



North Carolina Law Life

Corporation or LLC is not a “Get Out of Debt Free” Card

By: Donna Ray Berkelhammer. Monday, August 27th, 2012

The **Federal Trade Commission** recently settled the largest-ever fitness and weight loss deceptive advertising complaint, against **Ab Circle Pro**, for up to \$25 million. The FTC settled with not only the marketer, but the producers and star of the infomercial — and the **individual owners of the marketing corporation**.

It is a myth that forming a corporation or limited liability company will safeguard your personal assets in all situations.



The limited liability coming from entity formation protects the personal assets of the company owners by creating a separate legal entity that is the **corporation** or **LLC**. Generally speaking, if an entity is properly formed, properly maintained and properly capitalized, the founders risk only their initial capital contribution. Also generally speaking, “**piercing the corporate veil**” to defeat limited liability and sue the owners of an entity individually is as rare and severe as a lightning strike.

In **North Carolina**, a corporate entity can be disregarded (and the owners sued personally) when the corporation is operated as a “mere instrumentality” or “alter ego” of a sole or dominant shareholder.

This often presents as an allegation of fraud or other deliberate and deceptive act in commerce where the company has few assets. The plaintiff claims there is no true separation between the company and its owners, and therefore the owners should be personally liable for the wrongdoing. Courts will analyze: (1) inadequate capitalization; (2) non-compliance with corporate formalities; (3) complete domination and control of the corporation so that it has no independent identity; and (4) excessive fragmentation of a single enterprise into separate corporations.

To avoid being personally liable for your company’s acts:

- Observe the required formalities: Hold formal annual meetings of shareholders and directors and keep the minutes organized. Timely file all reports and pay all fees to the NC Secretary of State. For an LLC, document all business decisions with a meeting or consent minutes.

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- Do not co-mingle personal and business assets.
- Properly sign your documents as an officer of the corporation or manager of the LLC. You need to indicate that you are acting on behalf of a company and not as an individual.
- For more information on preserving limited liability, click [here](#).

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