

# Should I Have a Limited Liability Company?

LLC Limited  
Liability  
Company

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# Should I have a Limited Liability Company (LLC)?

If you watch tv ads for business owners you would think everyone is supposed to have an LLC if you are starting a business. However, that is NOT the truth.

Far too many people get the cart before the horse by setting up an LLC because it seems like the 'common' or 'right' thing to do once you start a business...or even think of starting a small business.

I don't know how this whole craze started and frankly, or who started the spread of misdirection and misinformation, but the LLC for all of its good and bad is here for the foreseeable future.

Thus, I would be remiss not to tackle this important topic set the record straight.

## **3 Major reasons for an LLC**

I truly believe it boils down to 3 reasons why an LLC make sense in certain situations for a new small business owner.

**1. Protection from and ownership of Rental Property.** The #1 reason LLCs are utilized and created every day around the Country and by the thousands every year, is to hold rental property. The LLC protects the owner and manager of the property from operations of the business/rental. Yes, in order to have this 'protection' the manager and owner or (referred to as the Members) of the LLC need to act responsibly, without negligence and within the scope of their duties and responsibilities.

Now this protection is extremely valuable and an important reason to form and LLC, but everyone doesn't need an LLC the moment you start operating a business. Your business may not have 'assets' or create liability (for example selling jeans on e-bay). However, if you even own one rental property, an LLC should be a serious and important consideration

**2. Ability to convert to an S-Corp later.** Sometimes an LLC can be a great stepping stone for a new business owner when they have an operational business. If the owner sees a potential for growth and the need to save on Self-Employment tax, or the owner has some liability exposure from the operations and needs a formal entity to legitimize the business.

In this situation an LLC can be a great starting place and even help keep costs down. This type of structure typically involves a Single-Member LLC. A



SMLLC is a 100% owned LLC by a one individual (or entity) and offers a unique cost saving benefit. The owner gets asset protection, yet no extra tax return. The owner can report the operations of the LLC on the owner's tax return. Typically a Schedule C if an individual or on a consolidated tax return of the owner is an entity. Also, if the owner is an individual, the owner can choose to make an S-Election retroactively to the beginning of any tax year without a timing problem.

As an aside, it's important to note that filing an LLC isn't simply filing a single piece of paper with the State. It's important that the owner treat the formation and maintenance of an LLC similar to that of a corporation to receive the same type of protection.

**3. Partnership Purposes.** Bottom line, an LLC is excellent for partnerships. It protects a partner from the actions of the other partner and allows for more efficient tax planning. Most importantly, the LLC creates a mechanism to document all of the agreements and terms for their partnership. Far too many business owners partner with others on a hand shake, email or some scribbles on a napkin from Dennys.

An LLC can be used on the 'operations side' with the partners each having their individual ownership held by an S-Corp. This allows each partner to take additional tax write-offs, utilize the S-Corp for other sources of revenue, and most importantly establish their own payroll levels to save on Self-Employment taxes, or even create a 401k or health plan. The possibilities are almost endless...ok that was a little strong.

On the 'passive side' the ownership of the LLC would typically be in the name of the trust of each partner. I discuss this further in Chapter X, where I emphasize the importance of estate planning. Just because a partner has stepped up to the plate with asset protection and the benefits of an LLC in this respect, has the partner thought of their family, loved ones, or charity and who would inherit their share of the LLC upon their passing.

Again, one can see that simply clicking a button on an incorporation website can do more harm than good without some comprehensive planning. The possibilities of an LLC can be extremely powerful and helpful in a well-designed tax and asset protection plan. However, without any coordinated planning the LLC may not even be worth the paper it's printed on and actual create unseen costs.

Mark J. Kohler is a CPA, Attorney, Radio Show host and author of the new book ["The Tax and Legal Playbook- Game Changing Solutions For Your Small Business Questions"](#) and ["What Your CPA Isn't Telling You- Life](#)

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