

A business owner should carefully consider in which state to form or reorganize his or her business. If the option is available, here are some reasons why a business owner would want to form his or her business as a South Dakota LLC: of if you are serving as an individual Trustee of a Special Needs Trust for the first time: Trustee over the other, here are the practical advantages of choosing a Corporate Trustee:

Personal Protection From Your Business Creditors. Like most states, South Dakota's LLCs will protect your personal assets from the creditors of your business. These creditors could be employees, individuals the business has contracted with, or individuals bringing personal liability claims against the business. By forming an LLC, you ensure that these creditors cannot get to more of your assets than are in the business. This is often referred to as "inside-out" creditor protection. In this regard, one state is approximately as effective as the next.

Protection of the Business From Your Personal Creditors. South Dakota stands out in that it can do more than just protect your personal assets from the creditors of your business; it can also protect your business from your personal creditors. In a majority of states, your personal creditor can get to either your ownership of the business or the assets inside of the business. South Dakota, on the other hand, severely limits what a personal creditor is able to receive of your business. Instead of forcing your business apart, the most a creditor can get from you is a "charging order" which allows the creditor to receive any distributions that the business may make to an owner, nothing more. It can't force those distributions; it can't interfere with running the business; it can't take the assets. This is referred to as "outside-in" protection, and it holds true whether the business is a single member LLC or a multiple member LLC (a distinction which matters in other states). The practical result of this exclusive remedy is that most creditors will not even bother pursuing it; it is not worth the time or expense.

Inexpensive to Form. South Dakota LLCs are relatively inexpensive to form.

Works Synergistically With Other South Dakota Asset Protection Techniques. There are only a handful of states which offer asset protection that is of the same quality as that offered by South Dakota. For example, South Dakota offers both Dynasty Trusts and Domestic Asset Protection Trusts. An owner forming a South Dakota LLC can couple the business with these other techniques to create an even more robust asset protection strategy.

If you would like helping forming a business in South Dakota or would like to know more about the advantages offered, please contact Goosmann Trust Law Counsel.



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