

Spiegel & Utrera, P.A., P.C., Easy Order Limited Liability Company Fax Form

Photocopy this form and Fax to: 1 888 465 8500 or 212-964-5600 If you wish to confirm receipt call: Toll Free 1 800 576 1100

Date: _____ How did you first hear of Spiegel & Utrera, P.A.,P.C.? _____

Your name: _____

Your phone number: (____) _____ Your fax number (____) _____

Email address _____

Your address _____

Address for delivery of corporate documents: _____
(if different from above)

CORPORATE NAME:

1st choice: _____

2nd choice: _____

3rd choice: _____

The name must end with LLC, LC, Limited Liability Company or Limited Company

NATURE OF BUSINESS: _____
(Briefly describe what the corporation will do)

ADDRESS OF CORPORATION: _____

County where Principal Office is located: _____

MAILING ADDRESS: _____
(If different from above address)

_____ Check here to use Spiegel & Utrera, P.A.,P.C.'s address (45 John Street, Suite 711, New York, New York 10038) There is a one time charge of \$35.00 for this service.

_____ Check here to use our mailing address

The charge for this service is \$15.00 per month, 6 months in advance, plus postage for mail forwarded to you. If you choose this service please fill in your **CONFIDENTIAL** forwarding address:

Members: (Only one is required)

	<u>Names</u>	<u>Address</u>	<u>Telephone/Fax</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____

Managers: (Must be the same as members, can be one Member)

	<u>Names</u>	<u>Address</u>	<u>Telephone/Fax</u>
1. Operating Manager:	_____	_____	_____
2. Vice Operating Manager (optional):	_____	_____	_____
3. Treasurer:	_____	_____	_____
4. Secretary:	_____	_____	_____

A copy of the passport of the Manager(s) must be attached

The Company must obtain a Federal Tax ID number to open a bank account and file Tax Returns in the USA. Spiegel & Utrera can obtain this for the Company. The charge is \$35

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The main advantage of the LLC is that it is not burdened with the numerous restrictions imposed on an S corporation. An LLC may have more than 75 members; and as few as one. Its Membership interests may be held by corporations, partnerships, Non Resident Aliens, trusts, pension plans and charitable organizations; the LLC may make special allocations, thereby avoiding the single class of stock requirement applicable to S corporation; and it may own more than 80% of the stock of a corporation and, therefore, may be a member of an affiliated group.

When forming an LLC, we strongly recommend the owners obtain the maximum protection permitted by current Laws. The best way to protect yourself is to enter into an Indemnification Agreement and Operating Agreement at the time of the filing of the LLC.

Once the Indemnification Provisions are in effect, the LLC is responsible should there be any legal action taken against it's representative for actions taken on behalf of the LLC. In other words, the Company would have to pay any legal fees or liabilities assessed against its Management Staff. The Indemnification and Covenant Not To Sue Provision and Agreement is only \$75.00 when ordered at the time of Organization.

In the State of New York, an **Operating Agreement is required and must be adopted within 90 days** after the filing of the Articles of Organization. The Operating Agreement sets forth, the business of the Limited Liability Company, its general operation and conduct of its affairs including its rights, powers, preferences, limitations or responsibilities of its members, managers, employees or agents. We can draft the Agreement in conjunction with your Company documents in compliance with New York Law for only \$99.95 for a single member LLC or \$249.95 for a multi member. The Operating Agreement can be prepared as part of our service, so you may review the Agreement and make changes and discuss it with one of our Attorneys.

For your convenience, we have attached a detailed explanation of the Limited Liability Company Structure, and brief descriptions of some of the most important items.

Should you have any questions regarding this matter, please do not hesitate to contact our office by phone at 212 962 1000, fax 212 964 5600 or via e-mail at nyc@amerilawyer.com.

Good luck with your business!

Spiegel & Utrera Staff

WHAT IS AN LLC?

The Limited Liability Company ("LLC") is a hybrid entity that is very flexible and, depending on how many owners (known as "Members") and what such Members elect to do, may be taxed as a partnership or corporation, if it has multiple Members, or as a sole proprietorship, if it has only one member, while providing limited liability protection for all of its Members. For federal tax purposes, an LLC, like a partnership or sole proprietorship, is a pass-through entity; thus, its income and losses are taxed only at the member level. However, all members of an LLC, like the shareholders of an S corporation, have limited liability for the debts and claims against the LLC. No member will be burdened with the personal liability.

The main advantage of the LLC is that it is not burdened with the ownership restrictions imposed on a small business corporation (also known as a Sub Chapter S Corporation). An LLC may have more than 100 Members or as few as one. Its interests may be held by corporations, partnerships, Non Resident Aliens, trusts, pension plans and charitable organizations; the LLC may make special allocations, thereby avoiding the single class of stock requirement applicable to an S corporation; and it may own more than 80% of the stock of a corporation and, therefore, may be a member of an affiliated group.

The Members of the LLC become owners of the Company by putting capital (making a "Capital Contribution") into the Company in exchange for a Membership Interest, which is expressed as a percentage. Typically, the allocation of profits and losses are proportionate to the Membership Interest. The Capital Contribution can be money, real estate, equipment, future service ("sweat equity") etc., and if it is something other than money, it should be assigned a value agreed upon by the Members. For example, Bill and Mike want to set up a company to operate a retail athletic goods store. Bill puts in \$51,000 and Mike will work 60 hours next year managing the store and his sweat equity will have an agreed upon value of \$49,000.

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The LLC is operated by Managers that handle the day-to-day activities of the LLC. The Managers may be all of the Members, some of the Members, or it may even be managed by a person or entity that has no ownership interest in the company. Since such a non-Member Manager will not share in the profits and losses, perhaps they will be paid a salary or commission as agreed upon in a Management Agreement.

Limited Liability Companies taxed as Partnerships are exempt from New York State Franchise Taxes.

For tax purposes, an LLC taxed as a partnership or a disregarded entity (similar to a sole proprietorship) may have advantages over a Sub Chapter S Corporation with respect to the amount of deductible losses. The amount of a Sub Chapter S Corporation shareholder's deductible losses is limited to the sum of the shareholder's basis in his stock and any loans from the shareholder to the corporation. In contrast, a partner can deduct losses in an amount up to the sum of the basis in the partnership interest, the allocable share of partnership income, and his allocable share of qualifying partnership debt.

How the taxes work is simple. For example, each of 10 individuals contribute \$100,000 to a newly formed entity to acquire an office building. The entity borrows from a bank an additional \$5,000,000 as the balance of the building's \$6,000,000 purchase price. If the entity is taxed as a Sub Chapter S Corporation, each shareholder's loss deductions are limited to \$100,000. However, if the entity is an LLC taxed as a partnership, each member can deduct losses up to \$600,000 (\$100,000 basis plus \$500,000 share of the entity's debt). These losses may then be used by the individuals to offset other income they may have from other sources.

When forming an LLC, we strongly recommend the owners obtain the maximum protection permitted by Law. The best way to protect yourself is to enter into an Indemnification Agreement and Operating Agreement at the time of the filing of the LLC.

For example, you may include in your Articles of Organization a special provision to protect the operating manager from any action taken on behalf of the LLC called an Indemnification. With an Indemnification and Covenant Not to Sue Agreement, the LLC agrees to indemnify and hold harmless its Operating Manager(s) (those who act as agents of the LLC and represent the LLC's interests in day to day business transactions).

Once the Indemnification Provisions are in effect, the LLC is responsible should there be any legal action taken against its representative for actions taken on behalf of the LLC. In other words, the LLC would have to pay any legal fees or liabilities assessed against its Management Staff. The Indemnification and Covenant Not To Sue Provision and Agreement is only \$75 when ordered at the time of formation of your LLC.

