

LCA's Video Law Library

Representing the LCA Music Client: Band Formation

Speakers:

[Barry Irwin](#) | Irwin IP

[Peter Strand](#) | Leavens, Strand & Glover



ILLINOIS INSTITUTE for
CONTINUING LEGAL EDUCATION

www.iicle.com



Band Formation: Agreements Among Band Members

- Fundamental issues to address
 - Band Member jobs and responsibilities
 - How to split profits from gigs
 - How to split merchandise profits
 - How the band should make future decisions
 - Majority vs. Unanimous vote
 - How to determine songwriting credits
 - Who owns the band name
 - What to do if a band member wants to quit

Band Formation: Choice of Entity

- General Partnership
- “S” Corporation
- Limited Liability Company (LLC)

General Partnership: Advantages and Disadvantages

- Advantages
 - Simplicity – minimal startup requirements, flexibility in structuring operations, and no required state filings.
- Disadvantages
 - Personal Liability – each band member can be held personally responsible for the acts and debts of the band as an entity.

General Partnership: Drafting the Partnership Agreement

- Defining scope of band partner services
 - Contributions to sound recordings as well as live performances
- Restrictions on non-band partner activities
- Explicit rejection of employer-employee relationship
- Establishment of Name/Logo/etc.
- Rules for meetings
 - Including delineation of which matters require a unanimous vote and which require a simple majority

General Partnership: Drafting the Partnership Agreement

- Ownership of Sound Recordings
 - Will Copyrights be registered in the name of the Band Partnership or each Band Partner?
- Ownership of Musical Compositions/Publishing Rights and division of publishing income
- Band Partner Contributions – amount, frequency, etc.
- Profit and Loss Sharing
- Accounting procedures

General Partnership: Drafting the Partnership Agreement

- Dissolution – what happens when the band dissolves, or even when a band member leaves
- Procedures for addition of new members
- Rights and Duties of former members
- Additional Boilerplate
 - Warranties and Indemnification
 - Notices
 - Waiver
 - Choice of Law
 - Mediation/Arbitration
 - Etc.

“S” Corporation: Advantages and Disadvantages

- Advantages
 - Limited liability protection
 - Single taxation
 - Reduced annual cost (as compared to LLCs)
- Disadvantages
 - Rigid management structure
 - Onerous ongoing requirements

“S” Corporation: Formation Checklist

- Articles of Incorporation
- By-laws
- Organizational Consents
- Stock Certificate and Receipts
- Shareholders Agreement
- Employer Identification Number
- S-election form
- Disclosure Document
- Annual Consents
- Annual Report filing with Secretary of State

"S" Corporation: By-laws

- Common Provisions
 - Offices
 - Recordkeeping procedures
 - Meetings and relevant procedures
 - Including voting and attendance rules
 - Board of Directors
 - Rights and Responsibilities
 - Officers
 - Shares and transfer thereof
 - Contract/Loan/Deposit Authority
 - Indemnification
 - Miscellaneous

“S” Corporation: Organizational Consent

MEMORANDUM OF RECORDING

The original of the Articles of Incorporation, File No. **[File Number]**, immediately following this Memorandum, was filed for record in the Office of the Recorder of Deeds of **[County]**, Illinois, on **[Date]** as document number **[Document Number]**.

"S" Corporation: Organizational Consent

[BAND CORP.]

CONSENT OF SOLE INCORPORATOR TO ADOPTION OF RESOLUTION IN LIEU OF ORGANIZATIONAL MEETING

The undersigned, being the sole incorporator of [BAND CORP.], an Illinois corporation, pursuant to Sections 2.05 and 2.20 of the Illinois Business Corporation Act of 1983, consents in writing to the adoption of the following resolution in lieu of an organizational meeting:

RESOLVED, that the following named persons are elected to serve as directors of the Corporation, to serve until the first annual meeting of the shareholders and until their successors are elected and qualified:

[Board Member 1]

[Board Member 2]

[Board Member 3]

Dated as of [Date]

[Name of Incorporator]

