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An Intellectual Property and Business Law Firm

Another Advantage of Doing Business as a LLC

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Virginia Bankruptcy Court Ruling Underscores the Importance of Giving Thought to the Form of Business You Choose To Operate Under

A provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which took effect on October 17, 2005, can have a large impact on what forms of businesses are preferable to operate. The act requires an individual to seek credit counseling before they qualify as a "debtor" and are therefore eligible for bankruptcy protection. This requirement also applies to bankruptcies that are filed by sole proprietors seeking relief from business debts. However, the requirement does not apply to bankruptcies filed by "artificial" entities such as corporations or LLC's. In the Virginia Case, Timothy C. Watson filed an individual chapter 11 as he was facing eviction from his business premise. Watson filed in his individual capacity citing that he had obtained the lease as a sole proprietor. The court denied his petition citing that he failed to obtain the required credit counseling as required by the statute. Watson appealed claiming that the statute was unconstitutional because it denied him equal protection because he chose to operate as a sole proprietor instead as a corporation or LLC. The court disagreed citing that many state laws allow single member LLC's or single shareholder/director corporations, and that congress's decision to exempt "artificial" entities such as corporations and LLC's from the credit counseling requirement had a rational basis and was therefore constitutional. This is yet another reason why forming a corporation or LLC to operate a business is a good idea and can provide some extra advantages over operating as a sole proprietor. For more information on the different types of entities available to run a business in Colorado check out the discussion on our website at <http://ld-law.com/ColoradoBusinessEntities.html>

About the Author -

Mr. Lemire is a Founding Member of the law firm of Leyendecker Lemire LLC, specializing in business and intellectual property law. Previously, Mr. Lemire served as in house counsel to various companies in the Denver Metro area in industries ranging from high tech ".com's" to strategic investment firms specializing in the purchase and sale of distressed commercial debt. Mr. Lemire has advised companies on issues such as

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general corporate and business law, employment law, mergers and acquisitions, contract drafting and negotiation, software licensing, strategic relationships, copyright, trademark and cyberlaw. He is a Member of the Colorado Bar Association, the American Bar Association's (ABA) Business Law section, the ABA Cyberspace Law and Internet Law Committees as well as the ABA's subcommittee on Electronic Commerce, as well as the Secretary of State's Legislative Drafting Committee on Trademarks.

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