In the State of New York, an Operating Agreement is required by law and must be adopted within 90 days after the filing of the Articles of Organization. The Operating Agreement sets forth, the business of the LLC, its general operation and conduct of its affairs including its rights, powers, preferences, limitations or responsibilities of its members, managers, employees or agents. We can draft the Operating Agreement in conjunction with your LLC formation documents in compliance with New York Law for only \$99.95 for a single member or \$249.95 for a multiple member LLC. The Operating Agreement can be prepared as part of the formation of your LLC, so you may review the Operating Agreement and make changes and discuss it with one of our Attorneys.

OPTIONAL SERVICES

How To Build Your Business

Believe it or not, starting a business is more than just complying with regulations, at some point you have to go find customers! Building your business often gets lost when you are confronted with all of the other matters which must be taken care of. This should not be the case. Without customers you will not have a business for long! Two powerful business builders worthy of your consideration are below.

Service Agreement - *The Foundation for a Successful Service Business – You are LOSING \$\$\$ without it!*

The bedrock foundation of many service businesses is a customized written agreement entered into with its customers. Many franchises sold for tens of thousands of dollars are business formats revolving around a Service Agreement. The key with a Service Agreement is to make it work as a marketing tool offering the business services in the widest variety of formats to your customers. For example, a one-time use customer needs to be converted to a monthly, quarterly or annual type repeat customer. At Spiegel & Utrera we want to help you get, and keep, your customers while looking

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professional and at the same time maximizing each sale with a friendly service agreement. A Service Agreement starts at \$367.95 up to \$897.95 depending upon its complexity if ordered at the time of forming your LLC. We will prepare a draft of your Service Agreement and deliver the draft by fax or email to you for your review. Once you have had an opportunity to review the Service Agreement we will meet over the telephone to discuss the various aspects of the draft Service Agreement. Thereafter, Spiegel & Utrera will make changes to the Service Agreement to finalize it. Once the Service agreement has been finalized and delivered to you, you should take it to your printer to be printed and padded so it will always look professional and non-negotiable.

LLC Operating Agreement - Avoid Member Disputes with a Comprehensive Agreement

The way the LLC will be run is described in an Operating Agreement. The Operating Agreement defines the duties and responsibilities of the Members to each other and to the LLC.

A well-drafted LLC Operating Agreement will:

- Designate the Members that invest in the business;
- Designate the Managers that handle the day-to-day operations of the business and describe Managers' management powers and control;
- Describe the amount of capital contributions that the Members have to make, how much and when distributions of profits will take place and allocate losses among the Members to minimize tax liability;
- Ensure compliance with filing requirements with the Secretary of State by mandating an annual report;
- Provide a framework for the settlement of disputes between Members by allowing mediation and arbitration as a quicker, cheaper method;
- Prevent a Member from competing against the LLC by selling the same products or offering the same services;
- Require Members to maintain the confidentiality of all customer names and other business records so that Members don't run off with valuable LLC secrets or intellectual property;
- Prevent a Member from impairing the goodwill of the LLC by bad-mouthing the management or financial standing of the business; and
- Prevent a Member from soliciting customers of the LLC for new LLC business.

The agreement should be very thorough and anticipate common company problems so that the proper course of action is defined ahead of time rather than leaving Members "flying by the seat of their pants," so to speak. A draft of this Agreement will be prepared as part of our service, so you may review the Agreement and make changes and discuss it with one of our Attorneys. Normally, the fee to prepare such a comprehensive agreement of this nature would be \$1,500 or more. However, your cost is only \$99.95 for a single member LLC and \$249.95 for up to 4 members of a multi member LLC, additional members are \$50 each, if prepared in conjunction with the LLC formation.

LLC Management Agreement - Providing Maximum Protection for Your LLC

Every LLC should enter into a written Management Agreement between the LLC and its Manager(s). The Management Agreement should be drafted in such a way so that it conforms with the provisions of the LLC Operating Agreement and, in addition thereto, it will:

- Describe the terms of the Manager's employment, such as the duties, responsibilities and compensation of the LLC Manager(s).
- It states that the Manager(s) will not compete against the LLC for a specific period of time after leaving the LLC;
- Prohibit the Manager(s) from disclosing any of the LLC's business records, computer data, trade secrets, methods of operation, et cetera;
- Prevent the Manager(s) from soliciting customers or clients of the LLC; and

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- Prevent the Manager(s), after leaving the LLC's, from soliciting the LLC's employees to work elsewhere.

The cost of the Management Agreement is just \$150, if ordered at the time of forming your LLC.

Spiegel & Utrera, P.A. General Counsel Club & Registered Agent Service - Experienced Legal Advice to Help You Save Money

Let Spiegel & Utrera, P.A. help you grow your business.

Our firm has what we call the "General Counsel Club". Select this valuable service at the time of ordering your LLC and receive an additional one month Bonus so that your first year of service will cover 13 months. PLUS take a \$50 discount, so you pay only \$89.95 for the first 13 months of service. You get unlimited telephone consultations all year long on matters relating to legal and strategic business advice. Plus our firm will prepare the Notice and Minutes of your LLC's Annual Meeting of Members and Managers; our firm will comply with all statutes and applicable laws relating to your LLC's Registered Agent & Registered Office; our firm will review all mandatory State LLC filing documents as required by the Secretary of State; our firm will act as your LLC's General Counsel; and you will receive our firm's newsletter, "Entrepreneur's Alert®", which is published six times a year and provides valuable insight into running your business from a legal and business point of view.

Start-Up Essentials

Many new business owners don't realize what is required to legally conduct business in New York. The last thing you want is to lose your business because you didn't know that you needed register a fictitious name. Below are some of the most common items that new businesses need in order to be compliant with the state of New York and other services that you may find advantageous for your business.

Federal Tax ID Number - Required for a Business Bank Account

The equivalent of a social security number for an LLC. You will need it to operate your business and open a bank account for the LLC. We can obtain this number for you and the advantage of allowing us to get it for your LLC, is that we will deliver it with your LLC for only \$35, so you may open your bank account immediately. If you are a Foreign National without a United States Taxpayer Identification Number or a United States Social Security Number, the charge for the Federal Tax ID Number is \$125.

State of New York Limited Liability Company Publication Requirement (Mandatory Under New York Law):

Section 206 of the Limited Liability Company Law of the State of New York states:

Upon the effectiveness of the initial Articles of Organization of an LLC, a copy of same or a notice containing the substance thereof shall be published once each week for six successive weeks, in two newspapers of the county in which the office of the LLC is located, one must be a daily newspaper and the other a weekly newspaper designated by the County Clerk. Proof of such publication by the Affidavit of the publisher or printer of each newspaper must be filed with New York State within 120 days after the effective date of the Articles of Organization of the LLC.

Remember, if an LLC fails to file proof of publication with the State of New York within 120 days after the formation of the LLC, the authority of the non-complying LLC to carry on, conduct or transact business in the State of New York shall be suspended, effective as of the expiration of the 120 days.

Publication Saver Consider purchasing from Spiegel & Utrera, P.A., P.C. a pre-formed New York Limited Liability Company that includes the New York Limited Liability Company statewide publication requirements.

