

Instructions L010i

Articles of Organization

ARIZONA CORPORATION COMMISSION

Corporations Division
1300 West Washington Street
Phoenix, Arizona 85007
www.azcc.gov
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General Information

Who can form a limited liability company ("LLC")? One or more persons can form an Arizona LLC by signing and filing Articles of Organization with the Arizona Corporation Commission. A.R.S. § 29-631. These persons are called "organizers." "Person" includes individuals and entities. A.R.S. § 29-601(15). "Entity" means domestic or foreign corporations, limited liability companies, and other associations – see A.R.S. § 29-601(15). Statutes are available on the Arizona Legislature's website, www.azleg.gov, by following the link for Arizona Revised Statutes.

Does the organizer have to be a member or manager? No. The person or persons who sign the Articles of Organization can be, but do not have to be, members or managers of the LLC before or after formation of the LLC. A.R.S. § 29-631.

What are the LLC name requirements? The examiner will determine if the LLC name to be used complies with the statutory requirements, but you can review the name criteria, check for name availability and, if desired, submit a name reservation application by using our website at www.azcc.gov/divisions/corporations/filings/namingpolicy.asp. Reserving the name is not required. Web access is available to the public at our Phoenix and Tucson offices.

The LLC name must satisfy the requirements of A.R.S. § 29-602. The professional LLC name must satisfy the requirements of A.R.S. § 29-845. Statutes are available on the Arizona Legislature's website, www.azleg.gov, by following the link for Arizona Revised Statutes.

The minimum requirements under Arizona law for the name of a limited liability company are that it:

shall contain the words "limited liability company" or "limited company" or the abbreviations "L.L.C.", "L.C.", "LLC", or "LC"

AND shall not contain the words "association", "corporation", "incorporated", or an abbreviation of those words.

If the name contains any of the following words, prior written approval must be obtained from the Arizona Department of Financial Institutions before registration is allowed: Bank; Banker; Banking; Banc; Banco; Banque; Credit Union; Deposit; Savings Association; Building Association; Savings and Loan Association; Building and Loan Association; Savings Bank; Thrift; Trust; or Trust Company. See A.R.S. §§ 29-602, 29-804.

A professional limited liability company name shall not conflict with any of the above, and shall contain the words "professional limited liability company" or one of the following abbreviations: "P.L.L.C.", "P.L.C.", "PLLC", or "PLC", in upper or lower case letters.

Trade name – if you are the owner of a trade name registered with the Secretary of State's office that is identical to the LLC name you wish to use, your name must appear in the Articles of Organization in some capacity.

Should I form a professional LLC? You should check with the agency or board that licenses your profession to see if it requires you to form a professional LLC or if it prohibits you from forming a professional LLC. See A.R.S. § 29-841 through 29-847. The Arizona Corporation Commission cannot tell you whether you can or should form a professional LLC, because this issue may involve legal or tax advice, and Commission staff cannot give legal or tax advice to the public.

A.R.S. §§ 29-841 through 29-847 apply to professional LLCs. Statutes are available on the Arizona Legislature's website, www.azleg.gov, by following the link for Arizona Revised Statutes.

Can I form a nonprofit LLC? You may form a limited liability company and it can apply to the Internal Revenue Service (IRS) for tax-exempt status, but you do not form a "nonprofit LLC" in

Arizona. It is advisable to seek the advice of your tax or legal professional and/or the IRS (www.irs.gov) before you form your LLC. The Commission staff cannot give you legal or tax advice, and cannot tell you whether your LLC will qualify for tax-exempt status.

Should my LLC be member-managed or manager-managed? A general description of each type of management structure is below. The Arizona Corporation Commission cannot advise you on this issue because it involves legal advice, and Commission staff cannot give legal advice. It is prudent to seek the advice of an attorney before forming your LLC in order to make an informed decision about the management structure of your LLC.

