



3 KEYS TO LLCs

PROTECT YOURSELF AND YOUR FAMILY

You've created a Limited Liability Company (LLC) for your business. **Congratulations!**

Separating business and personal assets is the best way to protect you and your family from the risks of running a business. **But forming an LLC is just the beginning.** To get the protection, you need to run your business as a business, and avoid sending mixed messages that could "pierce the veil" of protection that an LLC provides, putting your personal assets at risk.

Nobody goes into business expecting to fail, but things happen. And based on what we see every day here at TBS Factoring Service, a lot of truckers are unknowingly putting personal assets at risk by failing to follow some basic, fairly easy guidelines. We call them the Three Keys to LLCs.

THE THREE KEYS

 **All contracts and paperwork must be in the name of your LLC** – including your Authority, Insurance, factoring contracts, and payments from freight brokers. Even your phone should be in your company name.

 **Keep separate records for your business**, and never deposit business checks into your personal account.

 **Always use the EXACT legal name of your company** – if you are A.B.C. Trucking, LLC, always write it the same way and remember to use the periods between the letters. That means ABC Trucking, LLC is not correct – it needs to be A.B.C. Trucking, LLC.

An LLC can be a useful tool to protect your personal finances. But, like all tools, they only help if you use them properly.

You should consult with an attorney to make sure all of the details associated with your particular LLC are legally valid, and that your company's policies and procedures are in line with state and federal regulations governing limited liability companies. A little extra time spent up front to make sure you are protected can save you a lot of time and headache down the road.

WHAT IS AN LLC?

An LLC is a business structure that combines the personal legal protection of a corporation with the tax simplicity of a partnership.

- Profits and losses pass through to the owners' personal tax statement.
- No separate tax filing or annual stockholder meeting is required.
- Full personal legal protection of a corporation is provided.

DETAILS MATTER

An LLC can protect you only if you make a concerted effort to treat your business as a business. In addition to the Three Keys, **here are some important things you can do to show that your business is truly separate and distinct from you and your family.**

- File all state-required reports on time and pay all fees.
- Pay sales taxes, FICA, and all other taxes on time.
- Sign all contracts in your capacity as an officer of the company, i.e.: (Your Name), Managing Member, on behalf of "LLC Name."
- Have business cards, letterhead and other materials use the LLC name.
- Do not withdraw money from the company for personal use and document it later as a loan or bonus.

FORMING AN LLC

Allowing for variations from state to state, there are four basic steps:

1. Choose a name.

- Can't have same name as any previously registered LLC or other entity in your state. (Your state will tell you whether a name is available.)
- Name must include LLC, Limited Liability Company, or some other indication the business is an LLC.
- Must not include restricted words, such as "bank," or "insurance."

2. File Articles of Organization

- Typically filed with Secretary of State (or equivalent)

3. Create an Operating Agreement (especially important for multi-member LLCs)

- Include: % interests of each member, allocation of profits and losses, members rights and responsibilities, among other things.
- Include a "buy-sell" clause that spells out how a partner may leave the partnership, how shares will be priced, and any restrictions on transfer of ownership.

4. Announce your business.

- Some states, including Arizona and New York, require new LLCs to publish a statement announcing their formation in the local paper.

- Carefully read any personal guarantees you may sign in conjunction with a loan to your LLC. Make sure you're only liable personally for the debt of that particular loan – remember, you must separate LLC and personal finances.
- Make sure your LLC has enough money to conduct business. Otherwise, a court might find your LLC is too "thinly organized," which means you may have personal liability. The exact amount needed varies, depending upon the size of the LLC and its revenue.
- Don't take a personal payment from your LLC, if that payment puts the LLC out of business. That may give creditors the right to sue you, instead of the LLC.

That is a lot to remember, but essentially they all say the same thing: **If you want the protection provided by an LLC, you need to consistently demonstrate that your business is, in fact, separate from your personal assets. Pay attention to details, and don't use the company as your personal piggybank.**

Most independent trucking firms are what are known as "single-member" LLCs, which typically report income on the owner's personal tax return. A "multi-member" LLC, that is, an LLC with multiple owners, is taxed as a partnership, and the income is reported to each owner on form K-1, generally according to percentage of ownership.

Copyright 2012, David B. McKinney and Melissa S. Taylor, Members of GableGotwals, Tulsa, Oklahoma. This is legal education and not legal advice. An attorney-client relationship is not created by the reading of this article. You should consult your lawyer before taking any action that has legal consequences.

ABOUT TBS

[TBS Factoring Service, LLC](#) is a leading company in providing factoring to growing companies in the transportation industry. TBS Factoring was founded in 2004, and currently serves more than 1,000 clients. The company is headquartered in Oklahoma City, OK.

In 1968, [Truckers Bookkeeping Service](#) began providing independent truckers with permitting and fuel tax reporting services. In 1998, [TBS Insurance Agency](#) was formed to provide truck insurance throughout the nation. TBS Factoring Service, LLC was started in 2004 to provide simple and flexible cash flow solutions with freight bill factoring. These three companies comprise a family-owned, one-stop shop for independent trucking.

The TBS family-ownership group has more than 50 years experience serving independent truckers. Our clients receive outstanding service from a seasoned and dependable staff. TBS Factoring Service is among the most highly regarded freight factoring companies in the USA.



FOR MORE ARTICLES LIKE THIS ONE, VISIT
WWW.TBSFACTORING.COM/TRUCKERSLAB