws, no corporate resolutions, no officers elected, and no minutes. I tell him that the assets of the corporation are exposed to the liability and he could lose them all. I also tell him that normally a corporation shields his personal assets and there is no exposure. However, in this case, there may be some exposure because he has not followed many of the corporate formalities. That means the corporation could be disregarded and he could have some personal exposure.

In a third case, my client had formed a C corporation himself many years ago. The company was successful and he was negotiating a sale for \$10 million. However, the buyer was insisting on purchasing the assets of the corporation rather than the stock. Unfortunately, I had to counsel him that because the corporation was a C corporation and not an LLC or Subchapter S corporation, he faced "double taxation" and potential increased tax bill of \$1 million or more.

From these examples, we can see that lawyers add value in the formation of corporation because they help you make the correct initial decisions and complete additional important documents. These decisions and documents have substantial ramifications and potentially large costs.

These initial decisions are normally about the choice of entity (Limited Liability Corporation, C corporation, S Corporation or Partnership), the state of incorporation (taxes, costs and corporate governance), limited liability, tax elections, licenses, regulation, and intellectual property.

The initial documentation a lawyer will put in place is usually an operating agreement, shareholders agreement, resolutions, and minutes. They will make sure you have the right licenses and adhere to the regulatory standards. They will help minimize the taxes and costs.

Mistakes in the formation of corporations are costly in the long run. If the initial organization is not done correctly and completely, if you choose the wrong form of entity, if you choose the wrong state, or if you don't have an operating agreement, the legal and accounting costs to unravel or correct the errors will be substantial. The tax costs can be very, very significant.

Thanks to our friends and contributors from [Sweeney Legal](#) for their insight into corporations.



[Previous article](#)
The Arizona Divorce Process

[Next article](#)

Divorce Preparation: 5 Finance Tips



ARE YOU A LAWYER?

Have Your Own Tips Published!

[Submit Your Article](#)

RECENT FAQs

[Will the Trump Administration Make Recreational Marijuana Illegal?](#)

[Weed: Where is it Legal and Why?](#)

[Can I Get Fired if Injured on the Job?](#)

[How Do I Hire a Personal Injury Lawyer?](#)

[Assault vs. Battery - What's the Difference?](#)

STAY CONNECTED



VIDEOS

[Do I Have a Case?](#)

[HOT LEGAL TIPS](#)

[What Is a Contingency Fee?](#)

[HOT LEGAL TIPS](#)

[Value of a Case](#)

[HOT LEGAL TIPS](#)

ARE YOU A LAWYER?

Have Your Own Tips Published!

[Submit Your Article](#)

RECENT FAQs

[Will the Trump Administration Make Recreational Marijuana Illegal?](#)

[Weed: Where is it Legal and Why?](#)

[Can I Get Fired if Injured on the Job?](#)

[How Do I Hire a Personal Injury Lawyer?](#)

[Assault vs. Battery - What's the Difference?](#)

STAY CONNECTED



VIDEOS

[Do I Have a Case?](#)

[HOT LEGAL TIPS](#)

[What Is a Contingency Fee?](#)

[HOT LEGAL TIPS](#)

[Value of a Case](#)

[HOT LEGAL TIPS](#)