Member-managed LLCs have at least one member and do not have any managers listed in the records of the Commission. In general, in a member-managed LLC that has no operating agreement, each member has authority to act for the LLC and each member has one vote per member. Member-managed LLCs with no operating agreement are very similar to partnerships in the way decisions are made, with most day-to-day decisions being made by a majority vote of the members. See A.R.S. § 29-681. Caution – in a two-member LLC with no operating agreement that provides otherwise, both members will always have to agree on every action or decision, because there will never be a majority.

Manager-managed LLCs have at least one manager listed in the records of the Commission, and at least one member who must be listed if the member owns 20% or more of the LLC. In general, in a manager-managed LLC that has no operating agreement, each manager has authority to act for the LLC and most day-to-day decisions are made by a majority vote of the managers, with each manager having one vote. See A.R.S. § 29-681. Manager-managed LLCs are very similar to corporations in the way day-to-day decisions are made. For example, the managers are like the

board of directors of a corporation, and the members are like shareholders. Caution – if there are two managers and no operating agreement that provides otherwise, both managers will always have to agree on every action or decision, because there will never be a majority.

Can the LLC have only one member?

Yes.

Can the only member also be the only manager? Yes.

What is an operating agreement and do I need one? An operating is a written or oral (verbal) agreement between all members concerning the affairs of the LLC or the conduct of its business. See A.R.S. §§ 29-601(14), 29-682. An operating agreement is not required by statute. If there is no operating agreement, then the LLC statutes will govern how the LLC conducts its affairs. Your needs may not be addressed by those statutory provisions, and, therefore, you might want an operating agreement. For example, the LLC statutes provide that each member has one vote, but you may want the member who owns a 60% interest to have 60% of the total voting power. Unless there is an operating agreement that changes the voting to percentage interest, then each member will always have one vote, no matter what percentage they own. As a further example, the statutes limit the reasons for expelling members, and you may want more freedom to expel members.

You should seek the advice of a competent professional such as an attorney concerning the particular needs of your LLC to determine whether you need an operating agreement and what it should contain. The Arizona Corporation Commission does not have a form for an operating agreement, and cannot advise you at all about operating agreements. DO NOT FILE operating agreements with the Arizona Corporation Commission.

What is a Statutory Agent?

A Statutory Agent is an individual or a business entity that the LLC appoints for the purpose of accepting service of process (lawsuit papers or legal documents) for the LLC. See A.R.S. §§ 29-604, 29-606. The agent is called a

“statutory” agent because a statute requires that the LLC appoint someone for this purpose. See A.R.S. § 29-604. If, for example, a lawsuit is filed against the LLC, the Statutory Agent will be the one who is served (receives the papers on behalf of the LLC), and then the Statutory Agent should give the papers to the LLC. Note that the law requires that the LLC maintain a statutory agent with a valid address on the records of the Arizona Corporation Commission at all times, and the failure to do so will subject the LLC to being administratively dissolved. See A.R.S. §§ 29-604, 29-786. Official notices from the Arizona Corporation Commission will be sent to the statutory agent’s address.

Who can be the Statutory Agent?

A Statutory Agent can be an individual, or an Arizona corporation or LLC, or a foreign corporation or LLC that is authorized to transact business in Arizona. An LLC cannot be its own Statutory Agent – it must appoint someone apart from itself. For example, the LLC can appoint one of its members or managers in his or her capacity as an individual as the statutory agent, but cannot appoint the LLC itself as the statutory agent.

If an individual is appointed as the statutory agent, that individual must be a permanent, full-time resident of the State of Arizona and must have a permanent, full-time physical or street address in the State of Arizona. The mailing address, if any, of that individual statutory agent must also be in Arizona.

The statutory agent must accept the appointment in writing. The statutory agent can accept the appointment by completing and submitting the Statutory Agent Acceptance form M002 found on our website at:

<http://www.azcc.gov/Divisions/Corporations/forms/formsindex.asp>. If the statutory agent is an entity, an authorized agent of that entity can sign the acceptance. An authorized agent is anyone given authority to sign for that entity.