Meeting the Limited Liability Company Publication Requirement (Mandatory Under New York Law):

Complying with the State's Publication requirements can be very confusing. Spiegel & Utrera can prepare all the documents you need in order to satisfy the State's requirements. For only \$89.95, if ordered at the time of the formation of your LLC, Spiegel & Utrera will provide you with the letter you need to send to the government official relating to the publishing requirement selections, the legal verbiage for your notice and the published legal notice tear sheet request you will need for each newspaper and the letter you will need to send to the State of New York along with step by step instructions to ensure your notice publication process goes smoothly. If ordered with the formation of your LLC, the telephone support at Spiegel & Utrera's General Counsel Club is included with this service and available to you to answer any questions as you proceed to complete the New York LLC Publication requirements.

New York Sales Tax Number and Certificate of Authority - Avoid State of New York Sales Tax

If you sell goods or taxable services, this is your sales tax account number with the State of New York as well as the Certificate of Authority to charge Sales Tax in New York State. This account number also allows you to buy goods for

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resale or export and not pay any State sales tax. Once you obtain a Sales Tax Account Number, you are registered as a Sales Tax Vendor in New York State. The fee to initiate the documents for you to obtain this number is \$35 when ordered at the time of forming your LLC.

Supplemental Approval of Certain New York Limited Liability Companies

If the name and/or purpose of your New York Limited Liability Company contains reference to any of the following items, a separate supplemental approval process must be completed at the New York State level. Company names and purposes referencing or suggesting education, training, lessons, banking, finance, insurance, unions, chamber of commerce, daycare for children, home health care services, military or naval affairs, non-public schools, health, mental health, disabilities, alcohol or substance abuse, mental retardation, developmental disabilities, political parties or any type other of company requiring approval by the State of New York. The fee for the approval process associated with the foregoing names, if ordered at the time of formation of your Limited Liability Company, is \$150. Please be aware that all processing time frames of Spiegel & Utrera, P.A., P.C.'s work begins after the State of New York Supplemental Approval Process is completed.

Special Certificate of Organization Clauses for Certain New York Limited Liability Companies

If the purpose of your Limited Liability Company relates to a cooperative or local development company and, provided it is ordered at the time of formation of your Limited Liability Company, there is an additional fee of \$150. for the special Certificate of Organization. Please be aware that all processing time frames of Spiegel & Utrera, P.A., P.C.'s work begins after the special Certificate of Organization clause is accepted by the State of New York.

Mail Forwarding Service - *Get Your Business Up and Running, Even without a Physical Location*

If you have not set up your company office or you want your attorney to receive your company mail, you may use any Spiegel & Utrera, P.A. office address as your mailing address. Our mail forwarding service is only \$15 per month. There is a six month minimum order. There is also an initial postage deposit of \$25, additional postage/shipping, if any, will be billed separately. In order to participate in Spiegel & Utrera, P.A.'s Mail Forwarding Service, your company must complete an Application for Spiegel & Utrera, P.A.'s Mail Forwarding Service. The application will be emailed to you after the formation of your entity.

Taxpayer Identification Number for Foreigners - *For Resident and Non-Resident Aliens*

An Individual Taxpayer Identification Number is a tax processing number only available for certain nonresident and resident aliens, their spouses and dependants who cannot get a Social Security Number. It is a 9-digit number, beginning with the number "9", formatted like a Social Security Number (NNN-NN-NNNN). Spiegel & Utrera, P.A. will prepare all the documentation necessary for you in order to obtain your Individual Taxpayer Identification Number. The charge for this service is \$125.

How To Save Money on Taxes

One of the most misunderstood and least used benefits to new entrepreneurs are the tax savings offered to them. Although there are many ways that you can save money on taxes, you must be in compliance with all regulations and laws; otherwise you may find yourself losing your business instead of saving money. Below are some of the ways that you can save money on Taxes:

New York Purchaser's Blanket Resale & Exemption Certificates

State and local tax laws require that vendors maintain properly executed Exemption Certificates given to them in good faith by all of their customers who claim New York Sales Tax Exemption. We can prepare a set of Exemption Certificates for you to give to vendors from whom you intend to buy goods for either resale or export for which you are exempt from paying State or local sales taxes. The fee for a set of 6 Re-Usable Certificates is only \$35 when ordered in conjunction with the formation of your LLC.

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Sub Chapter "S" Tax Status - *The Biggest Tax Loophole Available to New Entrepreneurs*

Since the LLC has more flexibility in the manner it can be taxed, it is strongly recommended that the LLC have at least two or more owners (members) at all times. The LLC may be taxed as a sole proprietor, a partnership, a disregarded entity, a regular corporation, or a Sub-S Corporation. However, when you have a single member LLC, if you do not elect to be specifically taxed as a corporation, the IRS taxes you automatically as a sole proprietor. This option is not in your best interest, as you will have to file Schedule C to your personal IRS Form 1040 tax return which will automatically create a higher chance of being audited by the IRS and you will not have the opportunity to take as many tax deductions as an LLC taxed as a corporation.

US Citizen or Permanent Resident

If you are a single member LLC, and the single member is an individual who is a citizen or permanent resident of the United States of America, or a Sub-S Corporation, Spiegel & Utrera, P.A. can prepare the necessary documentation for your LLC to elect to be taxed as a Corporation. We will also prepare the necessary documentation for your LLC to be taxed as a S Corporation, in order to receive the maximum tax benefits available to you. The fee for our office to prepare all your documentation is \$125.

Non US Citizen or Permanent Resident

If you are a single member LLC and the single member is an individual who is not a citizen or permanent resident of the United States of America, nor a Sub-S Corporation, our office can prepare the necessary documentation for your LLC to elect to be taxed as a Corporation. The fee for our office to prepare all your documentation is \$50. If you wish to be taxed as a partnership, then we recommend that you consider adding another member, it could be a parent, a sibling, a child, or another corporation. The other member could have a very small percentage of ownership interest in the LLC and you could limit the second owner's ability to vote, it is therefore also important to prepare and enter into an Operating Agreement between the members and LLC to clearly state all the terms and conditions.

IRS Section 1244 LLC Membership Interests - Tax Savings for Nearly Every LLC Taxed as a Corporation

This is another powerful tax provision which can be used by almost all LLC's taxed as a corporation, BUT, may only be accomplished with the original issuance of ownership interests in the LLC. This special provision of the Internal Revenue Code allows you to deduct as an ordinary loss, rather than as a capital loss, a loss on the sale, trade or worthlessness of the ownership interests in your LLC taxed as a corporation. The amount you can deduct as ordinary loss is up to \$50,000 per year for a single person or \$100,000 per year, if filing a joint return with your spouse. Generally, without 1244 Membership Interests, your loss would be limited to \$3,000 for a single person per year or \$6,000 per year, if filing a joint return with your spouse. An LLC taxed as a corporation that issues 1244 membership interests and elects to be an S corporation gives its members the best of both possible worlds from a tax stand point. The issuance of 1244 membership interests costs only an additional \$50 when ordered with the formation of your LLC and comes with all the necessary documents, including corporate resolutions, 1244 plan and special membership certificates.

TAX SAVING LEASE AGREEMENTS***Home Office Lease - Turn Your Home Office into a Tax Deduction***

Agreement detailing the leasing of office space by a homeowner or tenant with a LLC for use as the LLC's principal place of business. The typical tax savings under this agreement can exceed \$1,200 per year. The Home Office Lease is only \$150 when ordered with your LLC, and as an added bonus to our clients, we draft the Lease in such a manner that it is automatically renewable from year to year at no additional charge. We do not recommend a home office lease for a single owner corporation or single owner limited liability company or a where husband and wife file a joint tax return and are the only owners of the corporation or limited liability company.

