

---

# WHY YOUR LLC NEEDS AN OPERATING AGREEMENT

---

Congratulations! You have decided to form a limited liability company (LLC) to run your business. After completing your state formation process, your LLC needs to have the right documentation in place. An Operating Agreement is a legal document that describes and outlines how an LLC will run and **is an essential document for owning and operating an LLC**. Having an Operating Agreement provides your business with many benefits and can help you avoid significant problems.

## AN OPERATING AGREEMENT:

✓ **ALLOWS YOU TO CUSTOMIZE HOW YOUR BUSINESS OPERATES.** A key advantage of LLCs is the ability to create flexible business structures. However, when you fail to create an operating agreement, you subject your business to the default rules set out in your state's LLC statute. On the other hand, if you draft an operating agreement, you can customize a variety of provisions related to the management and ownership of your business. LLC owners, referred to as Members, can customize and identify:

- how profits and losses are split among members,
- restrictions on the transfer of ownership interests,
- methods for paying for business taxes, and
- signatories for business accounts.

This is not an all-inclusive list. In general, most aspects of an LLC can be designed to reflect the Members' desires, unless the state statute that governs the LLC specifically prohibits contractual alteration of a specific right or duty.

✓ **HELPS MAINTAIN MEMBERS' LIMITED LIABILITY.** An important benefit of LLCs is that **LLC members have limited liability—that is, they will not be held liable for the LLC's obligations**. However, **limited liability may be lost if steps are not taken to maintain the business as an entity that is separate from its owners**. One practical step is creating and implementing an operating agreement. Evidence that an LLC adheres to an Operating Agreement has supported the recognition of the limited liability of its members in the past. **Steps to clarify the legal separation between business and owner are especially crucial for single-member LLCs, which have only one owner.** When there is only one member, the limited liability veil is more easily pierced. Intentional planning, including the drafting of an operating agreement, is required to strengthen the shield and preserve the limited liability of the member.

- ✓ **IDENTIFIES HOW DECISIONS WILL BE MADE.** Another critical part of the Operating Agreement is the provisions that address how decisions are made. These clauses provide immense value, particularly for multimember LLCs and manager-managed LLCs, where multiple people may be involved in making management decisions. In those instances, it is vital to identify who has the power to make certain decisions. For example, if you have multiple LLC members, you may want to create two or more ownership classes with varying degrees of voting power. Additionally, if you have a manager-managed LLC, you may want to identify certain decisions that LLC managers are authorized to make while leaving other decisions for LLC members. Finally, you may also want to determine how matters like voting deadlocks will be addressed. Will the LLC provide tie-breaking powers to specific managers or members in the LLC, or will they consult with an independent third party? These issues should be addressed in your Operating Agreement.
  
- ✓ **ARE REQUIRED BY CALIFORNIA LAW (CA Corp. Code § 17701.02(s)).** California requires every California LLC to have an Operating Agreement. Having an Operating Agreement helps ensure you comply with the law and most importantly establishes the business as a separate entity. Additionally, some institutions or individuals may impose such a requirement before engaging in a business transaction with your LLC. Most banks require a copy of (or to review and verify) the Operating Agreement before opening business accounts for an LLC. Some investors and similarly situated institutions have also required copies of Operating Agreements when evaluating whether to invest in a business. These institutions or individuals may want extra reassurance and proof of how the company operates, which can be provided by the LLC Operating Agreement. It is essential to have an LLC operating agreement in place to enable your LLC to take full advantage of business opportunities when they arise. Without an Operating Agreement you are not in compliance with the law and in litigation this violation can support piercing the liability veil protections in order to pursue personal liability of the Members. **A blank Operating Agreement within your corporate binder as ordered from a non-attorney online corporate formation service does not satisfy the legal obligation to have an Operating Agreement and puts you in jeopardy of liability.**
  
- ✓ **MUST BE EVALUATED/ UPDATED IF THERE ARE CHANGES TO YOUR COMPANY.** If you want to admit a new Member, change your structure to have a Manager, create different types of Membership Interests, have an investor or raise money or if someone gets married, the Operating Agreement should be updated and modified, and such should be discussed with your counsel.

**W**e understand how to draft Operating Agreements that will help your business operate efficiently and avoid expensive litigation. A conversation with our team will enable you to identify the key features your LLC needs. Call our office and schedule a virtual or in-office appointment today.

**Call Us Today – 805-409-0530 - BOOK A MEETING USING THE LINK BELOW**

 [Book a meeting](#)

**D**eciding to form a business can be complicated, but if the right experts guide you, establishing and running a successful business is an extremely rewarding experience. It is also important to think about transfers of membership interest provisions in the Operating Agreement and how those provisions impact your estate planning. We welcome a further conversation with you about your estate planning and asset protection.

**S**taying in compliance with California laws is overwhelming. We advocate and protect not only your corporate and personal interests but also your employment and labor law liability exposure. Tamara L. Harper, A Professional Corporation, understands how you all feel, as we are an employer and business owner too. Many of our clients felt the same way too before they worked with [Tamara Harper, Esq.](#) Our clients have found that as a result of working together, they feel confident in the final outcome of their situation. Our unique competitive advantage is that Tamara L. Harper, A Professional Corporation, is very approachable as a firm which makes our clients feel at ease and in capable hands. [Tamara Harper, Esq.](#) is an aggressive fighter that is dependable and ethical. Tamara L. Harper, A Professional Corporation, not only offers quality work, but enjoys a good location in Westlake Village, California. Ms. Harper and her team pride themselves on their excellent personal and business relationships with clients and professional advisors and uses their insight and knowledge to obtain successes for each client. [Tamara L. Harper](#) is a proud member of the [Conejo Valley Estate Planning Council](#), Wealth Counsel and holds her AEP® accreditation with the [National Association of Estate Planners and Councils](#).



 WealthCounsel  
Member