Is publication required? Yes. See A.R.S. § 29-635. A notice of the filing of the Articles of Organization is required to be published. When the Articles are approved for filing, you will receive a Notice Of LLC Formation that you can publish. DO NOT PUBLISH

UNTIL THE COMMISSION APPROVES THE ARTICLES FOR FILING. The approval letter you will receive from the Arizona Corporation Commission will contain information on how to publish.

When is the LLC formed?

If no date is specified – if no delayed date is specified in the Articles of Organization, and if the Articles of Organization meet all statutory filing requirements and all fees are paid, the LLC is formed on the date the Articles were delivered to the Arizona Corporation Commission.

If a delayed effective date or time or both is specified – if the Articles of Organization meet all statutory filing requirements and all fees are paid, the Articles would be effective on the specified time and date. If a delayed date is specified, but no time is given, then the time used will be 12:01 a.m. Mountain Standard Time. A delayed effective date may not be later than the ninetieth (90th) day after the date the Articles are delivered to the Commission for filing.

If all filing requirements were not met, the Arizona Corporation Commission will send notice that additional information and/or fees are required. You will have 30 days from the date of that notice in which to submit the requested information and/or fees. If the requested information and/or fees are provided within that 30 days and all statutory filing requirements are met, then the LLC will be considered formed as of the date the original Articles were first delivered to the Commission. If the requested information and/or fees are not provided within that 30 days or do not comply with statutes, then the LLC terminates as of the 31st day after the date of the notice requesting additional information and/or fees.

Filing fee. The filing fee is \$50.00. For expedited processing (read the next paragraph), add \$35.00 to the filing fee. All fees are nonrefundable. See A.R.S. § 29-851.

Processing time. Processing times are posted on our website each Monday at www.azcc.gov/Divisions/Corporations. For expedited (faster) processing, payment of the expedite fee plus payment of the filing fee must be submitted. See A.R.S. § 29-851. The expedite fee is \$35.00. See Decision No. 68008, July 22, 2005, Docket No. AC-

00000A-05-0488. The Arizona Corporation Commission does not currently offer same day or next day service.

Instructions

Number 1. Check one box to indicate whether the LLC will be a regular (non-professional) LLC or a professional LLC. Please refer to "Should I form a professional LLC" under the General Information section above.

Number 2. Give the exact name of the LLC, including exact spelling, punctuation, and an appropriate LLC identifier such as Limited Liability Company or LLC, etc. Please refer to "What are the name requirements" under the General Information section above.

Number 3. If the LLC will be a professional LLC (if "professional limited liability company" was checked in number 1), then briefly describe the type of professional services that will be rendered by the LLC.

Number 4.1. Please refer to "What is a statutory agent" and "Who can be the statutory agent" under the General Information section above. List the name of the statutory agent – either an individual or entity, not both. If the statutory agent is an entity, you can put the name of a person to whom correspondence will be directed on the "Attention" line directly underneath the statutory agent name line, and the name will become part of the address. A name in the "Attention" line will NOT change the identity of the statutory agent. Provide a street address for the statutory agent directly underneath the "Attention" line, completing all blanks that are not marked optional. The address will be viewable by the public on the internet. Note that LLCs are required to maintain a statutory agent at a valid address in the records of the Arizona Corporation Commission at all times, and failure to do so will subject the LLC to being administratively dissolved. See A.R.S. §§ 29-604, 29-786. Note that official notices from the Arizona Corporation Commission will be mailed to the statutory agent at its street address, unless a statutory agent mailing address is provided, in which case notices will be mailed to the statutory agent mailing address.

Number 4.2. The statutory agent named in number 4.1 can have a separate mailing address, which can be a P.O. Box or a personal mail box. The address will be viewable by the public on the internet. If the statutory agent is an individual, the mailing address must be in Arizona. Complete all address blanks that are not optional. Note that official notices from the Arizona Corporation Commission will be mailed to the statutory agent at its street address, unless a statutory agent mailing address is provided, in which case notices will be mailed to the statutory agent mailing address. Note that LLCs are required to maintain a statutory agent at a valid address in the records of the Arizona Corporation Commission at all times, and failure to do so will subject the LLC to being administratively dissolved. See A.R.S. §§ 29-604, 29-786.