Motor Vehicle Lease - Turn Your Personal Car into a Tax Deduction

If you use your vehicle for business purposes, it is usually much more advantageous to keep the vehicle in your name and lease the vehicle to the LLC. The typical tax savings under this type of arrangement ranges between \$1,500 and \$3,000 per tax year. As an added bonus to our clients, we draft the lease in such a manner that its automatically renewable from year to year at no additional charge. We can prepare the lease for only \$150 when ordered with formation of your LLC. We do not recommend a motor vehicle lease for a single owner corporation or single owner limited liability company or where a where husband and wife file a joint tax return and are the only owners of the corporation or limited liability company.

Office Equipment Lease - More Tax Savings

A lease which details the leasing of office equipment by a business. Once again, by leasing equipment to the LLC, you

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create a legitimate business expense for the LLC and a Tax Deduction. Typically, the tax savings under this type of arrangement can exceed \$1,000 per tax year. As an added bonus to our clients, we draft the lease in such a manner that it's automatically renewable from year to year without additional charge. The cost for an Office Equipment Lease is only \$150, when ordered with the formation of your LLC. We do not recommend an office equipment lease for a single owner corporation or single owner limited liability company or a where husband and wife file a joint tax return and are the only owners of the corporation or limited liability company.

Effectively Controlling Your Business

Voting Trust – Keeping Control of Your LLC when there are Multiple Members

A voting trust is a device for combining the voting power of members. It is not unlawful for members to combine their voting membership interests for the election of managers so as to obtain or continue the control or management of an LLC. In order to avoid the invalidation of a voting trust, the applicable statutes should be strictly complied with. There are various situations in which a voting trust agreement may be used. It may be used when several members wish to vote their respective ownership as a unit. It also may be used for the special purpose of protecting LLC creditors. The general plan of a voting trust is controlled by the voting trust agreement; then the members endorse their membership certificates to the voting trustee. The voting trustee surrenders these certificates to the LLC and the voting trustee receives in return new certificates issued in the name of the voting trustee, and the voting trustee votes the membership interests as principal, rather than as agent as in the case of proxies. For tax purposes, the voting trust certificate takes the place of the membership certificate it represents. Tax transactions with respect to voting trust certificates are treated as transaction affecting the ownership. A voting trust is not a taxable association, because in itself it is not an enterprise for the carrying on of business for profit. Used correctly, the Voting Trust could be a useful tool for your LLC. The charge for Spiegel and Utrera, P.A. to form a Voting Trust for your LLC is only \$767.95 if ordered at the time of forming your Company.

Membership Options – Control Your LLC while Raising Money

An option to buy membership interests gives the holder the exclusive right for a specified period of time to purchase the membership interest at the price and under the terms and conditions specified in the agreement. Although the option grantor is bound by the option and generally cannot revoke it, the option holder is not bound unless he exercises the option. Options are regarded as capital assets if the underlying property constitutes, or if acquired would constitute, a capital asset in the hands of the holder. The receipt of consideration for the option is not taxable until the option either is exercised or has lapsed. If the option is exercised, the consideration is treated as part of the selling price and included in computing the gain or loss in the sale of the membership interest. Since membership interest are generally a capital asset, gain or loss on the sale would be entitled to capital treatment, either long-term or short-term. The holding period for qualification for long-term capital treatment is more than one year. The seller's holding period for the membership interest sold includes the period during which the option is outstanding. Upon the failure of the option holder to exercise the option, if the consideration is forfeited, the option grantor generally realizes short-term capital gain, but income is not realized until the time of forfeiture. An option holder's gain or loss upon a sale of the option, or loss upon a failure to exercise the option, would be entitled to capital gain treatment. The holding period of the option will determine whether long-term or short-term capital gain or loss is realized. For this purpose, if the loss is attributable to a failure to exercise the option, the option is deemed to have been sold on the day it expired. If the option is exercised, the consideration for the option is treated as part of the purchase price and is included in the option holder's basis for the membership interest purchased. The purchaser's holding period does not include the period during which the option is outstanding.

Membership options can be utilized very effectively by an entrepreneur, for example:

- Ownership is given to an employee, but if he leaves the employ, the LLC has the option to repurchase the employees stock at fixed or variable price.
- Ownership in the LLC is sold to raise needed capital, but the LLC has the right to repurchase the membership interest in the future.
- For whatever reason a person would like to be a member in the LLC but not now, an option to purchase membership interest is purchased from the LLC.

The members option can be an on-target management incentive or control device. Members options can be used in employment agreements, consultants agreements, incentive agreements, as means of raising equity capital or borrowing funds. Spiegel and Utrera, P.A. will provide the Membership Option service for your business for only \$367.95 if ordered at the time of forming your LLC.

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Asset Protection / How to Protect Your Business

As a new entrepreneur, you are going to invest a lot of time and money into your business. It is imperative that you protect yourself and your business from anything that could go wrong. One of the keys to being a successful entrepreneur is proactively planning for the worst situation, not reacting to the situation after it has happened. Below are items imperative for the protection of you and your business.

Indemnification Agreement and Covenant Not to Sue - *Don't Take Chances: Protect Yourself from Personal Liability*
We strongly recommend that you include special provisions in your Articles of Organization and additional agreements which trigger this important protection requiring the LLC to indemnify and hold harmless its Managers and Members from any actions they take on behalf of the LLC. If a Manager or Member is ever sued for actions taken on behalf of the LLC, these provisions require that the LLC be held responsible, as agreed upon by the Managers and Members and the LLC. These important provisions and agreements cost only an additional \$75 if ordered at the time of formation of your LLC.

Members Restrictive Agreement for a Limited Liability Company - *Avoid Unwanted Transfer of Membership*
We strongly recommend you enter into a Member Restrictive Agreement. This agreement is entered into by the Members and the LLC to enumerate and describe the rights and obligations of the Members to each other and to the LLC. More particularly, it affords a right of first refusal where in the event a Member wants to transfer their Membership interest it requires approval and/or a buyout by the other Members.

A draft of this agreement will be prepared as part of our service, so you may review the Agreement, make changes and discuss it with one of our Attorneys. Please bear in mind that this Agreement is customized specifically for your LLC. Normally, the fee to prepare such a comprehensive agreement of this nature would be \$1,500 or more. However, your cost is only \$150 if prepared in conjunction with the formation of your LLC.

Member Divorce Protection Provisions in the Members Restrictive Agreement for a Limited Liability Company - *Avoid the Unintended Spouse Member*

Unfortunately, many eager entrepreneurs anticipate a successful business venture but never contemplate the "down side." What happens if a member gets divorced? Will the membership interest remain with the member or get awarded to the spouse as part of the divorce settlement? What happens if member tries to convey or assign their membership interest to a spouse or former spouse to meet their obligations? A carefully drafted provision in the members restrictive agreement should afford a right of first refusal when a Member wants to transfer their membership interest by requiring a buyout of the membership interest by the other Members. Such a provision will protect the current members from potential ownership by divorced spouses or other possible sources of ownership conflict. For example, assume a company set up by husband John Smith, wife Pocahontas Smith, and son Al Smith. All are Members, and son Al is married to Patti Smith. What happens if Al and Patti Smith file for a divorce? Provisions in the Members Restrictive Agreement require that in the event of the filing of a divorce involving a Member of the company, a notice is sent to the other Members offering them a right of first refusal, which allow them to purchase Al Smith's membership interest to avoid having Patti Smith as a member, especially after a nasty divorce. Furthermore, even if none of the Members want to buy the membership interest at issue, any transfer of membership interest would require unanimous consent of the other Members. Let us draft these special provisions to protect your company from divorce for an extra \$75 when ordered with the Members Restrictive Agreement at the time of formation or \$150 thereafter.

