
LLCS FOR RISK MANAGEMENT, SUCCESSION PLANNING, AND ASSET SHIELDING

GOOD
BIZ.LAW

Alicia Locheed Goodrow, Founder
(713) 589-3232
agoodrow@goodbiz.law

GOOD
BIZ.LAW



Why Form An LLC

There are many advantages to an LLC,
but the core advantages to an LLC are:

Risk Management

Shared Ownership

Capital Raising

Buy-Sell Issues

Tax Flexibility

Operational
Freedom

Business Roadmap

Dispute Resolution

Exit Plan

Governance

Case Studies

Four Founders Family Business



THE BIRTH OF THE LLC

HIPPIE MOM + STUFFY DAD

A hybrid entity combining the flexibility of partnerships with the liability shield of corporations. Designed to balance freedom and structure.

1977

Wyoming enacts the first LLC Statute in the U.S.

1988

The IRS clarifies LLC tax treatment with Revenue Ruling 88-76, boosting acceptance.

1991

Texas's first modern LLC act goes into effect, officially authorizing LLCs in the state.

CORPORATIONS

V.

GENERAL

PARTNERSHIPS

LLCs became commonly used business entities in the 1990s starting with the Texas Limited Liability Company Act (1991).

They were designed to be full liability shields (no general partner) but with the flexibility of more informal governance structures. They are both creatures of contract and statute.

CORPORATION

➔ HIGHLY STRUCTURED
"The Stuffy Dad":

Governed by the Texas Business Organizations Code ("TBOC").

Requires Bylaws, Annual Meetings, and Strict Compliance.

GENERAL PARTNERSHIP

➔ MINIMAL STATUTORY REQUIREMENTS
"The Hippie Mom":

Essentially "no rules." Partners share profits, losses, and liability without mandated governance.

The Flexibility Advantage of LLCs

➔ Strength

Empower private companies to create their own governance rules while retaining full liability protection for owners. Tax classification, management powers, member rights, buy-sell terms, voting, and economic rights are all flexible.

➔ Weakness

The statutory governance rules lack details and provide little guidance for addressing day to day relationship issues between owners and between owners and managers. A written agreement is necessary to create clear rules. Basic questions like "will a capital contribution cause a dilution" are not answered without a written company agreement.

LLC Management Options

HIPPIE Model:

Member–managed, handshake governance.

Example: Jessica & Jimmy run a cupcake shop.

Corporate–Style LLC:

Corporate. Manager–managed with formal agreements.

- **Common in funds, real estate, holding companies.**
- **Optional:** Outsourced Manager (MSA) or Nominee Manager for foreign owners.
- Analogous to old GP/LP structure common in Funds with a professionalized management team in a separate entity.

STUFFY Model:

Board–managed with detailed LLC Agreement (think 60 pages).

Ideal for complex ventures or private wealth structures.

The "LegalZoom" Fallacy

Many fail to spend the time, money, and thoughtful planning energy to customize. They default to boilerplate forms (think LegalZoom), which often ignore strategic needs.



What is the Solution?

★ Answer 1

All LLCs must have clearly written, comprehensive, thoughtful company agreements

★ Answer 2

Clients must understand and follow the rules in the company agreements

Even Single Member LLCs Need Company Agreements?

Answer: YES!