“S” Corporation: Organizational Consent

There will also be a document memorializing the consent of the Board of Directors regarding:

- Ratification of actions of the incorporator
- Adoption of By-Laws
- Election of Officers
- Issuance of shares
- Fiscal Year
- Bank Accounts

*Organizational Consent Documentation
Available in Supplementary Materials*

"S" Corporation: Stock Legends

LEGENDS TO ADD TO REVERSE SIDE TO STOCK CERTIFICATES

The securities represented by this certificate have been acquired for investment and has not been registered under the Securities Act of 1933, as amended, or any applicable state securities laws. Without such registration, such securities may not be sold or otherwise transferred at any time whatsoever unless, in the opinion of counsel satisfactory to the Company, (1) registration is not required for such transfer and (2) such transfer will not be in violation of the Act or applicable state securities laws, or any rule or regulation promulgated thereunder.

The sale or transfer of this certificate is subject to an agreement between the Shareholders dated [\[Date of Shareholder's Agreement\]](#). A copy of this Agreement is on file in the Office of the Secretary of the Corporation.

“S” Corporation: Shareholders Agreement

- Basic Provisions
 - Name of band
 - Details of formation
 - Term of agreement
 - Place of business
 - Purpose
 - Directors and Officers

"S" Corporation: Shareholders Agreement

Distribution of Profits – Sample Provision

- a. Net Profits shall be equally distributed to the Shareholders from time to time as authorized by the Board of Directors. The aggregate amounts distributed to the Shareholders from the Corporation's profits shall not, however, exceed the amount of cash available for distribution, taking into account the Corporation's reasonable working capital needs as determined by the Board of Directors.
- b. For the purpose of this Agreement, **"Net Profits" shall mean all income, advances, royalties, license fees, commissions, bonuses, payments (other than repayment of loans), interests or monies of any kind or nature paid to the Corporation after deducting the sum total of all expenses, including, but not limited to, salaries, management fees, license fees, royalties, rent, promotional costs, travel costs, office expenditures, telephone costs, accounting and legal fees, entertainment costs and any and all other Corporation expenses incurred by the Corporation while conducting Corporation business.**
- c. The Corporation shall distribute to each Shareholder on or before sixty (60) days after the end of each fiscal year an amount sufficient to cover such Shareholder's tax obligation as a shareholder in a "S" Corporation for such fiscal year.

“S” Corporation: Shareholders Agreement

- Shareholders
 - Rights and Obligations
 - Restriction on transfer of shares
- Assets of the Corporation
- Corporate Bank Accounts
- Miscellaneous
 - Insurance
 - Construction/Severability
 - Modification

“S” Corporation: Employer Identification Number (EIN)

- Sometimes referred to as a Tax Identification Number (TIN)
 - Can obtain [online](#)

Step 1: Determine Your Eligibility

- You may apply for an EIN online if your principal business is located in the United States or U.S. Territories.
- The person applying online must have a valid Taxpayer Identification Number (SSN, ITIN, EIN).
- You are limited to one EIN per [responsible party](#) per day.

Step 2: Understand the Online Application

- You must complete this application in one session, as you will not be able to save and return at a later time.
- Your session will expire after 15 minutes of inactivity, and you will need to start over.

Step 3: Submit Your Application

- After all validations are done you will get your EIN immediately upon completion. You can then download, save, and print your EIN confirmation notice.

[Apply Online Now](#)

"S" Corporation: S-Election – IRS Form 2553

- Necessary to obtain Single Taxation benefit
- Requirements
 - Domestic Corporation
 - No more than 100 shareholders
 - Shareholders are individuals, estates, other exempt organizations, or trusts
 - No nonresident alien shareholders
 - One class of stock
 - Cannot be
 - Bank, insurance company, possessions corporation, DISC
 - Must have one of the permitted tax years
 - Ends 12/31, natural business year, ownership tax year, etc.
 - Consent of Shareholders

“S” Corporation: Disclosure Document

- Often a letter directed to the new “Band Corp.”
 - Explain corporate formalities and operating procedures
 - Minute Book
 - Annual Report
 - Annual Meetings
 - Tax Returns
 - Changed Circumstances

