

**JOHN CUNNINGHAM'S LLC NEWSLETTER
FOR TAX AND LEGAL PROFESSIONALS**

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**FIVE KEY TABLES YOU NEED IN HANDLING LLC DEALS
UNDER THE NEW HAMPSHIRE LIMITED LIABILITY
COMPANY ACT**

EXECUTIVE SUMMARY

If, whether you are lawyer or an accountant, you assist clients in forming a New Hampshire LLC, you need to make use of four key tables of New Hampshire Limited Liability Company Act provisions in order to handle this task competently. You can print out each of these tables and the master table on which they are based by clicking on the link to my website, www.llcformations.com, and then clicking on the "LLC Library" button on the left-hand navigation bar on the home page of that website. The "Discussion" portion of this newsletter explains why these tables are necessary and how to use them in New Hampshire LLC formations.

DISCUSSION

- 1) You can't form NH LLCs unless you know the New Hampshire Limited Liability Company Act. It goes without saying that the most important asset of lawyers and accountants in assisting their clients in forming New Hampshire LLCs is their knowledge of the provisions of the New Hampshire Limited Liability Company Act (the "Act") that are relevant to these formations.

For lawyers, the key provisions of the Act will often be those dealing with management structures, events of dissociation, fiduciary duties and other purely legal issues. For accountants, the key provisions will normally be those relating to financial and tax issues, such as those concerning contributions, allocations, distributions and buy-sells.

However, neither lawyers nor accountants can limit their knowledge of the Act to just these types of provisions. This is because often what seems to be a purely financial issue in an LLC deal turns out to have hidden but important non-tax ramifications; and what seems to be a purely legal provision turns out to have important financial implications.

Thus, whether you are a lawyer or an accountant, you must have a *comprehensive* knowledge of the provisions of the Act relevant to LLC formations if you want to assist your clients in LLC formations competently.

- 2) Categorizing the provisions of the Act. Furthermore, in order to handle LLC formations competently, both lawyers and accountants must know whether each of

the above provisions is properly categorized as a *definitional*, a *mandatory*, a *default* or a *permissive* provision, since this knowledge is critical in making proper use of these provisions in LLC formations.

- a) Definitional provisions. Definitional provisions are those that contain statutory definitions of terms employed in the Act. See, e.g., RSA 304-C:1,VII, which defines the key financial term “limited liability company interest” as used in the Act. It is necessary to know all of these definitional provisions in order, among other things, to refer properly to the concepts to which these provisions refer when you are dealing with LLC formation clients and, if you are a lawyer, when you are drafting LLC agreements.
 - b) Mandatory provisions. Mandatory provisions are those which the Act does not permit LLC members to alter in their LLC agreement. An example of a key mandatory provision of the Act is contained in RSA 304-C:37,I, which provides that promises to make contributions to LLCs are binding only if they are writing. Obviously, if you are ignorant of this rule in assisting your client in the formation of a New Hampshire LLC, this ignorance can result in disaster if a member of your client’s LLC breaches a merely oral promise to contribute to the LLC.
 - c) Default provisions. Default provisions are those that the Act permits LLC members to alter in their LLC agreements. A key default provision is contained in RSA 304-C:40, which provides, in effect, that members can receive interim (i.e., operating) distributions from their LLC only if their LLC agreement provides for them. Obviously, if your client anticipates that she will need interim distributions from the LLC to cover federal and New Hampshire taxes on her share of LLC profits, she will want to alter this rule in the LLC agreement of her LLC.
 - d) Permissive provisions. Permissive provisions are those that authorize and validate arrangements in LLC agreements but do not require them. A key permissive provision in the Act is contained in RSA 304-C:7,II(j), which permits LLCs to appoint officers and agents.
- 3) The need for tables. However, although it is necessary for you as an LLC lawyer or accountant to know all of the provisions of the Act relevant to LLC formations and to know in which of the above four categories each provision belongs, it is the rare lawyer or accountant who can commit all of this knowledge to memory and have all of it immediately available as needed. Rather, most of us can make practical use of this knowledge in planning and negotiating LLC deals and, in the case of lawyers, in drafting LLC agreements only if it is contained in clearly organized tables to which we can refer as checklists.

Over the past several months I spent many hours compiling a master table of the provisions of the Act relevant to New Hampshire LLC formations and characterizing each of these provisions as definitional, mandatory, default or permissive. Once I completed this table, I used it as the basis for creating four subtables—namely, subtables containing, respectively, all of the provisions in each of these categories; and I posted them on my website at the link listed above. I use these tables religiously in assisting my clients to form New Hampshire LLCs.

I invite you to download the above five tables from my website and, if you think they are accurate, to use the four subtables as checklists in your own LLC formation practice. I've made the master table available on my website in order to enable you, if you so choose, to check this table against the Act and thus to satisfy yourself that the table is accurate. Obviously, the above four subtables can only be as accurate as the master table from which they are derived.

Needless to say, if you find any errors in the master table or in any subtables, please let me know and I'll fix them immediately and post revised tables on my website.

If you have comments on this column or wish to contact me for any other reason, please send me an e-mail at lawjmc@comcast.net or give me a call at (603) 228-0125. If you'd like to visit my website, the link is www.llcformations.com.

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