Succession of Management



Segregation of Assets



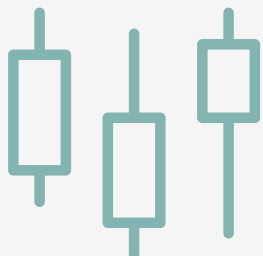
Tax Classification



Succession of Ownership



Purpose



Community Property Issues



Company Agreement

Table of Contents

ARTICLE 1	Definitions.....	1
ARTICLE 2	Organization.....	5
ARTICLE 3	Membership; Dispositions of Interest.....	6
ARTICLE 4	Capital Contributions.....	8
ARTICLE 5	Allocations and Distributions.....	11
ARTICLE 6	Management Of Company.....	11
ARTICLE 7	Meetings Of Members.....	16
ARTICLE 8	Indemnification.....	16
ARTICLE 9	Books, Records, Reports, And Bank Accounts.....	19
ARTICLE 10	Dissolution, Liquidation, And Termination.....	19
ARTICLE 11	Dispute Resolution.....	21
ARTICLE 12	Miscellaneous.....	22
Schedule 1	– Cap Table: Members, Capital Contribution, Membership Interests, and Sharing Ratios	
Schedule 2	– List of Affiliates of Founders (if any)	
Appendix A-1	– Founder Class Buy-Sell Agreement	
Appendix A-2	– Incentive Interest Buy-Sell Agreement	
Appendix B	– Tax Allocations & Special Tax Withholding	
Appendix C-1	– Decision Matrix of Company	
Appendix C-2	– Officer Decision Matrix – Delegation of Authority	
Exhibit A	– Pro Forma Demand Note	
Exhibit B	– Non-Disclosure Agreement	

Other Issues

Tax Classification and 704b compliance for tax partnerships

Capital Calls

New Members

Multiple Classes

Dispute Resolution

Dissolution

Indemnification

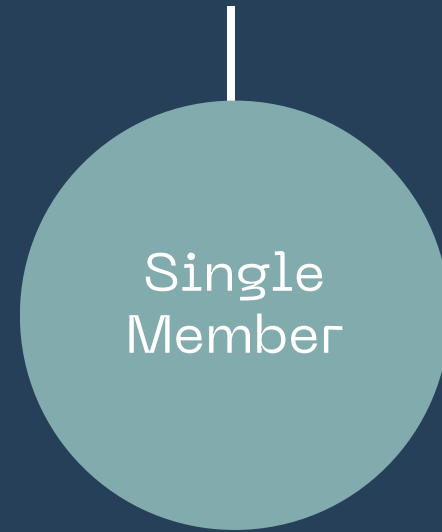
Schedule 1

PRO FORMA CAP TABLE

Member Name, Address, FEIN	Initial Capital Contribution	Class	Sharing Ratio	Vesting Schedule
John Smith 1234 California St Houston, TX 77006	\$100,000.00	Founder	99%	
Jane Smith 1234 California St Houston, TX 77006	\$0.00	Incentive	1%	5 years
Totals	\$100,000.00		100%	

