

COMPANY FORMALITIES CHECKLIST

Corporations and LLCs (“companies”) must maintain proper formalities to safeguard limited liability and proper tax treatment. A company needs to be treated as a separate entity in order for the shareholders or members to avoid personal liability.

If you do not follow these formalities, a Court could find that you are operating as a sole proprietor or partnership, with unlimited personal liability for business debts, judgments and tax problems, regardless of the fact that you are also the shareholder of a corporation. Whether a Court would do this is based on a reasonableness test, but following these rules should ensure that your corporate entity is respected.

1. Read, sign and date the Initial Meeting Minutes and the By-Laws (if you have set up a corporation) or your Operating Agreement (if you have set up an LLC). Keep these with your Articles of Incorporation or Organization (as appropriate). Read carefully - DO NOT assume that because we provided them they must be worded correctly for your business. No one knows your business like you do. These are your documents, and you are responsible for their content. If you have any questions or require explanation, ask!
2. Write a personal check in the amount of your initial stock or membership interest purchase and deposit it into the business bank account. Write “stock investment” on the memo line. Keep a copy of the check in your business files with your Articles, Minutes and By-Laws or Operating Agreement.
3. Maintain the existence of the company by filing required annual reports with the State Department of Assessments and Taxation (SDAT) and paying taxes due to the State and local taxing authorities. The annual report should be mailed to you. If you haven't received a large envelope with a colored form from SDAT by January 31 next year and every year thereafter, please call us or your accountant. Your business's existence is at stake!
4. Any document signed on behalf of the company should clearly indicate that the person signing is doing so in his capacity as an officer or member, as appropriate. Read any contract or agreement, especially credit card agreements, carefully to be sure that there is no "small print" that would make the signing officer or member liable. The proper way to sign on behalf of a company is as follows:

FUNNY, INC. By: _____ IAN FUNNY, President	OR, for an LLC,	FUNNY, LLC By: _____ IAN FUNNY, Member
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5. Your organizing documents set the framework for your business operation. Review your Articles of Incorporation or Articles of Organization (as appropriate), bylaws or Operating Agreement and other organizing documents at least annually to be sure you are “following the rules” of your own business. If your mode of operation changes, consider changing your documents to reflect your new business operation, or changing your operation to match your documents. One way creditors “pierce the corporate veil” is by showing that you don’t follow your own rules, and thus aren’t really operating a separate entity.
6. Hold shareholder’s or members’ and Board meetings (if you have a Board of Directors) at least annually, if required (and we can advise you as to whether this is required for you). Keep your minutes of your annual meetings with your business records. On an annual basis, the company's CPA should advise you or your attorneys as to what needs to be documented in the minute book for tax purposes. This includes salary payments made to shareholders, shareholder loans, capital contributions and any significant capital transactions. The IRS and creditors may be entitled to inspect the company minute book when tax or liability issues arise. If the books are not properly kept up, the creditor or the IRS may succeed in establishing that you are personally liable for the debt – the very thing you have tried to avoid by forming your corporation or LLC.
7. Even if your books are current, and notwithstanding the corporate or LLC entity form, everyone with check writing authority and everyone with control of the company books and records can be found PERSONALLY liable for taxes, if unpaid or not withheld. Don’t borrow money from your payroll account, or from your Uncle Sam. He has no mercy, nor will your unpaid or underwithheld employees.
8. Operate the company under the proper name and/or under one or more fictitious (“DBA”) names duly filed with SDAT – NOT in your personal name. Make sure that DBA names are duly registered both with SDAT and locally in the county where the primary office is located, if required. Third parties doing business with

- the company must be aware that they are dealing with a corporation or LLC that has limited liability. The corporate name must appear along with any DBA name on all contracts and invoices with customers and vendors, all business cards and brochures, etc. Invoices for items purchased by the company should show the company as the purchaser to avoid potential personal liability for payment and/or product liability claims.
9. Do not give personal guarantees or have personal involvement in situations that would result in personal liability unless absolutely necessary for the survival of your business – and even then, count the cost. If a creditor demands a personal guarantee, remember that, regardless of the kind assurances of the creditor's representative to the contrary, your creditor can and will sue you personally if your company cannot pay. There are legal means available to protect your assets even if you have to give a personal guarantee. Every situation is different; consult us regarding forms of titling, ownership of your company and related issues.
 10. Treating the company as a separate financial entity is imperative. The company checkbook should not be treated as though it were your individual checkbook, and vice versa. Payments to or on behalf of the company, and from the company or on your individual behalf need to be properly documented as loans, capital contributions, compensation or profits or dividend distributions. These items should be specified in the books and in the annual minutes. If you need help classifying these items, call us or your accountant. Purchase of personal items with business funds is a potential source of liability if it can be treated as disregarding the business entity.
 11. Think twice before permitting employees to drive your personally-owned vehicles. If an individual's name is on the title of a car, he has potential liability for accidents while someone else drives it. Make sure that your commercial insurance package includes "non-owned automobile" coverage to cover potential liability from errands that someone runs in an employee or contractor's own automobile.
 12. If the company owes money to a shareholder or related parties, document this with a promissory note so that the repayments are properly respected by the IRS and creditors as loan repayments and not as disguised salary. File a security interest lien or mortgage on corporate assets so that the individual creditor will be paid before third-party creditors. We can provide you with a form for this purpose.
 13. Company pension plans require periodic updates and IRS filings to maintain creditor-proof status and income tax advantages. Inadvertent termination of a plan through failure to file required forms can have a devastating consequence in fines and liability to employees – and, regardless of your liability limitation through the company, you are PERSONALLY liable for all such items.
 14. Make sure you are current on your workers' compensation payments (if required) and that all parties providing services to you are properly exempt or maintaining their own coverage. Make sure you properly classify employees and independent contractors – the test is not simply whether you want to withhold taxes. The IRS is eager to reclassify for you, and assess interest and penalties. We can assist with these issues.
 15. Shareholders or members, as appropriate should draft an employment agreement entitling their estates or successors to be paid compensation in the event of death or disability. Otherwise, the IRS can deny deductibility of payments made after death or disability. You should decide now how you will fund any buyout of a shareholder or member, or you might find yourself doing business with other shareholders' or members' spouse or children, who might have no interest in the long-term viability of the business and just want cash – and want it now. We can help you draft an agreement.
 16. If you are leasing equipment, office space or other premises to yourself, you must document the arrangement for it to be enforceable – which protects you and your company from creditors. The lease terms must be reasonable, and payments must comply with the terms of the lease to be deductible. The assets of your company can be protected by causing the company to give you a lien to enforce future rent on a long-term lease. We can provide you with a lease drafted to fit your situation.
 17. Avoid confusion among multiple companies. Clients owning more than one company should be sure that applicable formalities and documentation do not inadvertently make these companies' "parents" jointly and severally liable. Inter-company transfers or financial arrangements may cause tax problems and should be carefully documented and scrupulously followed.
 18. If you are considering bringing in shareholders, members or investors, purchasing or leasing property, entering into contracts or other agreements, please call us. We can assist with all of those issues and more!