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## Choice of Entity Question for Professional Service Providers in Virginia: Professional Limited Liability Company v. Limited Liability Company

The limited liability company (“LLC”) has emerged as the entity of choice throughout the small business community over the past 25 years. However, for many professional service providers, Virginia offers another, yet confusingly similar, option: the professional limited liability company (“PLLC”). Because (i) the two types of entities are similar in many substantive respects, yet different in some very important respects; and (ii) the distinctions between LLCs and PLLCs and overall regulation of professional service providers vary from state to state and profession to profession, there is naturally confusion among professionals in Virginia as to which type of entity is right for their business. As a side note, this article does not discuss the Virginia stock corporation and Virginia professional corporation, which are still commonly used but have arguably taken a backseat to the newer, more flexible LLC structure.

### What is an LLC?

Business entities are creations of state law. The Virginia LLC is a business entity formed under the Virginia Limited Liability Company Act (the “LLC Act”). Combining the beneficial features of both corporations and partnerships, the Virginia LLC is an attractive option for business owners because it provides a combination of legal and tax advantages and flexibility that other forms of business entity cannot match. For example, the LLC form offers its owners (referred to as “members” under the LLC Act) the benefit of limited liability protection from debts and obligations of the business. This means that members are not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the LLC solely by reason of being an owner. Put another way, this means that a member’s personal assets are not at risk for LLC obligations unless such debts or obligations result from a member’s own personal negligence or misconduct, or the member has otherwise contractually agreed to be responsible for such obligations (e.g., a personal guaranty).

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A Virginia LLC is formed by filing Articles of Organization with Virginia’s State Corporation Commission (“SCC”) and paying a \$100 filing fee. Once formed, an LLC can engage in practically any kind of lawful business or activity. To keep a Virginia LLC “Alive” and in good standing with the SCC, all that is required is payment of an annual fee of \$50.

The only other governance document for an LLC, not legally required, but highly recommended, is referred to as an Operating Agreement. The Operating Agreement is a written contract among the LLC and its members, addressing a variety of issues including: (i) ownership split, (ii) business purpose, (iii) capitalization and contributions of the members, (iv) management and governance, (v) economic sharing, (vi) tax allocations, (vii) transfer restrictions, (viii) succession planning and buy-sell issues, (ix) dispute resolution, and other issues memorializing the terms and condition of the owners’ business relationship.

### **What is a PLLC?**

For professional service firms, the advantages of the LLC structure are easy to recognize. However, in Virginia, professional service providers such as dentists, attorneys, and other professional occupations that require licensing by state regulatory boards have an additional option when choosing a business entity structure—the professional limited liability company (“PLLC”). Some groups of professionals, like attorneys, are restricted by law from using the LLC entity structure and instead must rely on the PLLC alternative.

A PLLC is a specialized type of LLC available for certain licensed professionals as defined in the Virginia Professional Limited Liability Company Act (the “PLLC Act”). Virginia PLLCs are governed by both the LLC Act and the PLLC Act. Essentially, a PLLC has the same basic structure as an LLC. Most importantly, the PLLC offers the same level of limited liability protection to its owners. The main difference between a PLLC and an LLC is that the PLLC Act imposes restrictions on who may be an owner of a PLLC.

A PLLC is only for professionals recognized in Virginia through applicable licensing or certification. Accordingly, for most Virginia PLLCs, all members must be professionally licensed. As a result of this ownership restriction, members of a professional limited liability company may not sell, assign, or otherwise transfer their membership interests, except to the PLLC or another individual or professional business entity recognized in Virginia to offer the same services. Further, if any member becomes disqualified to render those professional services in Virginia, that member must immediately sever all employment with, and financial interests in, the PLLC. A PLLC’s violation of this requirement constitutes grounds for the administrative dissolution of the firm by the SCC.

The ownership restrictions are less onerous for architects, professional engineers, land surveyors, landscape architects, and certified interior designers. For firms providing those services, only two-thirds (2/3) of the owners must be licensed.

Once formed, a PLLC may only engage in the professional services listed in its Articles of Organization. Any outside, unrelated activities have to be conducted through a separate entity.

## Who May Form a Virginia PLLC?

Under the PLLC Act, a professional service is a licensed, certified, or otherwise legally authorized service rendered by:

- Pharmacists;
- Optometrists;
- Physical therapists and physical therapist assistants;
- Practitioners of the healing arts;
- Nurse practitioners;
- Practitioners of the behavioral science professions;
- Veterinarians;
- Surgeons;
- Architects;
- Professional engineers;
- Land surveyors;
- Landscape architects;
- Certified interior designers;
- Public accountants;
- Attorneys;
- Insurance consultants;
- Audiologists or speech pathologists; and
- Clinical nurse specialists.

Anyone who is licensed, certified, or otherwise legally authorized in one of the above professions in Virginia may conduct their professional practice through a Virginia PLLC.

As previously mentioned, some professional service providers are not permitted to conduct business as a traditional LLC. Instead, they can choose to form a PLLC. Here is a chart of the most frequently asked about professions to help illustrate this distinction\*:

<b>Virginia Licensed</b>	<b>May form as an LLC</b>	<b>May form as a PLLC</b>
Professions Attorney	No	Yes
Dentist	No	Yes
Physician	Yes	Yes
Veterinarian	Yes	Yes
Architect	Yes	Yes
Professional Engineer	Yes	Yes

Land Surveyor	Yes	Yes
Certified Interior Designer	Yes	Yes
Landscape Architect	Yes	Yes

\*This chart is not an exhaustive list of regulated professions in Virginia.

**Tax Classification**

Despite the subtle, yet important, distinctions between an LLC and a PLLC, there is no meaningful distinction between the two types of entities from a tax perspective. Therefore, whether forming an LLC or PLLC, owners must undertake the same analysis as to how they would like their company to be classified for tax purposes. Depending on several factors, LLCs and PLLCs can choose one of four different tax classifications:

- Sole proprietorship (also known as a disregarded tax entity; an option only for a single-member LLC/PLLC);
- Partnership;
- S corporation; or
- C corporation.

Business owners should discuss tax classification issues with their accountants during the entity formation process.

**Final Notes**

In conclusion, the distinction between an LLC and a PLLC is not as significant as some might expect. For some professions, the governing state board or agency makes the decision easy for professionals by requiring the use of a PLLC or a professional corporation. In other situations, it is a matter of marketing or business strategy or just personal preference that drives the choice of entity decision.

In any event, choosing the right business entity for your professional service firm requires a multi-faceted consideration of legal, business, and tax issues. If you need help with forming a Virginia LLC or a PLLC, please contact Eric Perkins at [eric@ericperkinslaw.com](mailto:eric@ericperkinslaw.com) or (804) 205-5162 to answer your questions and discuss Perkins Law’s flat fee entity formation package.