

BUSINESS PLANNING HANDBOOK

NW CORPORATE LAW

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BUSINESS PLANNING CHECKLIST: CORPORATIONS OR LLCs

This checklist is for informational purposes only. Not every issue will apply to every new company, and some companies may have legal issues not set forth in this checklist.

MANAGEMENT AND VOTING	On a day-to-day basis, will the company be managed equally, like a partnership, or will certain individuals have greater management power?	
	How will major decisions be made? Will a majority vote or a unanimous vote be required? Major decisions could include, for example: <ul style="list-style-type: none"> • Amending the Articles of Incorporation or Articles of Organization • Making cash distributions to owners • Buying back equity from owners • Issuing out additional equity to owners • Allowing new owners to join the company • Paying salaries to management and key employees • Making large capital expenditures • Merging or converting the company • Changing the company's principal line of business • Closing down the company • Selling most, or all, of the company's assets • Electing how the company will be taxed 	
	If there is a deadlock in votes, how will the deadlock be resolved? Examples include: <ul style="list-style-type: none"> • A forced sale of the company to decide critical decisions • A coin toss provision to decide less critical decisions 	
	Will any of the owners receive a salary for work performed on behalf of the company?	
	Will any of the owners have officer or management positions on behalf of the company?	
COMPETITIVE ACTIVITIES	Will the owners or managers be permitted to compete with the company while owning or managing the company?	
	After an owner or manager leaves the company and no longer owns equity or manages the company, will he or she be restricted from competing with the company? If so, where and for how long?	
TAXES	How will the company be taxed by default at the federal level, and is a different tax election preferred?	
	Will the company be required to make tax distributions to its owners?	
OBTAINING AND MAINTAINING OWNERSHIP	What will each owner contribute to the company for his or her percentage ownership in the company?	
	Will owners be required to make additional contributions to the company after joining?	
	Will all owners receive the same type of equity, or will the company have different classes or types of equity?	
	Will the owners be permitted to leave the company, and, if so, under what terms?	
	Can owners be expelled from the company, and, if so, under what terms?	
	Will owners have the right to maintain their ownership percentages in the company if the company issues out additional equity?	
	Will any owners in the company be purely passive – that is, will they contribute money but have little to no power to manage the company's affairs?	

TRANSFERRING OWNERSHIP AND BUY-OUTS	<p>Under what circumstances will an owner's ownership end, and will the company or other owners be required to, or have to the option to, buy that owner's equity in such circumstances? Examples include:</p> <ul style="list-style-type: none"> • Death • Disability • Divorce • Mental incompetency • Bankruptcy • Fired as a company employee for cause • Quitting as a company employee • A breach of any ownership agreements with co-owners • Withdrawal from the company • Expulsion from the company 	
	<p>If there is a buy-out, how will the value of the company be determined? For example:</p> <ul style="list-style-type: none"> • Agreeing upon a price at the time of buy-out • Appointing an appraiser, or appraisers, to determine the value at the time of buy-out • Using a pre-determined formula, such as capitalized earnings or book value 	
	<p>If there will be a buy-out, what will be the payment terms? For example:</p> <ul style="list-style-type: none"> • Will the buyer pay the entire amount up front or will the buyer pay in installments? • If in installments, will there be interest or a security agreement? 	
	<p>If a majority owner wants to sell his or her equity as part of a potential sale of the company, should he or she be able to force the minority owners to also sell their equity?</p>	
	<p>If a majority owner wants to sell his or her equity as part of a potential sale of the company, should minority owners be able to force the sale of their equity as well?</p>	
	MISC.	<p>Will the company obtain and maintain life insurance policies on its owners?</p>
<p>If there is a dispute between the owners, where will the dispute be resolved, and will it be resolved in court or in private arbitration?</p>		