Number 4.3. The individual or entity named as statutory agent must accept the appointment as statutory agent by signing a statement of acceptance. The statutory agent can independently complete and submit form M002, the Statutory Agent Acceptance form, available on our website at this link: <http://www.azcc.gov/Divisions/Corporations/forms/formsindex.asp>, however, it is recommended that the acceptance form be delivered simultaneously with the Articles. If no statutory agent acceptance is in the Arizona Corporation Commission system at the time the Articles are examined, the Articles will be rejected.

Number 5. The Arizona known place of business (KPB) address must be a street address in Arizona, and it can be the same as the statutory agent's street address. See A.R.S. § 29-604. The address will be viewable by the public on the internet. If the KPB address is the same as the statutory agent's street address, check the "yes" box and continue with number 6, and do not list any address under number 5.2. If the KPB is not the same as the statutory agent's street address, check the "no" box and provide a street address in number 5.2 by completing all address blanks that are not marked as optional. Note that the LLC is required to maintain a valid KPB in the records of the Arizona Corporation Commission at all times, and failure to do so will subject the LLC to being

administratively dissolved. See A.R.S. §§ 29-604, 29-786.

Number 6. The LLC must indicate how long it intends to exist – this is its duration or life period. The life period is presumed to be perpetual (forever) unless one of the other boxes is checked and a corresponding date or event is listed. If the LLC's existence will be perpetual, do not check any of the boxes.

Numbers 7 and 8. You must select a management structure for the LLC. Choose either 7 or 8, but not both. Please refer to "Should my LLC be member-managed or manager-managed" under the General Information section above.

Number 7. If the LLC will be manager-managed, check this box and then complete and attach only the Manager Structure Attachment. The Articles will be rejected if they are submitted without the Manager Structure Attachment.

Number 8. If the LLC will be member-managed, check this box and then complete and attach only the Member Structure Attachment. The Articles will be rejected if they are submitted without the Member Structure Attachment.

Number 9. Please refer to "Who can form a limited liability company" under the General Information section above. List the name of the organizer. The organizer must sign under penalty of perjury. See the Signature and Verification section below.

Signature and Verification

The organizer must sign the Articles of Organization.

The document is submitted under penalty of perjury.

Sign on the signature line in the Signature section. Print the name of the individual signing, if it is different from the name of the organizer (this occurs when an entity is the organizer). Fill in the date.

Submit the document

Cover Sheet. All documents should be submitted with a Cover Sheet. Forms are available on our website at this link:

<http://www.azcc.gov/Divisions/Corporations/forms/formsindex.asp>

Questions

For questions, contact our Customer Service Call Center at 602-542-3026, or, within Arizona only, 800-345-5819.

What to submit:

1. Cover Sheet
2. Articles of Organization
3. Member Structure Attachment
OR
Manager Structure Attachment
4. Statutory Agent Acceptance
5. Payment.

By Mail. Mail the completed paper document, cover sheet, and payment (see below for payment information) to:

Arizona Corporation Commission
Corporations Division
1300 W. Washington St.
Phoenix, Arizona 85007

In Person. Deliver the completed document, cover sheet, and payment (see below for payment information) to:

Arizona Corporation Commission
Corporations Division
1300 W. Washington St.
Phoenix, Arizona 85007

Payment Methods

Credit card. If submitting the document in person, payment by credit card is acceptable. Credit cards cannot be used if submitting by mail or by fax. The Arizona Corporation Commission accepts only Visa, MasterCard, or American Express.

Check. If submitting the document by mail or in person, payment by check is acceptable. Checks must have an imprinted (pre-printed) name of the account holder and/or the account holder's imprinted address – checks without imprinted name or address information will not be accepted. A handwritten or stamped name or address will not be accepted. If paying by check, make the check payable to Arizona Corporation Commission, and do not abbreviate.

Money order. If submitting the document by mail or in person, payment by money order is acceptable.

Cash. If submitting the document in person, cash payments are acceptable. Do not mail cash.