

Operating agreement not a must, but a good idea
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Q. I recently formed a limited liability company. Am I required to have an operating agreement?

While you are not legally required to have an operating agreement, it is generally recommended, particularly when there is more than one owner.

A limited liability company (LLC) is formed by filing a Certificate of Formation with the New Jersey Secretary of State. Once formed, all rights of the LLC and its owners, referred to as "members," will be governed by the New Jersey Limited Liability Company Act. However, the act provides that members may determine many of their own rights by adopting an operating agreement.

Some critical issues that an operating agreement would address are:

* Membership interests and rights: An operating agreement should provide the respective ownership interests of the members, which is typically based on the amount of capital (services or money) contributed. The operating agreement should also set forth the members' voting and decision-making rights.

* Management: An operating agreement can state how many managers the LLC will have. The managers can be given the authority to manage all business affairs, or may be

authorized to make only certain decisions, while leaving extraordinary decisions to a membership vote.

* Profits and losses: An operating agreement can allocate profits and losses as the members deem appropriate. The accord should also provide that members receive sufficient distributions to cover tax liabilities associated with their interests.

* Interest transfer: Often the most contentious and complicated issue is the right of members to transfer their interests to family or third parties, and what happens to members' interests upon death or disability.

In sum, members can adopt an operating agreement that reflects how they intend to run the business.

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