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Alphabet soup: Choose the right designation



Guy A. Schmitz

LLC tends to make the most sense for solos

By DAVID BAUGHER

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Solo practices and partnerships can be organized in a lot of ways. And for lawyers who don't concentrate on tax or corporate law, all the abbreviations can be dizzying. LLC? PC? LP?

Fortunately, most experts agree on one simple answer. An LLC, short for Limited Liability Company, seems to be the right call for the majority of lawyers forming a law office.

"The LLC is the preferred method for entity organization by solo and small firm attorneys in the state," says Philip Prewitt, a lawyer in Macon. "It's appropriate for everyone from a solo practitioner right up to a multinational corporation."

Prewitt, who often helps to form entities, says that since the unveiling of the LLC decades ago, few reasons exist to go another direction.

"It gives you the simplest structure with regard to recordkeeping," he says. "It provides you with liability protection and allows you the flexibility of deciding whether to be taxed as a sole proprietor or a partnership."

The LLC's flexibility can come in handy "It gives the broadest options starting out," Prewitt says. Solo attorneys "aren't even going to know how successful they are going to be for a couple of years, so it gives them the flexibility of being able to change later down the road."

'Minimize your hassle'

So why all the alphabet soup in other firm names? Chris Kelleher, a business attorney, calls it an "historical accident."

"If you see a law firm that's a PC, it's probably historical in nature because the LLC format offers a lot more flexibility for law firms than a PC, generally speaking," he says.

Kelleher, founder of Chesterfield-based The Law Firm for Businesses, should know. His own firm has that designation, which stands for professional corporation. When he formed his organization, the LLC statutes were fairly new, he says, and he didn't know how well they would stand up to Internal Revenue Service scrutiny.

Kelleher says he can't really think of good reasons to form one today.

"If you are just forming a small entity and you want to minimize your hassle, always go with what everybody else is doing unless you have a really good reason," he says.

Guy A. Schmitz of Armstrong Teasdale agrees. "I have not formed a PC in probably forever," says Schmitz, an of counsel attorney who handles tax law at the firm. "They are really not used much anymore."

Schmitz says the designation was originally an effort to limit the liability inherent in general partnerships by forming a corporate entity to shield individual partners. Largely, he says that today, those issues are handled by an LLC.

Prewitt says there might be a few differences with regards to offering certain benefits to employees but they aren't particularly significant.

"With a corporation, you can get access to more benefits than you can with an LLC, but most people are not going to need the types of benefits that come with being organized as a larger entity," he says.

Plus, a PC designation can come with additional headaches.

"It has regular reporting requirements so you have to file with the state every year," Prewitt says. "There's more housekeeping and administrative issues with a PC than with an LLC."

Solos can go with a simple sole proprietorship. This involves no \$50 registration fee with Missouri officials as an LLC does.

"If you want unlimited personal liability, then being a sole proprietor is a cheap way to go," Kelleher says. "Other than filing a fictitious name registration, you don't have to file any papers with the Secretary of State."

But "who wants unlimited personal liability?"

Prewitt cautions that no entity can totally protect you from liability. An attorney can still be sued for problems arising from the performance of his or her duties.

"Being an entity doesn't protect you from malpractice," Prewitt says. "All it does is protect you from the person who slips and falls out in your waiting room or the creditor of a business who may try to come after you personally for some debt."

LLPs, or Limited Liability Partnerships, are almost identical to LLC's, and the reason someone would form one is for specific titles.

"As best as I know, the reason you would want to be an LLP as a law firm is primarily so you can call yourself a partner," he says. "Technically speaking, if you are a PC or an LLC you can't call yourself a partner."

Schmitz says the primary reason for LLPs today is to give partnerships an LLC-equivalent under which to reorganize themselves, since moving to an LLC from a partnership would involve complex changes.

"You'd have to jump from one statute to another statute," he says. "You'd have to go see all your lenders and say we're no longer a partnership, which is a technical term. We've gone to a different portion of the Missouri code and are technically a new entity and you have to go to the lenders hat in hand and ask 'Do you mind this change?'"

Limited partnerships

LPs, or limited partnerships, are sometimes seen but are fairly rare, Kelleher says.

"They used to be really popular as investment vehicles because you'd have a general partner at the top who basically does all the work," he says. "Then you have passive investors who are called limited partners who have limited liability but no say in the business. That particular format really doesn't work that well in the context of a professional firm like a law firm."

Schmitz calls corporate structures "exceedingly cumbersome," particularly for a solo, when compared to an LLC which can simply be taxed as "disregarded entity" meaning the IRS does not separate its income from one's personal taxes.

Moreover, if a corporation is formed it's tough to undo the process – another reason to prefer LLCs.

"Even if you form a partnership, it is typically very easy to then incorporate, but going the other way is usually very, very difficult," Schmitz says.

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