

## Legal Matters – September, 2008

Legal Matters is a column that answers your legal questions. It is written by Barry Evans, Attorney at Law, located at 550 Egret Bay Blvd., League City, TX 77573. Barry has been practicing as an attorney for over twenty-five years. If you have any questions regarding this article, you may contact Barry Evans at 281-557-1900 or you can email him at [barryevans@msn.com](mailto:barryevans@msn.com)



### Is a Texas Limited Liability Company (LLC) better than a Texas Corporation?

The short answer is – generally yes. Most business owners incorporate for two primary reasons: to insulate themselves and their family from business liabilities and to help reduce Federal Income Taxes. Operating as a corporation, shareholders are not personally liable for corporate obligations. However, until September 1, 2007, businesses had no similar protection from liabilities created by the business owner. If a majority shareholder of a corporation was sued and a judgment taken against that shareholder, the judgment creditor could “seize” the shareholder’s stock, take control of the corporation, liquidate its assets and put the shareholder out of business! The judgment creditor could threaten to do this and the shareholder would be forced to settle for cash which normally comes from the business in the form of a loan or sale of assets.

Texas has now become a “complete shield” state for Limited Liability Companies (LLCs). This means that Texas has limited the remedies available to a judgment creditor of an individual member of a LLC to one remedy, “charging orders” only. Now, a judgment creditor cannot “seize” the equity of an individual member and cannot threaten to take your company away from you in order to make you settle.

In addition to better liability protection, other advantages are:

**Flexible Profit Distribution:** Limited Liability Companies can select varying forms of distribution of profits. Unlike a common partnership where the split is typically 50-50, LLCs have much more flexibility.

**No Minutes:** Corporations are required to keep formal minutes, have meetings, and record resolutions. The LLC business structure requires no corporate minutes or resolutions and is easier to operate as there is no board of directors or annual meeting.

**Flow Through Taxation:** All your business losses, profits, and expenses flow through the company to the individual members. You avoid the double taxation of paying corporate tax and individual tax. Usually, this will be a tax advantage, but circumstances can favor a corporate tax structure.

In summary, in most cases, the LLC is a better method to operate a business in Texas.

**Editor’s note:** *The information in this column is not intended as legal advice but to provide a general understanding of the law. Readers with legal problems, including those whose questions are addressed here, should consult attorneys for advice on their particular circumstances.*