Start-Up Money for Your Business

Finding the money necessary to start your business is challenging. Unfortunately many new entrepreneurs don't know how to find this money. Even worse, when they find money they don't know how to properly document the transaction. Don't let this happen to you. Review the options below on How To properly secure and document money for your business.

Lender's Agreement & Promissory Note - *Properly Document Money Lent to the Business*
Initially an LLC needs a cash infusion. Additionally, the LLC may require a continuing advance of funds for some time. Its important to minimize the amount of money a member is required to pay for the membership in the LLC because the members could be held personally liable by the LLC and/or the creditors of the LLC for not contributing all the funds the members had initially agreed to contribute to the LLC. How does the LLC get the money? After the initial purchase of its membership interests, generally, the LLC has two choices for obtaining additional money: (1) members can contribute additional funds for their membership interest (not the preferred method as previously stated) or (2) loan money to the

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LLC. Lending money to the LLC is the preferred method to advance money to the LLC because the lender is seen as a creditor of the LLC. The lending of money to the LLC is accomplished with a Lender's Agreement and a Promissory Note. Both of these instruments together provide for an initial amount of a loan to the LLC and also provide for future advances of money the lender might make to the LLC. In the event of failure of the business, the loan will be fully tax deductible by the lender as a bad debt. The fee for the Lender's Agreement and Promissory Note, if ordered at the time of the formation of your LLC, is only \$75.

Non-Voting Membership Interests - Control Your LLC While Raising Money

Allowing differences in voting rights is particularly advantageous to entrepreneurs who need to attract additional capital, but who also want to retain voting control over their LLC. For example, as a founding Member, you may want to have all of the voting membership interests so as to participate in the management of the LLC and control its operations, while transferring all of the non-voting membership interests to others so that they may share in the appreciation value and earnings of the LLC. Also, it's likely you'll want to protect yourself with a Members Restrictive Agreement. Seasoned business-owners will instinctually recognize the value of such an agreement. We'll draft a special provision for your Articles of Organization and issue special certificates for non-voting membership interests. This item costs only an additional \$74.95 if ordered at the time of formation.

Security Agreement for LLC - Protect Yourself if You Personally Funded the Loan for the Business

Once you have decided to use the Spiegel & Utrera, P.A. Lenders Agreement and Promissory Note, the next step is to collateralize the personal property assets of the company in favor of you, the lender with a Security Agreement. A Security Agreement is a contract between a lender and borrower. The Security Agreement gives the lender a security interest and the right to repossess personal property that a borrower has offered as collateral if a note is not paid per its agreed terms. This right is superior to all subsequent creditors provided the lien given by the Security Agreement is perfected. The Security Agreement available from Spiegel & Utrera, P.A. is complete and includes provisions relating to type of collateral being secured, address where collateral will be kept, executing further documents, events that shall constitute a default, assignment of secured collateral by holder, a listing of events that would constitute default by the borrower and the rights of the lender should the borrower default. Provided you have ordered the Spiegel & Utrera, P.A. Lenders Agreement and Promissory Note, the fee for the Security Agreement, if ordered at the time of forming your LLC, is an additional \$75.

Perfecting the Lien Created by the Security Agreement - Uniform Commercial Code

Liens against personal property are perfected differently than liens on real property. The use of the phrase "personal property" does not mean property owned personally by the owner of a business. Instead, the term refers to all property used inside or outside of a business (with the exception of real property) including equipment, furniture, inventory, etc. To perfect a lien against personal property used in a business, strict adherence must be followed pursuant to the Uniform Commercial Code, documentation must be created, executed and filed with the appropriate government agencies. Once recorded, the Uniform Commercial Code makes a lien valid and serves as notice that the lien exists. Usually, the first recorded lien takes priority. Provided you have ordered the Spiegel & Utrera, P.A. Lenders Agreement and Promissory Note and the Spiegel & Utrera, P.A. Security Agreement, the documentation required to perfect the lien under the Uniform Commercial Code is \$75, if ordered at the time of forming your LLC.

Which LLC is Best for Your Business

Selecting the type of LLC that best suits you and your business could be the most important decision you make. Don't make the decision blindly. Below are different Limited Liability Company types that you can form. Read about which one and choose which one sets you up for the greatest success!

Dual Class LLC - Raise Money for Your LLC without Losing Power

The Spiegel & Utrera, P.A. Lawyers Dual Class LLC is designed after IRS proposed regulations which allow an LLC to be deemed a partnership for Federal Income Tax purposes to have members/owners qualified as limited partners for Self Employment ("SE") tax purposes. The use by Spiegel & Utrera, P.A. of a Dual Class LLC ownership to distinguish between a manager and a non-manager class of ownership is used to allow the non-manager membership class to be treated as a limited partner class. More importantly, the Spiegel & Utrera, P.A. Dual Class LLC is structured to admit both active management providing members in addition to more passive, capital contributing members. For those LLC members who could qualify as both, they would own a portion of each class of the Spiegel & Utrera, P.A. Dual Class LLC.

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The Spiegel & Utrera, P.A. Dual Class LLC is divided as follows:

Class A General Member Units: The smaller manager class receives a priority preferred return of income (for example, a management or sales fee arrangement) that is contingent on the profitability of the LLC. It may not be a fixed compensation amount or it will constitute a guaranteed amount which is prohibited.

Class B Limited Member Units: This portion of the LLC membership interests is the cash contributing members' interest and is structured as a non-manager class qualifying for limited partner status. This class receives a cumulative preferred-priority return of profits based on their unreturned capital contributions, whereas the smaller active manager class would not.

The cost of adding the additional features required of the Spiegel & Utrera Dual Class LLC is just \$300 for up to 4 members, additional members are \$50 each, if ordered at the time of forming your LLC and, as an added bonus, it includes the required Dual LLC Operating Agreement.

Dual Class Management Agreement - Required for Your Dual Class LLC

Every Dual Class LLC must enter into a written Management Agreement between the LLC and its Manager(s), the Manager(s) are generally Class A member(s) of the Dual Class LLC. The Management Agreement should be drafted in such a way so that it conforms with the provisions of the Dual Class LLC Operating Agreement and, in addition thereto, it will:

- Spell out the terms of employment, such as the duties, responsibilities and compensation of the LLC Manager(s).
- It states that the Manager(s) will not compete against the LLC for a specific period of time after leaving the LLC;
- Prohibit the Manager(s) from disclosing any of the LLC's business records, computer data, trade secrets, methods of operation, et cetera;
- Prevent the Manager(s) from soliciting customers or clients of the LLC;
- Prevent the Manager(s), after leaving the LLC's, from soliciting the LLC's employees to work elsewhere.

The cost of the Management Agreement is just \$150, if ordered at the time of forming your Dual Class LLC.

Special Purpose Limited Liability Company for Self-Directed IRA Account - Take Control of Your IRA

The strategy for using a Spiegel & Utrera, P.A. Special Purpose LLC for Self-Directed IRA Account involves forming an LLC with the self-directed IRA as an owner (or "member") of the LLC. Funds are transferred to the LLC which, in turn, purchases and holds title to real estate. The creation of a self-directed IRA or IRA LLC enables you to choose what you would like to invest your money in. When you are the manager of an LLC, you have "checkbook control." That means that every time you are going to invest in a new property you don't have to have the custodian approve the transaction.

However, a special purpose LLC formed for a self-directed IRA owner has to comply with the Internal Revenue Code, Employee Retirement Security Act of 1974 (ERISA) and corresponding regulations. Such self-directed IRA owner is solely responsible for avoiding prohibited transactions and should seek the counsel of licensed attorneys and accounting professionals.