Management Structure

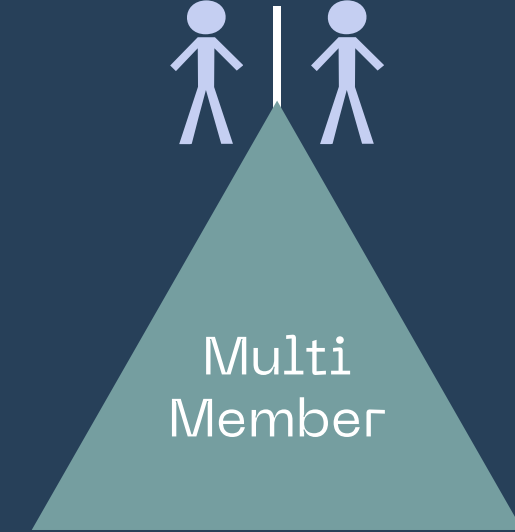
Member Managed



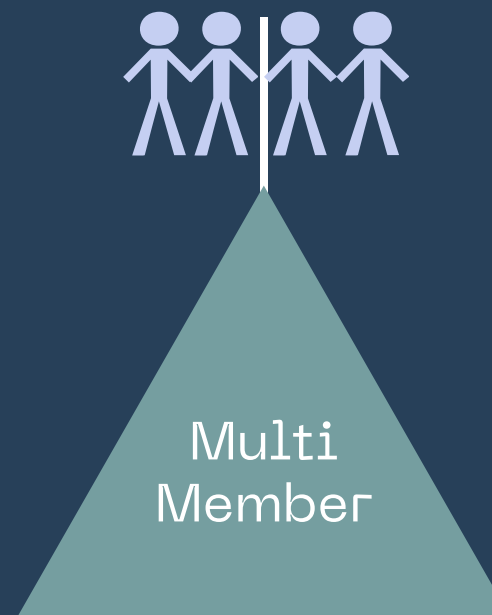
Manager Managed



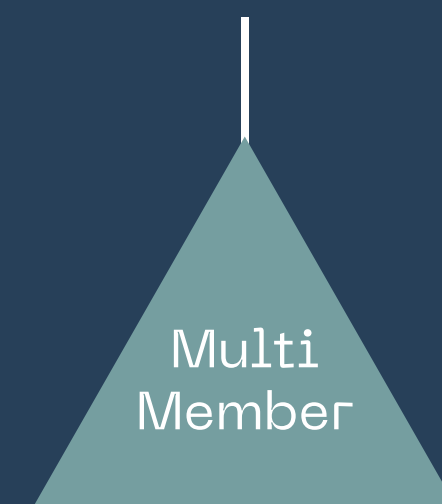
Member Managed



Board Managed



Single Member



what is a decision matrix and how can it help?

Decision Matrix for LLC

Decision	Manager	Members	Unanimous Consent of Members	Tie Breaking Advisory Council	Background Business Comments
Budget					
Day to Day Decisions					
Distribution of Cash					
Transfers of Ownership Interests					
Liquidation/Dissolution					
Distribution of Other Assets					
Member Buy-Outs					

