

## **SHOULD I FORM A COMPANY FOR MY BUSINESS?**

**By Pete Benenati, Benenati Law Firm, P.C.**

How many times have you heard, “you need to incorporate! You need to form a limited partnership (LP) or a limited liability company (LLC). It offers asset protection, and protection from creditors and lawsuits. It gives you better tax planning opportunities.” All of those statements are valid, however, I believe a lot of people don’t know why.

Putting an entity around your business basically creates a wall between the business and your personal assets; if something happens inside the entity, it won’t put your personal assets at risk. There are exceptions to this statement, but in general, that is the effect. There is some work you must do to maintain that protection. Specifically, you need to respect the entity. An entity is a separate legal person; thus, it must be treated as such. Therefore, if you want to pull money out, you need to document it, whether as a loan, compensation, or a distribution. If you want to put money into an entity, do it either as a loan or a contribution. If you’re borrowing cash for less than a year, traditionally, it is okay to do it as a journal entry on the books. If it is longer than a year, you need to document it with a promissory note. The IRS wants to see that documentation for income tax purposes. Do not pay your personal expenses out of company assets unless you are willing and able to justify it as a business expense and can document it properly, otherwise, claim it as a personal disbursement to yourself. With corporations, there are also requirements to maintain annual minutes.

None of these issues alone traditionally cause problems, however, if a person decides not to respect the entity, all of these problems seem to exist. Any entity you own should be operated like any other prudent business investment. Maintaining proper liability protection for the entity is always recommended and failure to do so could be classified as failure to respect the entity. If you fail to respect the entity, then the liability of the entity could reach your personal assets, and your creditor’s attorney will argue: “Your Honor, he doesn’t respect the entity, why should we be subject to it?” This is not an easy argument to win, however, no one wants to be in a position of being on the opposite end of that argument.

Basic rules:

- Form an entity – the form of the entity (corporation, LP or LLC) will depend on the particular circumstances of your business.
- Respect the entity
- Protect the entity

### **Disclaimer:**

This information does not constitute the rendering of legal, accounting or other professional services by Pete Benenati or Benenati Law Firm, PC. This information is not intended to create or provide an attorney-client relationship. Although care is taken to present the material accurately, any implied or actual warranties as to any materials herein are hereby disclaimed along with any liability with respect thereto.