For example, if you, your wife and children have an existing LLC in which you are the only owners (e.g., 100% ownership by disqualified persons) then your IRA cannot invest in that LLC. You could, however, create a new LLC and have both your IRA and the existing LLC invest into it as founding members at the same time.

The cost of adding the additional features required of the Spiegel & Utrera, P.A. Special Purpose LLC for Self-Directed IRA Account is just \$634.90 for up to 4 members, additional members are \$50 each if ordered at the time of forming your LLC and, as an additional bonus, it includes the required Special Purpose LLC for Self-Directed IRA Account Operating Agreement.

Special Purpose Limited Liability Company for Self-Directed 401(K) - Take Control of Your 401(K)

Why Limit your 401(k) investments when you can have self-direction? A strategy involves forming a single-owner limited liability company ("LLC") with a 401(k) Plan. Plan funds would be used either to purchase real estate or other assets

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directly or to create a holding company which in turn would purchase such assets. When you are the administrator of the LLC's 401(k) Plan, you have "checkbook control". That means that every time you are going to invest in a new property you don't have to have the plan custodian approve the transaction. You will want to contact a financial advisor to help you select and set up the right 401(k) Plan for you.

The operating agreement for your LLC would allow your self-directed 401(k) Plan to choose what you would like to invest your money in. The operating agreement for the Special Purpose Limited Liability Company for Self-Directed 401(k) Account has to comply with the Internal Revenue Code, Employee Retirement Security Act of 1974 (ERISA) and corresponding regulations.

As a result of such laws, the 401(k) Plan cannot invest in foreign-owned assets or transactions involving a "disqualified person". Disqualified persons include the 401(k) account owner, the spouse of the 401(k) account owner, the 401(k) account owner's descendants, ascendants and spouses of descendants. That means a father, mother, grandfather, grandmother, son, daughter, grandson, and granddaughter of the 401(k) owner are disqualified. However, a brother, sister, uncle, aunt or cousin are not disqualified. Also the court in *Rollins V. Comm'r, T.C. Memo 2004-260*, ruled that a prohibited transaction was created when an entity that was owned partially by an IRA made a loan to another entity that was owned (33%) by the IRA owner! Of course, you should seek the counsel of licensed attorneys and accounting professionals before proceeding.

The cost of adding the additional features required of the Spiegel & Utrera, P.A. Special Purpose LLC for Self-Directed 401(K) is just \$634.90 for up to 4 members, additional members are \$50 each if ordered at the time of forming your LLC and, as an additional bonus, it includes the required Special Purpose LLC for Self-Directed 401(k) Operating Agreement.

What You Need if You are Hiring Workers:

If you are planning to have anyone work for your company, whether as an employee or independent contractor, you must make sure that you are in compliance with all Federal and New York laws. Below are the most common items that you will require when hiring workers for your company.

New York Unemployment Tax Account Number – *Required By Law if you are Hiring Employees*

This number is used to withhold New York Unemployment Taxes from your Company's payroll. If you have any employees on the payroll, including yourself, you will need this account number. We can initiate the documents for this account number for you and deliver it with the LLC. The cost at the time of forming your LLC is only \$35.

Employee Benefits and Policies - *Protect Yourself from Employee Disputes with a Comprehensive Policy*

If you are using employees in your business, it is important to have written Benefits and Policies. Let us prepare your Employee Benefits and Policies. Unlike the Employment Agreement, the Employee Benefits and Policies creates an understanding of the entitlements of the employee relative to the policies of the business and provides protection for the business. The Employee Benefits and Policies will be customized for your business and are designed to cover:

- Vacation
- Absences, including vacation, sick time, time off for injury, death in family, jury duty, excused absence, military leave and emergency situations
- Holidays
- Equal Employment Opportunity
- Drug and Alcohol Abuse Policy
- Payday and Pay Period
- Overtime
- Internet and Email Policy
- Sexual Harassment
- 90-Day Training/Probation Period

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- Forfeiture of Commission, Incentive Compensation and Bonuses relating to failure to complete the initial employment period
- Business Hours
- Moonlighting Restrictions
- Honesty
- Pornography at Work
- Medical Insurance
- COBRA
- Timecards
- Departure from Employment with Notice or Without Notice
- Dress at Work
- Business Cards
- Parking
- Keys
- Alterations or Modifications
- Other benefits and/or policies which may be of special interest to your business

By having the customized Employee Benefits and Policies, the business has clearly communicated to its employees the Employee Benefits and Policies in effect at the business and how the Employee Benefits and Policies are to be followed so that there are no surprises. For example, relating to an employee who leaves the business without giving adequate notice who then would only be entitled to be paid at the minimum wage for any time due and owing and forfeiting any vacation days, sick days, commissions, incentive compensation and/or bonuses.

The Employee Benefits and Policies may be re-used by the business as it hires additional employees. The cost of the Employee Benefits and Policies is just \$167.95 if ordered now with the formation of your company.

Employment Agreement - *Get the Most Out of Your Employees*

If you are using employees for your LLC, it is important to have a written Employment Agreement to document the conditions of Employment. An Employment Agreement can be very advantageous for an LLC and should be required for all employees, whether new or existing. It creates a clear understanding of the arrangement between the employee and the LLC and provides protection for the business. The Employment Agreement also contains other important provisions:

- It spells out the terms of employment, such as the duties, responsibilities and compensation of the employee.
- It states that the employee will not compete against the LLC for a specific period of time after leaving its employment
- It prohibits the employee from disclosing any of the LLC'S business records, computer data, trade secrets, methods of operation, et cetera;
- It prevents the employee from soliciting customers or clients of the LLC; and
- It prevents an employee, after leaving the LLC's employment, from soliciting the LLC's employees to work elsewhere.

The Employment Agreement is prepared in such a manner that you can use it over and over again to avoid additional costs in the future. By having this Employment Agreement, the LLC is given substantial clout in preventing an employee

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from joining a competitor, or competing against the LLC and disclosing business secrets to anyone. The Agreement may be re-used by the LLC as it hires additional employees, the cost of the Employment Agreement is just \$150 if ordered at the time of forming your LLC.

New York New Hire Reporting – Required by Law

Federal law requires all New York employers to report basic information about employees, who are newly hired, rehired, or who return to work after a separation from employment. You must submit a report for each newly hired employee. *The penalty for failure to timely report newly hired employees or for failure to file a report showing the required information is \$20, per each newly hired employee.* If the failure to report is a result of a conspiracy between the employer and employee, *the penalty will be \$450, multiplied by the number of employees not reported or the number of false or incomplete reports filed.* We can provide you with a package of 6 New Hire Registration Forms for \$35. The forms are customized with your LLC's information, and you may re-use them for each person you employ.

Independent Contractor Agreement - What Your Business Must Have if Using Independent Contractors

There are many reasons for using Independent Contractors, however, simply verbally stating that a worker is an Independent Contractor is not enough according to the IRS. Certain criteria must be met. The IRS considers 11 factors in three specified areas: Behavioral Control, Financial Control and Type of Relationship. So, before you engage the services of an Independent Contractor, it is essential that you document that relationship with a written Independent Contractor's Agreement, otherwise the IRS could hold your LLC and you *personally liable* for the Independent Contractor's Income Tax, Social Security, Medicare Tax and Federal Unemployment Tax, which should have been withheld. As a signatory on the check used to pay the Independent Contractor, you could be held *personally liable* for these taxes. The Independent Contractor's Agreement also contains other important provisions:

- It spells out the duties, responsibilities and compensation of the Contractor;
- It states that the Contractor will not compete against the LLC for a specific period of time after the project is completed;
- It prohibits the Contractor from disclosing any of the LLC's business records, computer data, trade secrets, methods of operation, et cetera;
- It prevents the Contractor from soliciting customers or clients of the LLC; and
- It prevents the Contractor, after leaving the LLC, from soliciting the LLC's employees to work elsewhere.