DEADLOCKS AND DISPUTE RESOLUTIONS

Texas Hold 'Em
OR
Advisory Council

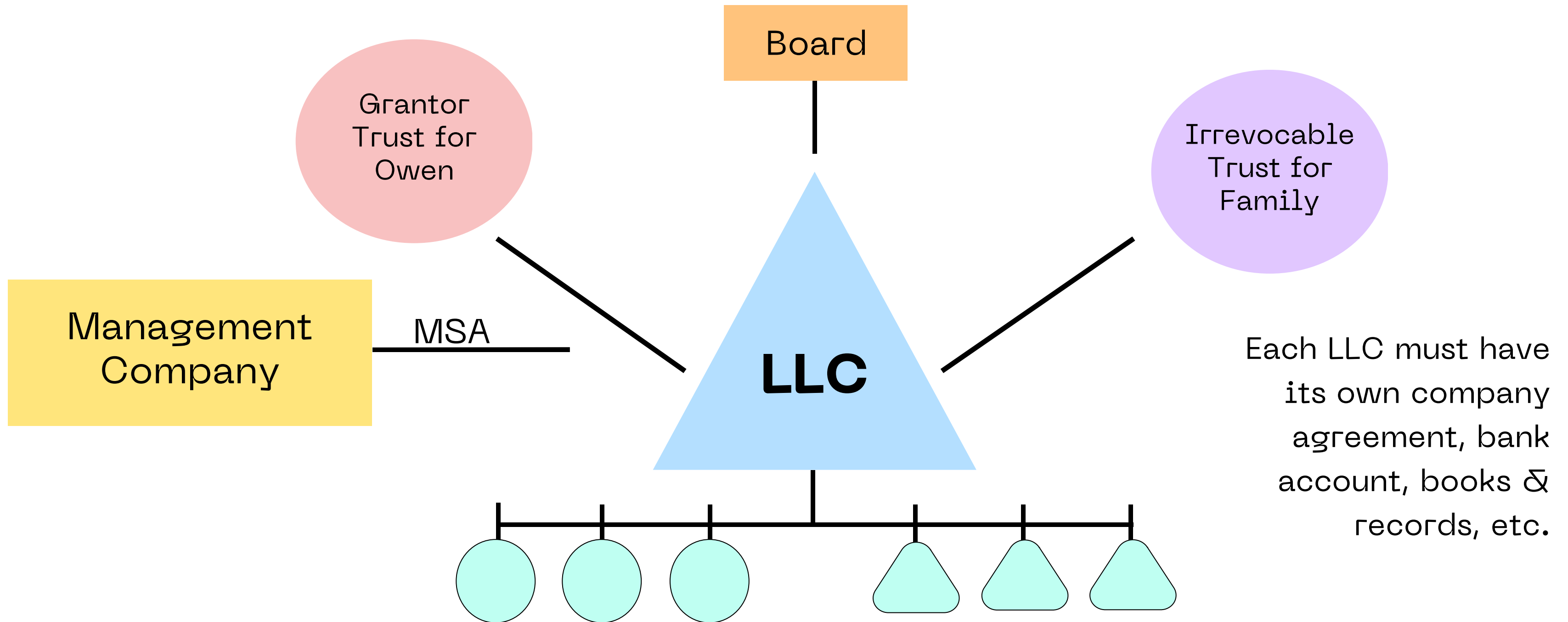


- Shotgun
- Buy-out
- Mediation
- Litigation
- Arbitration

Buy-Sell

Buy-Sell Triggering Event	Recommended Process	Valuation of Goodwill	Fixed Price Valuation	Appraisal Valuation	Valuation through Negotiation	Formulaic Valuation	Comments
		Residual Value of origination; Share of Goodwill; Payout based on 3-5 yrs of results following event; Cap Account; Payout from pre event work.	Fixed price agreed annually?	Minimum cost is \$25k-\$50k	Works if parties are equally situated financially and personally	Agree in advance on an industry specific formula based on EBITDA or Gross Revenue	Select the valuation for each event well in advance when parties are in equal negotiating position.
Disagreement/Business Divorce (after negotiation has failed)	Shotgun or Mediation?	Can work if this is part of the company's business model already.	risky b/c usually not current			Plan B if Shotgun is not fair	Business Divorces with 2 Founders are best resolved through Shotgun or Mediation.
Death, Perm Disability, Retirement	Remaining Founders Buy Out or Company Buys Out	Ditto	Ditto	May be necessary in complex or fast-growing business	Parties are not equally matched	Plan A	
Temporary Disability or Absence			no buy-				Usually no buy-out for temporary events
Divorce (community property assumption)	Member buys out spousal interest	n/a	Good option for divorce situations	This is the likely default if there is no divorce clause in the buy-sell	n/a	Maybe - but not common	In Texas, it is very important to have this done correctly
Third Party Offer	DISCUSS						ROFRs, Tag-Alongs, Drag-Alongs
Retirement	Remaining Founders Buy Out or Company Buys Out	Can work if this is part of the company's business model already.	usually not current. But could be used as a "floor"	Expensive and not common	Awkward	Most common	Important to negotiate in advance
Termination for Cause	Discounted value	n/a	Fixed Price/Discounted is normal	n/a	na/	n/a	Usually a floor value is set then perhaps something is negotiated into a Termination and Release Settlement.

BEST SOLUTION FOR COMPLEX COMPANIES AND GROWING FAMILY HOLD COS.



Each LLC must have its own company agreement, bank account, books & records, etc.

Litigation Trigger 1

Member Exits

When the LLC Agreement is not clear

- Wants to sell; does that mean the remaining Member has to accept a new partner he did not choose?
- Can the kids automatically take over the business?
- What if the remaining Member does not want to sell?

Litigation Trigger 2

Divorces and Death

Litigation Trigger 3

Members cannot agree

- Sale of business
- Major expansion
- Distributions
- Raising capital
- Adding new members
- Other

Litigation Trigger 4

Veil piercing issues in litigation

- Collect a judgement against one Member or against all Members

What Happens in Litigation?

- Subpoenas
 - Personal and business bank accounts
- Depositions
 - Minutes or other documents demonstrating decision making (voting)
 - Distributions and transfers
 - How have these been made?
- Documents
 - Are the assets titled?
 - How are credit cards used & paid?

That sounds **EXPENSIVE!**

Educating the client is the first step.

- Understanding tax choices involves multiple parties
- Drafting is often customized

BUT!

The cost of litigation is much more!

Q&A



Back of the Napkin



Pack Your Bags



GoodBiz.Law

Alicia Goodrow
(713) 589-3232