

THE LEGALPAD

News You Can Use
Vol. I No. 1
June 15, 1998

INTRODUCTION

I am pleased to publish the inaugural issue of "The LegalPad," a quarterly newsletter for clients, associates, and friends of THE LAW OFFICE OF WESLEY SCOTT JONES.

This newsletter will address basic aspects of the ever-changing and often complex topics of law that affect our everyday lives. I hope that you will enjoy this newsletter, and hopefully it will be "news you can use."

This quarter's legal focus is on CORPORATIONS.

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What is a corporation?

A corporation is a legal entity separate and distinct from its individual Shareholders, Directors and Officers. In North Carolina, corporations are regulated by the Business Corporation Act, codified as Chapter 55 of the General Statutes.

Except for special cases where the public interest justifies disregard of the corporate form, a corporation is a legal entity having a specified life, enumerated powers and liabilities, and certain constitutional rights. These include the right to sue and be sued, to acquire and dispose of real and personal property, to make contracts and incur liabilities, and to conduct business and have offices anywhere within the State.

Do I need a corporation to conduct my business?

The answer to this question varies, depending upon your specific needs. The corporate form offers several advantages for doing business, including, but not limited to, limited personal liability for corporate debts, ease of transfer of ownership, and perpetual existence.

Usually, the most coveted aspect of operating a business under a corporate form is limited personal liability. Individual Shareholders are not usually liable for corporate debts or obligations. This is in contrast to partnership or sole proprietor debts and liabilities, which are chargeable personally to the individual partners or sole proprietor.

For example, suppose a corporation runs up large debts, or is sued and is facing a potentially large civil judgment. Under a corporate form, and assuming that you have observed all corporate formalities, normally only the assets of the corporation will be subject to potential liability. In other words, only the assets of the business will be at risk, not the assets of the individual owners, or Shareholders. Each Shareholder is normally liable only for the amounts that he contributes to the corporation. In contrast, a person operating as a sole proprietorship, or a group of individuals operating as a partnership, will normally be personally liable for these debts and liabilities. All of their personal assets will be subject to potential liability.

It is also important to some business owners that their ownership interests be freely transferrable. An ownership interest in a corporation is represented by shares, and shares can be readily sold, provided a willing buyer is available. Transferability is especially important when the business wants to attract venture capital or is owned by several different people. If free transferability is a cause

of concern, often the case with small or family owned businesses, limits on the transferability of corporate shares can also be placed upon the Shareholders by use of a Shareholder's Agreement.

Finally, operating a business under a corporate form allows for the perpetual existence of the business. A corporation ordinarily has a perpetual existence, unlike a partnership, which terminates on the death of a partner, or a joint venture, which dissolves upon completion of the venture. A corporation may, however, be incorporated for a fixed period of time if provided by the Articles of Incorporation.

How do I form a corporation?

The first step in the incorporation process is to file an original and one conformed copy of your Articles of Incorporation with the Corporations Division of the Office of the Secretary of State. The filing fee is \$125.00.

The Articles must include: the name of the corporation, the number of shares the corporation is authorized to issue, the classes of stock, the street and address and county of the registered office, the mailing address of the registered office if different from the physical address, the name of the Registered Agent, the name(s) and address(es) of the Incorporator(s), and the signature(s) of the Incorporator(s). Other matters, such as the name(s) and address(es) of the initial Director(s) could, and should be included in the Articles of Incorporation as well. A minimum of one person is required to form a corporation. The maximum number is virtually limitless.

Within approximately two to three weeks, you should receive a certified copy of your articles from the Corporations Division of the Office of

the Secretary of State. While you are waiting to receive this, you should also apply with the IRS for an Employer Identification Number. This can be achieved by the filing of an SS-4 Form. It is also generally a good idea to purchase a corporate kit from a local stationery store. A corporate kit will include the corporate seal, preprinted, but blank stock certificates, and a stock transfer legend. This will also give you a place to maintain important corporate documents, including the Bylaws, and minutes from any Shareholders' or Directors' meetings. You should also begin to establish a corporate checking account.

To complete the organization of the corporation, the initial Directors named in the Articles of Incorporation must hold the first organizational meeting of Directors. At this meeting the initial Directors must issue stock, adopt Bylaws, appoint Officers (such as the President, Secretary and Treasurer), adopt banking resolutions, and fix a fiscal year. Depending upon the corporation's needs, other resolutions may be considered and adopted.