For a detailed explanation of the Benefits of using Independent Contractors' Agreements, including a breakdown of the 11 factors the IRS analyzes and Industry examples provided by the IRS, please refer to document 239 of Spiegel & Utrera's Free Faxback Service, call (800) 303-3300 and follow the prompts. We can provide an Independent Contractor's Agreement that covers all the legal requirements and many business advantages for your Company for only \$150 if ordered at the time of forming your LLC.

How To Build Credit and Credibility for Your Business

As a new business two items vital to your survival are credit and credibility. Customers feel secure dealing with a credible business. Potential investors and other lenders are more comfortable providing capital to a business with good credit. But how do you build credit and credibility for a business? Two of the easiest ways are discussed below.

D & B Number - Start Building Your Business Credit Immediately

According to Dun & Bradstreet, the D & B number is widely used by both commercial and federal entities and was adopted as the standard business identifier for federal electronic commerce as early as October 1994. The D & B number was also incorporated in the Federal Acquisition Regulation (FAR) in April 1998 as the United States Federal Government's contractor identification code for all procurement-related activities. The D & B number is also known as the D-U-N-S® number and remains with the company location to which it has been assigned even if it closes or goes out of business. With that in mind, it is important to have a physical location for your business when obtaining the D & B number. D & B also states that the D-U-N-S® number also "unlocks" a wealth of valued-added data associated with that entity, including the business name, physical and mailing addresses, trade styles (fictitious name, assumed name, alternate name or DBA), principal names, financial, payment experiences, industry classifications (SICs [Standard Industry Classification] and NAICS [North American Industry Classification System]), socio-economic status, government data and more. The D-U-N-S® number also links members of corporate family trees worldwide. If ordered at the time of forming your company, Spiegel & Utrera, P.A. will obtain your D & B number, also known as your D-U-N-S® number, for

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\$50. If ordered later, the charge to obtain the D & B number, also known as your D-U-N-S® number, is \$75.

Business Checking, Investment Account and Delayed Debit Gold MasterCard - Let Us Help You Establish a Business Bank Account

Let Spiegel & Utrera, P.A. help you set up your new business checking account. In addition to a business checking account, the account also comes with an investment account and a delayed debit Gold MasterCard. Depending upon the day in the billing cycle when a charge is made, your account will continue to earn interest for up to 30 days from the date of purchase or until the balance of the debit card for that period is charged to your account. In addition, with this account you have the ability to make deposits and withdraw funds from over 800 bank locations and other financial institutions in the United States. Multiple delayed debit Gold MasterCard's are available for use by your employees. Internet bill payments are free. No minimum balance is required to maintain your business checking account, however, there is an initial deposit of \$10,000 which is required to open the Business Checking, Investment Account and Delayed Debit Gold MasterCard. If you order your business checking, investment account and/or delayed debit Gold MasterCard from Spiegel & Utrera, P.A. at the time of forming your Limited Liability Company, the fee is \$249.95 to prepare all the necessary documentation and follow up until such time as your business checking, investment account and/or delayed debit Gold MasterCard has been established. If ordered after forming your Limited Liability Company, the fee is \$449.95.

Your Success Starts With Knowledge

As a new entrepreneur it is important that you surround yourself with the tools you need to be successful. However, it is also important that you don't drain your bank account looking for these tools. Three items with vast amounts of business knowledge and guidance can be found below. You will return to these items again and again, not only during the start-up process but over the entire life of your business.

Detours and Contradictions

Want more out of your LLC? Then don't miss Lawrence Spiegel's, 223 page *Detours and Contradictions*. Use this book, and all your available resources, to begin the challenging yet fulfilling journey of entrepreneurship. As we'll see... having a marketable idea is only the first step in a lengthy process. Along the way you'll encounter numerous detours and contradictions, risks and rewards. The regular price of *Detours and Contradictions* is \$13.50 if you order when forming your LLC. PLUS there is no extra charge for shipping, handling and processing as your book will be shipped with your LLC. Also, as an added bonus, your copy of *Detours and Contradictions* will be personally autographed by Lawrence J. Spiegel.

Charlie's Entrepreneurial Journey

Building your business, or selecting the type of business to start, is easy when using *Charlie's Entrepreneurial Journey* as a guide and applying Lawrence J. Spiegel's thirty eight "Principles of Entrepreneurship" to your business. Spiegel's latest book provides 416 pages of insight into the world of an aspiring entrepreneur named Charlie. Charlie's journey leads him through topics never discussed in business books but essential to success. Topics include: costs associated with Acquiring a Customer, Urgency to Purchase, Saturation Advertising, Success Leaves Tracks and Repetitive Business. Spiegel's "Principles of Entrepreneurship" cannot be found anywhere else. In fact, no one has ever *exposed* the business *secrets* Spiegel discloses. If you are seeking to spark your business you will find an *EXPLOSION* in this book. Order this book at the time of forming your corporation and you will get *Charlie's Entrepreneurial Journey* for \$19.50 which includes shipping, handling and processing, when ordered with the formation of your company. PLUS Lawrence J. Spiegel will personally autograph your copy of *Charlie's Entrepreneurial Journey*.

Lease / Agreement Review

Lease/Agreement Review – Protect Yourself BEFORE You Sign

Avoid costly mistakes, always, *always*, always have any type of Contract/Lease or otherwise legally binding agreement reviewed by Spiegel & Utrera BEFORE you sign it. We offer Consultations at all of our offices and over the phone. For your convenience, and at no obligation to you, you can fax us the documents that need to be reviewed at (800) 520-7800 and an attorney can advise you over the phone.

Our staff has many years of experience representing Tenants. Having your lease reviewed BEFORE you sign on the dotted line can save you thousands of dollars.

In our review we address issues such as:

- Rentable vs. Usable Space

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- Reasonable Rental Rates
- Free Rent
- Best Length of Lease
- Options to Extend the Lease & Purchase the Premises
- Leasing contiguous space for expansion
- Assignment and Subletting
- Caps on Rent increases and expenses demanded by Landlords
- Repair Responsibilities
- Exclusivity of Tenant's Business
- Early Termination Rights
- Personal Guarantees, should you or should you not
- Renewal Terms
- Zoning Issues
- Landlord build out costs
- Change of Control of Tenant
- Signage Protection

Business Purchase Review: Asset Purchase – Generally Liabilities are NOT Assumed

When assets are acquired, the purchaser buys all or specified assets of the selling entity and may assume none, some, or all of the liabilities of the business. An asset purchase may be attractive to you since you may be able to pick and choose the specific items desired and can attempt to avoid assuming debts and liabilities of the selling entity. An asset acquisition is also designed to reduce your exposure to possible unknown or contingent liabilities. When assets are acquired, appropriate documents must be prepared in order to effectuate the transfer of title to each particular asset which is being transferred. This can involve a great deal of paper work and may require approvals and consents from various other parties, depending on the entity which is being purchased. We recommend faxing any agreement BEFORE you sign to (800) 520-7800, at no obligation to you, and an attorney can advise you over the phone.

Franchise Agreement Review – Is That Franchise Too Good to be True?

