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## **FOREIGN ENTITY QUALIFICATION**

### **Where to form your company?**

Once you have decided to create a company, the next question that needs consideration is where to formally, or legally, create your company. The formation of limited liability companies and corporations is accomplished on the state level, and every state (including the District of Columbia) has a department dedicated to the formation and maintenance of limited liability companies and corporations. As such, business owners are presented with many options in choosing the state in which to legally create a company. You may choose to form your company in the state where the business is physically located; or alternatively, choose any other state in the country.

### **Why would you select one state over another?**

Seemingly, limited liability companies and corporations, irrespective of the state in which they were formed, look the same. They seem to provide limited liability to the members and shareholders no matter the state of formation. Why, then, would one state be selected over another for organization or incorporation when the benefits seem comparable?

Because limited liability companies and corporations are created and maintained on the state level, states are free to create their own laws and regulations that govern companies formed in the particular state. Thus, state laws and regulations of limited liability companies and corporations vary quite a bit, and these variances can be used to the benefit of business owners. Every state has its own tax regime and provides varying levels of liability protection to shareholders and company members and managers. Likewise, some states' laws are more favorable to businesses and have a long and established line of case law, which provide the benefit of more predictability as to the manner in which the state courts will decide cases and resolve conflicts.

Business owners may take advantage of another state's advantageous laws and case law by legally forming the company (whether an LLC or corporation) in that particular state. For example, owners of a company transacting business in California, Nevada, Texas and Florida, may wish to take advantage of the greater protection that Nevada affords to company managers, and therefore may wish to legally create their company in Nevada even though the owners and managers reside in California. If a question relating to manager protection arises in California, the California court may apply Nevada law and afford the company managers the greater level of protection provided by Nevada law.

The first step in setting up your LLC is to organize (or form) it in one particular state, which is where your articles of organization will be filed. All other states are referred to as "foreign states." As a general rule, a business entity must register as a foreign limited liability company or corporation in every other state in which it transacts business (other than the one in which it was originally formed). A failure to register as a foreign entity where a company transacts business could lead a court in that jurisdiction to ignore the entity, exposing the company owners,

managers and shareholders to personal liability. Thus, one advantage to filing in your home state (the place where the business is physically located) is avoiding additional filings and fees.

To illustrate the foreign qualification requirement, in the above example, the company owners may choose to legally form the company in Nevada to take advantage of Nevada's advantageous statutes, but the owners also would have to file a foreign qualification application in every other state in which it does business (California, Florida and Texas). In this particular example, if the owners or shareholders only filed the company with the State of Nevada, they would be exposed to personal liability in California, Florida, Texas and in any other state in which the company does business but in which it is not qualified.

Choosing a state of formation is an important decision and should be made with the advice of counsel. While there are many variables in making this decision, in many cases company owners are better off forming their company in its home state, where the company is physically located. Feel free to contact us for more information about our entity formation services.

To learn more about our Entity Formation and other services please visit our website here:

[http://www.lanternlegal.com/entity\\_formation.php](http://www.lanternlegal.com/entity_formation.php)

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