

Does your LLC have all of its legal rights protected in Arizona?

BURNS AND BURNS, P.C. IS AN AV RATED LAW FIRM THAT REPRESENTS MULTI-GENERATIONAL FAMILIES AND BUSINESS OWNERS WITH THEIR ASSET PROTECTION, REAL ESTATE, AND ESTATE PLANNING NEEDS.

Arizona Foreign Limited Liability Company Basics

Introduction

According to A.R.S. §29-601, a foreign limited liability company is defined as an LLC that is either: a) an unincorporated entity or association that is owned by one or more persons that have limited liability for the debts of the business, other than a partnership or trust, and that is formed under the laws of a jurisdiction other than the state of Arizona for any lawful purpose, including the rendering of professional services as defined in that jurisdiction or b) an entity or unincorporated association that is formed under the laws of a jurisdiction other than this state for any lawful purpose, including the rendering of professional services as defined in that jurisdiction, and that is characterized as a limited liability company by those laws.

Simply put – a foreign LLC generally describes an LLC that has originally been formed in a state other than Arizona. For example, an LLC originally formed in Nevada would be a foreign LLC in Arizona.

In the event an LLC, which has been formed in a state other than Arizona does business in Arizona; the LLC must be registered in Arizona.

Registration of a Foreign LLC

The Certificate of Registration is a document that must be filed with the Arizona Corporation Commission before a company formed outside of Arizona can begin transacting business within Arizona. Accompanying the filing requirement is a non-refundable filing fee as well as proof of the company's existence and specified company resolutions.

A foreign company that does not file a Certificate of Registration, as required pursuant to Arizona law, cannot sue an individual or entity in Arizona. However, the foreign company may be sued in Arizona. Additionally, by failing to file the Certificate of Registration, the noncompliant company agrees to elect the Arizona Corporation Commission to act as its statutory agent.

Filing a Certificate of Registration

Step 1: Name Confirmation

The first step in registering a foreign LLC in the state of Arizona is to determine if the LLC's name is available for use in Arizona. If available, it should be reserved immediately to ensure that another entity does not register it. Further, when reserving the name, it is important to note that generally the

words "bank," "deposit," "credit union," "trust" or "trust company" cannot be included in the LLC's or PLLC's name.

Additionally, when selecting a name, the chosen name must be distinguishable from other corporate and nonprofit corporate names reserved in Arizona, fictitious names adopted by foreign corporations, and the reserved names of other Arizona business entities. If the foreign company's name is unavailable, the out-of-state company will need to adopt a fictitious name for the Arizona entity.

Step 2: Filing Certificate of Registration

The application for certificate of registration shall include the following:

- 1) The name of the foreign limited liability company and the fictitious name of the foreign limited liability company, if its real name is not available or does not otherwise satisfy Arizona law;
- 2) The name of state or country where the LLC was originally formed;
- 3) The purpose of the foreign limited liability company or the general character of the business it proposes to transact in the State of Arizona;
- 4) The name and street address of the foreign limited liability company's statutory agent in Arizona;
- 5) The address of the office required to be maintained in the state or country of formation. In the event the foreign LLC is not required to maintain an address in its place of formation, then the principal office address of the foreign limited liability company must be provided.
- 6) Whether management of the foreign limited liability company is vested in the manager(s) or reserved to the member(s).

- 7) Either each person who is a manager of the foreign limited liability company and each member who owns a 20% or greater interest in the capital or profits of the foreign limited liability company or each person who is a member of the foreign limited liability company depending on the foreign limited liability company's management structure; and
- 8) Proof of the foreign limited liability company's existence in the state or country of its original formation.

Consequences of Failing to File a Certificate of Registration

A foreign company that does not file a Certificate of Registration, as required pursuant to Arizona law, cannot bring a lawsuit against another individual or entity. However, a lawsuit can be brought against the foreign company. Additionally, by failing to file the Certificate of Registration, the non-compliant company agrees to elect the Arizona Corporation Commission to act as its statutory agent. Having the Arizona Corporation Commission as the default statutory agent could be problematic because if the LLC is served, by the time the LLC is aware of the lawsuit, lawsuit deadlines may have already passed and the LLC might not be able to present its case in court.

BURNS AND BURNS P.C. acts as statutory agent for numerous Arizona LLCs. If you would like the reliability of having an AV rated law firm act as your LLC's statutory agent, please contact our law firm.

BURNS AND BURNS, P.C.

Asset Protection, Estate Planning, and Real Estate Law
www.B-BLAW.COM – Phone: 602.264.3227 Fax: 602.274.0103

Mandatory Updates

Foreign limited liability companies are required to update their standing with the Arizona Corporation Commission. Specifically, in the event a foreign limited liability company amends or restates its articles of organization by merger or otherwise in the state or country in which the company is organized, the foreign limited liability company shall deliver to the Arizona Corporation Commission a copy of the amendment or restatement within sixty (60) days of the effective date of the amendment or restatement. Further, if any statement in the application for a Certificate of Registration for a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly file articles of amendment, correcting the statement.

Revocation of a Certificate of Registration

After obtaining a Certificate of Registration, an LLC's Certificate of Registration can be revoked, if the LLC *fails* to do any of the following:

- 1) Pay any and all fees and or penalties within sixty (60) days of their due date;
- 2) Appoint and maintain a statutory agent;
- 3) Report a change in the business name, address or statutory agent;
- 4) Amend the Certificate of Registration for false information or changes in the information which make the document inaccurate as originally filed; or
- 5) Respond to interrogatories.

Avoiding Revocation of Certification of Registration

If a revocation of the Certificate of Registration has been issued for failure to comply with one of the previously set forth requirements, the company will have sixty (60) days to correct the inaccurate statement.

Cancellation of a Certificate of Registration

A company can cancel its registration to do business in Arizona upon filing a cancellation notice.

About the Author

Scott F. Burns, Esq.

Scott F. Burns, Esq. is an Arizona attorney whose clientele include professional athletes, business owners, and families desirous of protecting their personal and professional legacies through the use of asset protection strategies, estate planning and business consulting.

For Additional Information
www.B-BLAW.com

Material presented herein are for informational purposes only and are not intended to constitute legal advice, to be a legal opinion or create an attorney client relationship for the reader or any specific person. Estate and Tax planning is fact specific and requires consultation with a tax or legal advisor before undertaking any course of action.

BURNS AND BURNS, P.C.

Asset Protection, Estate Planning, and Real Estate Law
www.B-BLAW.COM – Phone: 602.264.3227 Fax: 602.274.0103