A franchise is a method of distributing goods and services by licensing a business idea or concept to another. The "franchisor" is the legal owner of the franchised business' concepts and ideas, including names and logos. The "franchisee" is the individual or entity that purchases the right to use these concepts and ideas from the Franchisor. Studies reveal that franchised businesses experience lower default rates than independent businesses and generally have a somewhat easier time securing financing because the Franchisor typically has an established trademark and goodwill, as well as marketplace experience. But is a franchise worth the cost and restrictions? Many new entrepreneurs incorrectly believe that purchasing a franchise will lead to immediate success and profits with little to no risk. This is rarely the case. When considering a franchise there are many aspects that you need to examine. One good indicator of the potential success of a franchise is to compare your start-up cost with the past advertising and promotional expenditures of the franchisor. For example, a fast food franchise that has a start-up cost of \$50,000 where the franchisor has invested \$500 million in advertising and promotion would probably be a better purchase than another fast food franchise that has a lower start-up cost but the franchisor has only invested \$10 million in advertising and promotion. Likewise, remember that higher price does not necessarily mean less risk and lower price does not mean greater potential reward. You must review all materials and disclosures carefully and seek legal advice. Although franchises usually require up-front fees and are heavily regulated by Federal and state agencies because of their inherent risks, a franchisee operating under one trademark can achieve levels of brand awareness, market penetration and purchasing power that business people operating individually could not ordinarily achieve. Generally, a franchise

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agreement grants to the franchisee a limited license and right to use and operate a recognizable outlet within a defined territory by utilizing a pre-existing business system and proprietary marks. The franchise agreement allows the franchisor to carefully control the obligations and responsibilities of the franchisee. It is imperative to have the agreement reviewed by an attorney BEFORE you sign it. The attorneys of Spiegel and Utrera, P.A. have extensive experience in Franchise Agreements and will review your Franchise Agreement. Just fax your agreement to (800) 520-7800, at no obligation to you, and an attorney can advise you over the phone.

In our review we address issues such as:

- Engagement
- Franchise Fee
- Royalty & Percentage Fees
- Proprietary Marks
- Training And Assistance
- Advertising
- Confidential Operating Manuals
- Confidential Information
- Maintenance
- Accounting and Records
- Standards of Quality
- Modification of System
- Warranties and Representations of Franchisor
- Warranties and Representations of Franchisee
- Rights of First Refusal
- Indemnification

A franchise is an excellent way to get started as a new entrepreneur, but it does not guarantee success. You must have a Franchise Agreement that works to your advantage. Let Spiegel and Utrera, P.A. review your agreement and get your franchise started on the path to success!

Shipping Information

Company Packages generally weigh approximately 4 pounds and are available for Pick up at our office or may be shipped to you via Ground (2-3 business day) Service for a charge of \$32.95 or via Overnight Delivery for a charge of \$62.95. Please note, shipping and handling charges outside New York will vary.

SPEED OF SERVICE OPTIONS

REDDI LLC

If you need a LLC immediately, we have companies, which are ready for immediate delivery. For more information and a complete list of all our Reddi or Shelf LLC's call our office at (800) 576-1100 for details.

2 BUSINESS DAY LLC

If you need your LLC formed urgently, for an additional \$175 (due to higher State Filing Fees), we can expedite the registration of the LLC and preparation of the LLC Records and the LLC Package will be ready in 2 business days, after receipt of payment. We also have Same Day Service available, inquire when placing your order.

4 BUSINESS DAY LLC

If you need to form your LLC fast, we offer a 4 Business Day LLC Service for an additional \$100. We will expedite the registration of the LLC and preparation of the LLC Records and the LLC Package will be ready in 4 business days, after receipt of payment.

TWO WEEK GUARANTEE LLC

Your LLC documents will be ready exactly two weeks from the day you place your order for an additional \$75.

REGULAR SERVICE

The regular processing time for an LLC is approximately 4-5 weeks. The LLC Package includes all the documents and the LLC Seal.

An Important Note about our RUSH SERVICES

We offer two levels of rush service. When you opt for one of our rush services, we guarantee to promptly deliver your Limited Liability Company to the State for processing, however, if the State is backlogged, you may experience a delay in receiving your documents. We strive to have all rush orders ready as soon as humanly possible, however if time is of the essence you may opt for one of our Reddi LLC's which are ready for immediate delivery.

Questions? Please call us! Toll Free:

1(800) 576-1100 New York City (212) 962-1000 Fax (212) 964-5600
1(888) 797-6200 Long Island (516) 338-9100 Fax (516) 338-9200

Summary of Services:

Client selection of Services

Limited Liability Company:	US\$244.95	_____
Service Agreement	367.95	_____
LLC Operating Agreement (Single Member):	99.95	_____
LLC Operating Agreement (Multi Member):	249.95	_____
LLC Management Agreement:	150.00	_____
General Counsel Fee 1 Year	89.95	_____
Federal Tax ID Number:	35.	_____
Foreign National Fed Tax ID	125.	_____
Publication Requirement Packet	89.95	_____
New York State Sales Tax Number:	35.	_____
Supplemental Approval	150.	_____
Special Certificate of Incorporation	150.	_____
Mail forwarding Service:	115.	_____
(6 months @ \$15 per month plus initial postage deposit of \$25)		
Taxpayer ID for Foreigners	125.	_____
Sales Tax Resale and Exemption Certificates	35.	_____
Sub Chapter S Tax Status (US Citizen):	125.	_____
Sub Chapter S Tax Status (Non US Citizen):	50.	_____
IRS 1244	50.	_____
Home Office Lease	150.	_____
Motor Vehicle Lease	150.	_____
Office Equipment Lease	150.	_____
Voting Trust	767.95	_____
Membership Options	367.95	_____
Indemnification Agreement	75.	_____
Members Restrictive Agreement	150.	_____
Member Divorce Protection	75.	_____
Lender's Agreement & Promissory Note	75.	_____
Non Voting Membership Interest	74.95	_____
Security Agreement	75.	_____
Perfect the Lien Created by Security Agreement	75.	_____
Dual Class LLC	300.	_____
Dual Class Management Agreement	150.	_____
Special Purpose LLC for IRA	634.90	_____
Special Purpose LLC for 401K	634.90	_____
Unemployment Tax Account Number	35.	_____
Employee Benefits and Policies	167.95	_____
Employment Agreement	150.	_____
New York New Hire Report Form	35.	_____
Independent Contractor Agreement	150.	_____
D & B Number	50.	_____
Business Checking \ MasterCard	249.95	_____
Detours and Contradictions	13.50	_____
Charlie's Entrepreneurial Journey	19.50	_____
Lease Review (100 per half hour)	100.	_____

Subtotal

Shipping:

Regular Ground Track	32.95	_____
Overnight	62.95	_____
Shipping Fees Outside of New York determined when order is confirmed.		
Bank Fee Incoming wire transfer of funds :	20.	_____
2 Day Service	175.	_____
4 Day Service	100.	_____
Two Week Guarantee	75.	_____

TOTAL CHARGES:

US\$ _____

Charge my Credit Card: Visa Master Card American Express Discover Diners
 Card # _____ Exp. Date: _____
 Name on Credit Card: _____ Signature: _____
 Billing Address of Credit Card: _____ Zip Code: _____

You may include payment in the form of a Cashier's Check or Money Order via Mail or via Fax:
 (You must also ATTACH a photocopy of BOTH sides of your credit card)

Cash -Circle "Cash" to select this payment method. You can wire funds to one of our accounts. A Spiegel & Utrera, P.A. associate will provide you with the necessary information when reviewing this order with you. Please add an additional sum of US\$20 to your order. This is the amount our bank deducts from your wire transfer as its service charge for accepting incoming wire funds.

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