Before commencing business, you will need to take several additional steps. You should obtain your State Employment Identification Number from the North Carolina Department of Revenue (this is the State counterpart to the federal employer identification number mentioned earlier).

You should also check with the Secretary of State's Business License Information Office. This office helps business owners in obtaining the State-issued licenses, permits, and/or other authorizations needed to operate. The office has comprehensive, up-to-date information on more than 600 mandatory State requirements. The office will supply you with a customized information packet that includes all of the essential application forms, instructions, and other useful information. Their phone number is

1-800-228-8443. Finally, you should check with local county and city offices for any licenses or permits needed to operate your business.

How do I maintain corporate formalities once I have formed my corporation?

As discussed above, one of the most desirable reasons for operating your business as a corporation is to limit your personal liability as an owner of the business. A corporation is a legal entity separate and distinct from its individual Shareholders, Directors and Officers. To benefit from the limited liability feature of the corporate form, it is imperative that the corporation's affairs be conducted in certain prescribed ways. This is called "maintaining corporate formalities."

Most important, you must keep the corporation's affairs and the personal affairs of its Shareholders, Directors, and Officers separate and distinct. You should never mingle corporate and personal funds, or the assets and liabilities of the corporation with those of its Shareholders, Directors, and Officers.

The business of the corporation should be conducted in the corporate name. The name that appears on the Articles of Incorporation is the correct legal name of the corporation. This name should appear on all corporate documents, including advertisements and business cards, bank account checks and deposit slips, and company correspondence. Corporate documents should be signed in the name of the corporation by one of its Officers, usually the President or Secretary, as follows:

Corporation Name, Inc.
By: _____
Your Name, Your Title

You should never sign corporate documents in your personal name unless you intend to accept personal responsibility for the transaction.

You will also need to hold annual Shareholder meetings to elect Directors. Usually, topics such as the financial condition and goals and objectives of the corporation are also discussed. You should prepare a written record of the meeting and keep it in your corporate minute book, and maintain this within your corporate kit.

Finally, you must file with the State an Annual Report and keep the State informed of any new changes to your Registered Agent's name or address (discussed more fully below).

Recent changes in the law.

The passage and ratification of Senate Bills 727 and 157 have radically changed the filing procedure for corporate annual reports. Beginning January 1, 1998, annual reports for business corporations will be filed with the North Carolina Department of Revenue at the time corporate income and franchise taxes are due. The annual report fee has also been increased to \$20.

You may obtain blank annual report forms by contacting either the Department of Revenue (919-733-8510) or the Corporations Division of the Office of the Secretary of State (919-733-4201). Of course, you may also contact my office. When the form is completed, it must contain the correct corporation name and identification number in the appropriate blanks. If no information has changed since the last report was filed, you will also have the option of certifying that fact on the form.

Remember, any changes to the corporation's address, Registered Agent, or Officers should be reflected on the annual report.

Failure to file an annual report will result in the administrative dissolution of the corporation. During periods of administrative dissolution, you may lose the benefit of the limited liability feature of operating your business as a corporation. Therefore, it is imperative that each annual report be filed on a timely basis.

The most common reason for failure to file the annual report is related to the corporation's failure to notify the State of any change of Registered Agent, or registered office address. If the State does not know where to send the blank annual report form, or if it is sent to a wrong or outdated address, you will never receive it, and will likely forget to timely complete and mail the form on your own. Therefore, you must always remember to keep the State informed of any such changes.

For your convenience, I have included a sample form to use for the purpose of notifying the State of any change of Registered Agent and/or address. The filing fee is \$5.00. To file this document, the original and one conformed copy should be sent to the Office of the Secretary of State at the address provided on page 4 of this newsletter.

Final thoughts.

Deciding to operate your business as corporation requires much thought, consideration and planning. You must decide many things. For example, beyond the steps outlined above, you must also decide how you would like for your corporation to be taxed by the IRS. A regular corporation, or "C-Corp" will be taxed on a corporate level, and the owners of the corporation will be taxed again as income is distributed to them. To avoid this so-called double taxation,

some corporations choose to elect to become a "S-Corp." This election can be achieved by the timely filing of Form 2553 with the IRS. A complete discussion of the pros and cons of making this election is beyond the scope of this newsletter. However, it is imperative that such a decision is made and timely incorporated into the steps and procedures outlined above. Coordinating your efforts with an attorney, and sometimes an experienced CPA, will be helpful in making this decision.

