What in the World is an LLC? What You Need to Know About Businesses & Law

There are many reasons why people choose to create a corporation, partnership, or other business entity, and one of them is to limit risk of losing personal assets. In North Carolina, as in other states, there are several different kinds of business entities, and knowing what they are is a good place to start.

Corporation	GS Ch. 55	(Incorporated, Corporation, Limited, Company)
Professional corporation	GS Ch. 55B	(P.A., P.C.)
Non-profit corporation	GS Ch. 55A	(Incorporated, Corporation, Limited, Company)
Limited liability company	GS Ch. 57C	**(LLC)**
Limited liability limited partnership	GS Ch. 59	**(LLLP, RLLLP)**
Limited partnership	GS Ch. 59	**(LP)**

All of these entities are "artificial persons" under the law, meaning that they have the ability to contract, sue, and be sued (through their agents, of course). People who own part or all of these entities are not personally liable for debts incurred by the entity (with one exception, explained below).

All of them are required to register with the Secretary of State's Office, and to maintain a registered agent for the purpose of receiving service.

If service of process is not accomplished by serving the registered agent, it must satisfy the alternative requirements set out in Rule 4(j) (6), (7), or (8). For entities other than partnerships, this means serving one of the following:

1. An officer of the company
2. A director of the company
3. A managing agent of the company

OR by leaving a copy in their office with a person apparently in charge of the office.

NOTE: GS 7A-217, which specifies specific rules for service of process in small claims actions, does not apply to artificial persons. The rules for serving them are set out in GS 1A-1, Rule 4. One significant difference is that service by Fed Ex or a similar delivery service is available as a means of serving these business entities.

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Much useful information is available about business entities on the Secretary of State's website, located at www.secretary.state.nc.us.

Why do you need to know this?

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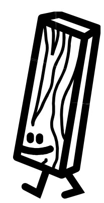
Tom

Dick



Carl Corporation

Three things you need to know about corporations

1. *Corporations may represent themselves in small claims court.*

And in Woods v. Billy's Automotive, 174 N.C. App. 808 (2005), the appearance and participation at trial of the primary owner of Billy's Automotive Inc. was held to constitute a general appearance by the corporation and thus cure defects in service of process arising out of serving Billy—the owner—despite the fact that he was neither officer, director, or managing or registered agent!

2. *Corporations remain liable for their debts and the actions of their agents even if they are dissolved.*

GS Ch. 55 sets out a procedure by which creditors may assert claims against corporations even when the corporation is dissolved (whether voluntarily or administratively).

In the instance of known creditors, the corporation is required to notify them of the pending dissolution and the procedure and deadline for asserting claims. A creditor who receives notice and fails to assert a claim in a timely manner forfeits the right to collect on the debt. GS 55-14-06.

What if a creditor does not receive this notice or his properly-filed claim was never acted upon? What if the liability in question arose after the corporation was dissolved? GS 55-14-07 answers these questions; if a corporation publishes notice of its dissolution in accordance with the statute, claims not asserted within five years from date of publication are barred. GS 55-14-08 provides that undistributed corporate assets (including proceeds of insurance coverage relating to such claims) are available to pay claims against the dissolved corporation. In some situations, a claimant may be able to recover some portion of liquidated assets from a shareholder as well.

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3. *It is sometimes possible for a plaintiff in tort to demonstrate that the owner of a corporation should be personally liable for an obligation.*

It is important to remember that "piercing the corporate veil" is an equitable doctrine, similar to unconscionability. The presence of three elements supports application of the doctrine:

a. Control by the defendant of the corporate entity to such an extent as to amount to the entity having no independent will or existence of its own; complete domination of not only finances, but also of policy and business practices;
b. This control was used by defendant to commit fraud or wrong, to violate a statutory or positive duty, or a dishonest and unjust act;
c. This control and breach of duty proximately caused the injury or unjust loss complained of.

As an equitable doctrine, the decision whether to pierce the corporate veil varies with the circumstances of each case. Significant factors identified by the courts include: 1) undercapitalization of the corporation; 2) non-compliance with corporate formalities; 3) absence of corporate records; 4) non-payment of dividends; 5) siphoning of corporate funds by dominant shareholder; and 6) non-functioning of other officers and directors. Glenn v. Wagner, 313 N.C. 450 (1985).

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