

**COMING UP NEXT ON ABC, EXTREME MAKEOVER, THE LLC EDITION:
Converting from an LLC to a Corporation**

By Joseph Rabinowicz

Choosing the correct legal entity for his or her new business is one of the very first decisions an entrepreneur faces. In most cases, the entrepreneur will elect to form a limited liability company in his or her home state. The limited liability company form provides many benefits to the entrepreneur: flexibility, less inherent formalities than a corporation, and pass-through taxation benefits. Forming a limited liability company in the home state also yields several benefits: it obviates the need to file documents in more than one state (in the state of formation and in the state where the business operates) and saves some money. However, the time may come when the entrepreneur is faced with the need to convert his or her business to a corporation.

The need to change the form of a legal entity often happens a lot sooner than the entrepreneur expects – often in the context of obtaining financing from investors. While friends, family and even some early-stage angels might be content with investing in a limited liability company, institutional investors often demand a conversion to the corporate form. These investors want the structure and formalities inherent in the corporate form and do not want pass-through taxation. In addition, these investors will often insist that the corporation be formed in Delaware given their familiarity with Delaware corporate law. In other words, the very benefits that caused the entrepreneur to initially choose the limited liability company form become drawbacks.

Until recently, Maryland did not provide for an easy, single-step, conversion from one entity to another. Instead such a conversion required two steps. In the case of a conversion from a limited liability company to a corporation, the conversion was most often accomplished by forming a new corporation, separate and apart from the limited liability company, and then merging the limited liability company into the newly formed corporation

Fortunately, effective as of October 1, 2013, Maryland law has been changed to permit a direct conversion from one entity to another. This includes a limited liability company converting into a corporation. Moreover, the conversion can be either to a Maryland corporation or to a corporation formed under the laws of any other state so long as the other state also permits conversions.

The primary benefit of the new conversion process is that the limited liability company and the corporation are deemed to be the same entity and the corporation is deemed to have been formed as of the date of the formation of the limited liability company. As a result, all the assets and debts of the limited liability company become assets and debts of the corporation as if the corporation existed from the very beginning. Likewise, the corporation becomes the party to any contracts entered into by the limited liability company as if entered into by the corporation.

The process for converting from a Maryland limited liability company to a Maryland corporation is relatively simple. The members of the limited liability company first approve the conversion and then the limited liability company files articles of conversion. If the conversion is to a foreign corporation, the limited liability company must comply with the laws of that state in addition to the Maryland law.

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