



PROGRAM MATERIALS

Program #35135

September 5, 2025

Piercing the LLC Veil: Avoiding Member Liability for Business Debts

Copyright ©2025 by

- **Brandon Schwartz, Esq. - Schwartz Law Firm**

All Rights Reserved.

Licensed to Celesq®, Inc.

Celesq® AttorneysEd Center

www.celesq.com

5301 North Federal Highway, Suite 150, Boca Raton, FL 33487

Phone 561-241-1919

Piercing the LLC Veil: Avoiding Member Liability for Business Debts

Brandon M. Schwartz
SCHWARTZ LAW FIRM
988 Inwood Avenue North
Oakdale, MN 55128
(651) 528-6800
brandon@mdspalaw.com



Understanding "Piercing the Corporate Veil":

- One trademark feature of the corporate form of business organization is limited liability for shareholders in which shareholder liability for the corporation's contract or tort obligations is generally restricted to the amount of that shareholder's capital contribution.
- In this regard, there is a corporate veil which protects shareholders' personal assets from the reach of the corporation's creditors.

Understanding "Piercing the Corporate Veil":

- A judge, however, can order this veil to be disregarded or pierced, when a shareholder engages in certain prohibited conduct.
- Generally speaking, corporate creditors will not be required to honor the separateness of the corporation from its shareholders if the shareholders themselves fail to honor that separateness.
- And because piercing the corporate veil can be the only way for a creditor to be paid in certain cases, there is a large body of law regarding what is required to pierce the corporate veil.

Factors Courts Consider for Piercing the Veil:

- Key factors that courts consider, such as commingling of assets and undercapitalization.
- Owner's relationship with the Entity
 - Corporate formalities
 - Siphoning funds by the owner
 - Nonfunctioning of other managers
 - Absence of records
 - Existence of the entity as a façade for individual dealings
 - Common recordkeeping mistakes

How to pierce the veil:

- Piercing the corporate veil is an equitable remedy.
- A two-prong test is applied to determine when a creditor will be allowed to pierce the corporate veil of protection from personal liability and hold an owner liable for the corporation's obligations.
- The first prong focuses on the shareholder's relationship with the corporation to determine whether the corporation was formed as the shareholder's alter ego or mere instrumentality.
- The ultimate question on the first prong is whether the individual(s) treated the corporation as a separate entity entitling him or her to "hide behind it to avoid liability."

How to pierce the veil:

- If the court finds that the factors are not present under the first prong, the court will not move on to the second prong.
- The second prong requires the veil-piercer to show that there was “an element of injustice or fundamental unfairness” that would result from not piercing the veil.
- Injustice or unfairness is present if the owner has used the corporate form to gain “an advantage he does not deserve.”

How to pierce the veil:

- While proof of strict common law fraud is not required, there must be evidence that the corporation has been operated as “a constructive fraud or in an unjust manner”.
- This portion of the test is not black and white, is very fact specific, and also requires the court to make subjective determinations. The courts are clear, however, that “there can be no piercing of the veil without a showing of improper conduct.”

How to pierce the veil:

- Situations in which courts have found an element of injustice or fundamental unfairness warranting piercing the veil include:
 - Issuing dividends/distributions when the entity is going to default on its obligations to non-owner creditors;
 - Repaying debts owed to owners in full and defaulting on obligations owed to non-owner creditors;
 - Selling assets at a discount to a related party and thereby leaving the entity without sufficient cash or assets to repay its obligations;
 - Transferring money or assets to an owner or a related entity so the entity is unable to pay its obligations; and
 - Paying excess and above-market rent to a related entity therefore rendering the entity unable to satisfy its obligations.

Introduction to LLCs and Operating Agreements:

- Definition of an LLC.
- Characteristics of LLCs, including flexibility, limited liability, and tax benefits.
- Comparison with other business structures such as corporations and partnerships.
- Advantages of LLCs, including limited liability and pass-through taxation.
- Disadvantages of LLCs, such as state-specific regulations.
- Examples of common uses for LLCs.

