

When is a Professional LLC right for you?

Arizona Professional Limited Liability Company Basics

PLLC vs. LLC

A professional limited liability company or PLLC is a business entity much like a limited liability company (LLC). However, a PLLC generally differs from an LLC in the following:

- A PLLC can only have members who are certified by an officer, agency, court or other authority in Arizona empowered by law to license or otherwise authorize the rendition of a professional service (i.e. the regulatory boards governing lawyers, medical doctors or real estate agents.)
- A PLLC can only conduct business in the field its members are licensed. For example: Licensed real estate agents who form a PLLC can only use the PLLC for business related to being a real estate licensee.
- A PLLC can only hire non-licensed employees if those non-licensed employees:
 - Work at the direction or under the supervision of persons who are licensed;
 - Do not hold themselves out to the public as being licensed to perform the professional services rendered by the professional limited liability company; and
 - The board governing the PLLC has not prohibited the hiring of non-licensed employees.

- A PLLC can generally only issue an ownership or membership interest to:
 - Individuals who are licensed under Arizona or another state's law to render the professional service set forth in the articles of organization of the PLLC;
 - General partnerships in which all partners are licensed by the profession to be conducted; and
 - Professional corporations which are authorized by law to conduct professional services.

PLLC Purpose Personal liability in a PLLC Formation

In Arizona, a PLLC can only be formed to accomplish a purpose related to the profession, (i.e. physicians operating a medical office) therefore any action by a member or manager of the PLLC to promote another purpose not in furtherance of the stated purpose of the PLLC will expose that person to liability.

Articles of Organization

The articles of organization are the documents which must be filed with an approved by the Arizona Corporation Commission in order to establish an Arizona professional limited liability company.

The articles of organization must include the following information:

- The name of the PLLC;
- The name and Arizona street address for the PLLC's statutory agent for service of process;
- The Arizona business address for the PLLC, if different than the address for the statutory agent for service of process;
- The latest date, if any, on which the PLLC must dissolve, if the duration is less than perpetual;
- Whether management of the PLLC is vested in the managers or reserved to the members; and
- The names and addresses of the managers and members with a 20% or greater share of ownership, if the management of the PLLC is vested in the managers or all the members, if management is reserved to the members.

Operating Agreement

An operating agreement allows you to structure how you and your member/managers want to conduct the business of the PLLC. These financial and working relationships can be wide and varied and it is important that the following topics are clearly addressed within a PLLC's operating agreement:

- Membership rights;
- Membership interests in the PLLC;
- Voting rights for member/managers;
- Diversification of operational duties and obligations;
- Meeting requirements;
- Capital contributions – cash, property or services;
- Percentage of ownership;
- Distributions;
- Profit and losses allocation;
- Liabilities;
- Creditor issues;
- Taxes;

- Termination issues;
- Community property issues;
- Buyout, buy-sell or death provisions; and
- Dissolution requirements.

Without an operating agreement, default laws within your state will be used by the court to address issues that would have been otherwise addressed within the PLLC's operating agreement. Thus, since the manner in which the state may manage your PLLC may be different than how you would operate your PLLC, prepare your own PLLC operating agreement.

Naming a PLLC

A PLLC's name may be the full or last name of one or more of its members. The PLLC may also select a fictitious name, so long as it is not prohibited by Arizona law or the rules of ethics governing the profession in which the PLLC is engaged. Also, the name of the PLLC shall contain the words "professional limited liability company" or the abbreviations "P.L.L.C.," "P.L.C.," "PLLC," or "PLC" and must otherwise conform to all formation requirements.

What's in a good name: When choosing a PLLC name, consider the following:

- Is the name easy to remember?
- Does the name describe the PLLC's product or service?
- Is the name available as a web address as either a .com, .net or .biz address?
- What websites pull up under popular search engines when the name is searched?
- Will the name infringe on an existing trade name or trade mark?

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Liability Issues of a PLLC

One of the limitations of a PLLC is the professional liability issue. Specifically, a PLLC's members, managers and employees performing the professional services *are liable* for their negligence or wrongful acts, omissions or misconduct as well as for the acts of any person performing professional services on behalf of the professional limited liability company, for whom the member, manager or employee performing the professional services has direct supervision and control.

Changing an LLC into a PLLC

An LLC formed under Arizona law may elect to change its status to a PLLC, if it meets the licensing requirements for a PLLC.

Management Structures

The management structure of a PLLC can either be vested in the managers or reserved to the members of the PLLC. A management structure that is vested in the managers means that only those persons who are elected as managers of the PLLC can partake in management decisions. Conversely, if management of the PLLC is reserved to its members, then all the members of the PLLC can partake in PLLC management decisions.

Management Structure Pros v. Cons: Careful consideration needs to be given when considering the type of management structure to implement.

For example: A PLLC with a large number of members may elect to have management decisions vested in the managers. Conversely, a PLLC with a few members may elect to have management decisions reserved to the members.

Profits and Losses

Usually profits and losses are split between PLLC members depending on the basis of their contributions to the PLLC. Thus, if one PLLC member contributes 80% of the capital to the PLLC, that member will be entitled to 80% of the profits as well as be responsible for 80% of the losses. However, the members of a PLLC can enter into an agreement on how they want to share profits and losses. Generally, this agreement is contained in the terms of the PLLC's operating agreement.

Membership Transfer Rights

Unless contrary to the PLLC's operating agreement, if a member transfers their interest in a PLLC, a member can only transfer their right to receive their share of the PLLC's profits and losses to an individual in the same profession. However, upon the consent of all the members, management rights can be transferred from a member to another individual in the same profession.

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