

# DO IT YOURSELF

## LAWYERS BEWARE WHEN FORMING YOUR LLC

**T**he age of the internet has resulted in a proliferation of “Do It Yourself Lawyers.” In the formation of business entities, the Louisiana Secretary of State (“LA SOS”) has made it easy for anyone to use the LA SOS website to form their own limited liability company without a lawyer’s assistance.

An electronic form with fillable blanks is provided on the website. All one need do is fill in the blanks with the only two things required by law to be included in the articles of organization as a prerequisite to formation of an LLC—those being the name and the purpose of the entity. A third set of blanks is provided for “Other Provisions.”

The LLC Law provides “default rules” which govern all LLCs formed in Louisiana unless the members provide otherwise in the articles or in an operating agreement. Some of these default rules may be modified by an oral operating agreement of the members, while others can be modified only in a written operating agreement, or in the articles of organization.

Assume a typical two member LLC in which the members (A & B) enter a “handshake agreement” that Member A will put up all the necessary capital and have 80% voting control with an 80% share of the profits and losses, while Member B puts up no cash capital and receives in return for services to be performed for the LLC, a membership interest having 20% of the voting rights and a 20% share of the profits and losses.

They form their own LLC without counsel, using the LA SOS website, fill in nothing in the “Other Provisions” blank and rely on their “handshake deal” for the details of their arrangement.

Member A will be rudely disappointed when he learns years after formation of the LLC, often only after he and Member B have fallen out with one another, that because they did not agree to their 80/20 arrangement in either a written operating agreement or provide for the same in their articles of organization, they each, as a matter of law, share equally in all voting rights and sharing of profits and losses.

In the absence of a written operating agreement or written articles of organization providing otherwise, voting rights, and sharing in profits, losses and distributions is strictly by heads; i.e. two members—50/50, three members—1/3 each, etc.

Moreover, Member A will be even more appalled to learn that he cannot require Member B to provide the services promised under the “handshake deal” because a commitment to contribute capital (which can include services to be rendered) must be in writing to be enforceable.

The Baringer Law Firm sees several clients per month who find themselves in Member A’s position or some variation thereof. Litigation of such disputes can be very expensive, with legal fees in the tens if not hundreds of thousands of dollars. So, before you decide to be a “Do It Yourself Lawyer” in forming your LLC, remember the Fram Oil Filter commercials: “You can pay me now, or you can pay me later.”



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### ABOUT THE AUTHOR

*Dale R. Baringer has more than 39 years of experience in the practice of law in the fields of tax law (planning, business transactions, dispute resolution and tax litigation), securities law, bankruptcy law, corporate law, business organizations, commercial and business litigation, mergers and acquisitions, construction law, life, accident and health insurance law, ERISA litigation, employment law and real estate law. He is certified as a specialist in the field of tax law by the Louisiana State Bar Association’s Board of Legal Specialization.*

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