The potential benefits of owning and operating a corporation will usually far outweigh the initial costs of forming the corporation. If you operate a business and would like to limit your exposure to potential liability, you should consult with me, or another experienced professional of your choice, regarding the correct way to achieve this goal.

STATEMENT OF CHANGE OF REGISTERED OFFICE AND/OR REGISTERED AGENT

The undersigned corporation hereby submits the following for the purpose of changing its registered office and/or registered agent in the State of North Carolina:

1. The name of the corporation is _____.
2. The street address and county of the current registered office of the corporation is _____ Street Address _____, _____ City _____, North Carolina, _____ County. The mailing address of the current registered office is _____ Street Address _____, _____ City _____, North Carolina, _____ County.
3. The street address and county of the new registered office of the corporation is _____ Street Address _____, _____ City _____, North Carolina, _____ County. The mailing address of the current registered office is _____ Street Address _____, _____ City _____, North Carolina, _____ County.
4. The name of the current registered agent is _____.
5. The name of the new registered agent and the new agent's written consent to appointment appears below:

Type or Print Name of New Agent Signature & Title

6. The address of the corporation's registered office and the address of the business office of its registered agent, as changed, will be identical.

This the ____ day of _____, 199__.

 Name of Corporation
 By: _____
 [Name of signer and capacity]

List of important phone numbers and addresses:

Secretary of State
 Legislative Office Building, Room 302
 300 North Salisbury Street, Raleigh, N.C. 27603-5909

Corporations Division (919) 733-4201
 or 1-888-246-7636
 Business License Information Office (919) 733-0641
 or 1-800-228-8443
 Trademarks Division (919) 733-4161

Department of Revenue
 Revenue Building
 501 N. Wilmington Street, Raleigh, N.C. 27634

Corporate Income & Franchise Tax Division (919) 733-3166
 Sales & Use Tax Division (919) 733-3661
 Privilege Licence & Excise Tax Division (919) 733-3673

Internal Revenue Service

Federal Employer ID Numbers & Other Information 901-546-3920

THE LAW OFFICE OF WESLEY SCOTT JONES
1442 MILITARY CUTOFF ROAD - SUITE 28
WILMINGTON, NORTH CAROLINA 28403

Address Correction or Forwarding Address Requested

address label

My greatest source of clients is from referrals by past and present clients, associates and friends such as yourself. Therefore, any referral from you would be greatly appreciated! I accept cases in the following areas:

- | | | |
|------------------------------------|--|------------------------------|
| - Construction Law | - Corporate Representation | - Collections |
| - Lien Filings and Defense | - Corporate Formation | - Overdue Accounts |
| - Collection of Overdue Accounts | - Shareholder Agreements | - Promissory Notes |
| - Building Disputes and Litigation | - Homeowner and Condominium Associations | - Homeowner Association Dues |
| - Foreclosures | | - Foreclosures |
| - Criminal Law | - Civil Litigation | - General Advice and Counsel |
| - DWI | - Business and Commercial Litigation | - Professional Service |
| - Drug Charges | - Serious Accidents or Injuries | - Reasonable Fees |
| - Traffic Violations | - District or Superior Court | - Caring Advice |
| - Juveniles | - Small Claims Court | - Solutions to Problems |

DISCLAIMER

This newsletter was prepared by THE LAW OFFICE OF WESLEY SCOTT JONES, as a courtesy for my clients, associates and friends and is not intended to be a comprehensive statement of the law. North Carolina laws change frequently and such change could affect the information in the newsletter. If you have specific questions with regard to any matter contained in this newsletter, I encourage you to consult with me or another attorney. An attorney-client relationship will be created only by individualized and personalized advice from me to a current or prospective client, and only after the signing of a Contract for Legal Services by all parties affected thereby.

If you do not wish to receive this quarterly newsletter, or if you know of a friend or associate who would like to receive a copy of this newsletter, please contact my office either by phone, fax or mail. Thank you.

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