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# LIMITED LIABILITY COMPANY FORMATION QUESTIONNAIRE

\*\*\* Fields outlined in red are required \*\*\*

1. Proposed LLC Name:

In case the above name is not available, list two additional names in the order of preference.

a.

b.

*(The Articles of Organization are submitted to the Secretary of State with two checks made payable to the Secretary of State. One check must be for \$70 to cover the basic filing fee. The other check must be for \$15 to cover the counter fee charged by the Secretary of State. We require the client to provide us with these two checks in advance.*

*If you want to reserve the LLC name in advance of filing the Articles, then the Secretary of State charges an additional fee of \$14 to check up to three names and reserve one for 60 days.*

*In order to expedite these requests we use a document filing service in Sacramento which charges additional fees to process these request for us. We will bill you for each of these services.)*

2. Full name and street address of the Agent for Service of Process.

Name:

Address:

*(The Agent for Service of Process is the individual formally authorized to accept service of lawsuits and certain formal notices from the state on the LLC's behalf. If the LLC decides to have officers, then normally it will be the Secretary. If the LLC decides not to have officers, then it will be the manager or a designated member. The address used must be a street address (NO post office boxes) and every LLC must name one.)*

3. Proposed Operating Agreement effective Date:

*(The date may be before or after the Articles of Organization are filed. It always should be **before** the LLC commences business. Please note that certain regulatory filings are due within 15 days after the date the LLC is capitalized or certain exemptions from the securities laws are lost. It is important to set realistic dates and to be prompt regarding completing the formation. You may want to discuss this further with us.)*

4. Full names and address of the members, their proportionate interest in the LLC and the consideration paid for the membership interest. If the consideration for the membership interest is to be real estate, equipment, or other noncash assets, then please provide a complete list of the assets with values and any liabilities assumed. (You may need to speak with your accountant and/or us regarding this.)

<b>NAME/ADDRESS</b>	<b>% OF OWNERSHIP</b>	<b>CONSIDERATION</b>
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5. LLC's may be "*member managed*" (daily operations are run by all the members jointly, much like a partnership) or "*manager managed*" (daily operations are run by one or more designated managers who may or may not be members). If the LLC is manager managed, it may, but is not required, to have officers. Deciding whether to be member managed or manager managed, and if manager managed, whether to have officers is often a difficult issue you may want to discuss with us.

Member Managed

Manager Managed

If manager managed, who will be the manager?

6. Designation of Tax Matters Member:  
*(Every LLC must have a member (or manager) designated as the "Tax Matters Member (or Manager)". The Tax Matters Member is the person designated to deal with the IRS and to sign and file various tax reports and elections.)*

7. LLC principal office street address:  
*(May **not** be a post office box.)*

8. LLC mailing address, if different than street address above:  
*(May be a post office box)*

9. Certified Public Accountant or other accounting professional:

Name:	Phone:
Firm:	Fax:
Address:	E-mail:

10. Name and branch address of the bank or other financial institution at which the LLC's funds will be deposited:

Names of Persons  
Authorized on the  
Bank Account:

Number of signatures required:

11. Buy out provisions.

*(We will need to discuss the buy out provisions at length. Buy out provisions are inserted in the Operating Agreement and are used to control to whom a member may sell his or her membership interest in the LLC, and the price and payment terms for the membership interest in the event of disagreements or a catastrophe such as an individual member's death, disability or personal financial problems. Typical issues which will need to be discussed are: 1. — the events which will trigger the right to buy out a member's interest; 2. — the method of setting the price paid for the interest; and 3. — the payment terms.)*

a. Buy out triggering events:

*(Nearly every set of Operating Agreement buy out provisions includes the following as the events which will trigger the buy out. If your particular business or circumstances are such that one of the following is not suitable or an additional one needs to be considered, please advise. We will need to discuss these triggering events in detail.*

*USUAL TRIGGERING EVENTS: 1. Attempt to sell a membership interest to a third party or otherwise withdraw from the LLC. 2. Death. 3. Disability. 4. Bankruptcy or other creditor action to attach a member's interest in the LLC. 5. Dissolution or a change in control of a corporation or partnership which is an LLC member. 6. Divorce.)*

Additional buy out triggering event that we may want to add to the list.

b. Price Setting:

*(Operating Agreement buy out provisions always include a mechanism to set the price for the membership interest to be purchased. Following is a list of typical methods used. Different methods tend to work better depending upon the relative financial strength of the parties and the nature of the LLC business and assets. Since one of the points of the buy out provisions is to make it difficult for a member to exit the LLC, often times the price is set artificially low for some buy out triggering events (e.g. a third party creditor attaches). Again we will need to discuss these methods in detail. If you have given this any thought or have particular concerns, then please comment below.)*

**Right of First Refusal Method.**

*(This price setting method is typically used when the triggering event is the attempt by a member to sell his membership interest to a third party. It is often combined with the valuation method selected for other triggering events so that the lower of the two prices is the one used.)*

**Schedule of Agreed Values Method.**

*(This price setting method requires that the members annually agree in writing to the LLC's value. The number agreed on then is used for any buy out that occurs during the following year. The good thing about this method is that having agreed to the value in advance, the parties have removed a significant issue of dispute at buy out time. The bad thing about it is that it requires annual review, and often times members simply do not get it done. Another bad thing about it is that in seasonal businesses the agreed value can be unfairly high or low at any given point in the year.)*

**Accounting Formula Method.**

*(This price setting method requires that the members agree to an accounting formula which will be applied when a buy out occurs. The good thing about using a formula is that it is a simple mathematical exercise to establish value. The bad thing about it is that, in industries that see wide fluctuations in annual earnings, the formula may work unfairly in any one given year. In businesses which have large inventories or equipment, the fair market value of which can be easily ascertained, the accounting formula may often involve appraisal of those assets similar to the pure appraisal method discussed below.)*

**Appraisal Method.**

*(This price setting method requires that the LLC and the departing member obtain an appraisal of the LLC's assets to determine the price for sale purposes. Often the appraisal will determine only the LLC's liquidation value and other times it will go a step further and apply minority interest and lack of marketability discounts to the departing member's portion of the LLC being sold. As a practical matter, appraisal costs usually dictate that this method is only used in LLC's where the assets are easily susceptible to appraisal such as real estate investments.)*

c. **Price Payment:**

*(Operating Agreement buy out provisions always include how the purchase price will be paid. The problem is always making sure that the departing member's interest in getting paid within a reasonable time period is balanced with the LLC's interest in making sure that paying off the departing member does not over burden its operations. Again we will need to discuss these methods in detail. If you have particular concerns, questions or comments regarding payment methods, then please note them below.)*

**All Cash.**

*(In the case of an at death buy out, this can be funded wholly or partially with life insurance.)* Insert any comments below

**Terms.**

*(The terms can call for a down payment or not and can be secured or unsecured. Typical is a 3 — 5 year term but longer is not unusual.)*

12. **Other information applicable to your LLC: (Not all items below apply to every LLC.)**

a. **Any licenses held by the LLC's principal owners or employees and which the LLC needs to have transferred to it in order to conduct its business:**

b. **Real Estate Leases:** If there are existing leases for the premises on which the LLC will conduct its business, they need to be assigned to the LLC. Please attach copies.

If there will be a new lease for the premises on which the LLC will conduct its business then outline the general lease terms below including the landlord name, the location, rent schedules, deposits, insurance and maintenance requirements, etc. If the lease is still under negotiation with the landlord, so indicate.

- c. Equipment Leases: If there are any existing leases for equipment which the LLC will be using to conduct its business, they will need to be assigned to the company. Please attach copies.

If any new equipment leases with a principal in the LLC need to be prepared, outline the general terms including, the items to be leased, rental schedules, deposits, insurance and maintenance requirements, etc.

- d. Employment Matters:

- i. Will there be employment agreements with key employees?

Yes      No

*(We normally recommend that members who also are LLC employees execute employment agreements outlining their compensation and benefits. We also generally recommend that LLC's have employment agreements with any key management level employees who are not members.) We will need to discuss 1. — covered employees; 2. — duties of each employee; and 3. — compensation and benefits for each employee. List comments or questions below.*

- ii. Will the new LLC have an Employee Handbook?    Yes      No

*(We normally recommend that employers have an employee handbook to outline employee rights and duties as well as company policy on various matters. A well written employee handbook that is implemented and followed can assist the employer in avoiding employee claims of improper treatment. We can assist you in preparing an employee handbook appropriate to your company.) List comments or questions below.*

13. Other questions you may have for us:

**For more information:**

Visit our website at <http://www.KirkSimas.com>, or

E-mail us at [BAREDepartment@KirkSimas.com](mailto:BAREDepartment@KirkSimas.com).