Formation of LLCs:

- Steps to form an LLC, including filing articles of organization.
- State-specific requirements and variations.
- Importance of choosing a unique business name.
- Role of registered agents in LLC formation.
- Initial costs and ongoing fees associated with forming an LLC.

Importance of Operating Agreements:

- Definition and purpose of an operating agreement.
- Legal requirements and benefits of having an operating agreement.
- Role of operating agreements in defining the structure and operations of the LLC.
- Protection against disputes among members provided by operating agreements.
- Examples of issues that can arise without an operating agreement.

Key Components of an Operating Agreement:

- Essential elements to include in an operating agreement, such as member roles, voting rights, and profit distribution.
- Management structure options, including member-managed vs. manager-managed LLCs.
- Details on capital contributions and ownership percentages.
- Procedures for adding or removing members.
- Dissolution and winding up procedures.
- Examples of clauses for each key component.

Drafting Effective Operating Agreements:

- Best practices for drafting operating agreements, including clarity and comprehensiveness.
- Legal considerations to keep in mind, such as state laws and compliance.
- Importance of customizing the agreement to fit specific needs.
- Role of legal counsel in drafting effective operating agreements.
- Common mistakes to avoid when drafting.

Essential Clauses to Include:

- Detailed discussion of must-have clauses, such as indemnification and dispute resolution.
- Examples and explanations of each essential clause.
- Importance of using clear and precise language in the agreement.
- Sample language for key clauses.

Customizing Agreements for Single-Member LLCs:

- Specific considerations for single-member LLCs.
- Simplified structure and decision-making process for single-member LLCs.
- Sample clauses tailored for single-member LLCs.
- Importance of documenting decisions and actions.

Customizing Agreements for Multi-Member LLCs:

- Specific considerations for multi-member LLCs.
- Complexities of multi-member management and decision-making.
- Sample clauses tailored for multi-member LLCs.
- Strategies for managing conflicts among members.

Amending Operating Agreements:

- Importance of keeping operating agreements up to date.
- Procedures for amending operating agreements.
- Legal considerations and best practices for amendments.
- Examples of situations that may require amendments.

Asset Protection and Liability:

- How LLCs protect personal assets.
- Legal principles involved in asset protection.
- Importance of maintaining the LLC's separate legal entity status.
- Examples of how LLCs can shield personal assets from business liabilities.

Maintaining Proper Separation:

- Importance of separating personal and business assets.
- Legal requirements and best practices for maintaining proper separation.
- Examples of maintaining proper separation.
- Consequences of failing to maintain separation.

Best Practices for Compliance:

- Tips for maintaining compliance with state laws and regulations.
- Importance of regular reviews and updates to operating agreements.
- Examples of good practices for compliance.
- Role of legal counsel in ensuring compliance.

Avoiding Personal Liability:

- Strategies to minimize personal liability.
- Legal safeguards and protections available to LLC members.
- Role of proper documentation and adherence to formalities in avoiding personal liability.
- Examples of actions that can lead to personal liability.

Role of Proper Documentation:

- Importance of documentation and record-keeping for LLCs.
- Examples of necessary documents, such as meeting minutes and financial records.
- Best practices for maintaining accurate records.
- Tools and resources for effective documentation.

Record-Keeping Best Practices:

- Tips for effective record-keeping.
- Tools and resources for managing records.
- Importance of regular audits and reviews to ensure accuracy.
- Examples of common record-keeping mistakes and how to avoid them.

Annual Reporting and Compliance:

- State-specific annual reporting requirements for LLCs.
- Importance of timely filings to maintain good standing.
- Consequences of non-compliance and how to avoid them.

Conclusion and Q&A:

- Summary of key points covered in the seminar.
- Contact information for follow-up questions.

Brandon M. Schwartz
SCHWARTZ LAW FIRM
988 Inwood Avenue North
Oakdale, MN 55128
(651) 528-6800
brandon@mdspalaw.com