“S” Corporation: Annual Consents

- Adoption of Resolutions in Lieu of Annual Meeting
 - Ratification of Prior Acts
 - Shareholders’ Election of Directors
 - Directors’ Election of Officers

"S" Corporation: Annual Report

- Basics
 - Identifying Information
 - Principal Address
 - Date of Incorporation
- Officers and Directors
- Authorized and Issued Shares
- Paid-in Capital

Form available in Supplementary Materials
as well as via www.cyberdriveillinois.com

YEAR OF
File Prior to: _____

**STATE OF ILLINOIS
DOMESTIC CORPORATION ANNUAL REPORT**

CORPORATION
FILE NO. _____

PLEASE TYPE OR PRINT CLEARLY IN BLACK INK

NOTE: A Change in the registered agent and/or registered office may only be effected by filing form BCA-5.10/5.20. If there have been any changes in items 6 or 7a; form BCA-14.30 must be completed and submitted in the same envelope.

1.) CORPORATE NAME _____
 REGISTERED AGENT _____
 REGISTERED OFFICE _____
 CITY, IL, ZIP CODE _____ COUNTY _____

2.) Principal address of corporation: _____
Street City State ZIP Code

3.) Date Incorporated _____

4.) **The names and addresses of ALL officers & directors MUST be listed here!**

OFFICE	NAME	NUMBER & STREET	CITY	STATE	ZIP
President					
Secretary					
Treasurer					
Director					
Director					
Director					

5.) If 51% or more of the stock is owned by a minority or female, please check appropriate box. Minority Owned Female Owned

6.) Number of shares authorized and issued (as of _____): _____

CLASS	SERIES	PAR VALUE	NUMBER AUTHORIZED	NUMBER ISSUED

IMPORTANT! Whenever the amount in item 6 or 7a differs from the Secretary of State's records, form BCA 14.30 must be completed.

7a.) The amount of paid-in capital as of _____ is: \$ _____

7b.) The Paid-in Capital on record with the Secretary of State is: \$ _____

(Paid-in Capital reflects the sum of the stated Capital and Paid-in surplus accounts.)

8.) By _____ (Any Authorized Officer's Signature) _____ (Title) _____ (Date)

RETURN TO:
 Jesse White
 Secretary of State
 Department of Business Services
 Springfield, IL 62756
 Telephone (217) 782-7808
 www.cyberdriveillinois.com

ITEM 8 MUST BE SIGNED!

Under the penalty of perjury and as an authorized officer, I declare that this annual report, pursuant to provisions of the Business Corporation Act, has been examined by me and is, to the best of my knowledge and belief, true, correct, and complete.

(PLEASE COMPLETE THE REVERSE SIDE OF THIS REPORT)

PRESIDENT _____
 SECRETARY _____

IF THE ABOVE OFFICERS' NAMES AND ADDRESSES ARE MISSING OR HAVE CHANGED, ENTER ONLY THE ADDITIONS OR CORRECTIONS BELOW.

PRESIDENT _____
NAME STREET ADDRESS CITY STATE ZIP CODE

SECRETARY _____
NAME STREET ADDRESS CITY STATE ZIP CODE

ENTER FEDERAL EMPLOYER IDENTIFICATION NUMBER IF NOT PRINTED— _____

File No. _____

"S" Corporation: Annual Report

- Allocation of Assets and Property
- Annual Franchise Tax and Fees

Form available in Supplementary Materials
as well as via www.cyberdriveillinois.com

(Item 9, OR 10, (a.) OR 10, (b.) whichever is applicable, MUST be completed)

9.) The amounts stated in parts (a) through (d) below are given for the twelve month period ending _____ (day) _____ (month) _____ (year)

The value of the property (gross assets)

(a) owned by the corporation, wherever located, was _____ (a) \$ _____

(b) of the corporation located within the state of Illinois was _____ (b) \$ _____

The gross amount of business transacted by the corporation

(c) everywhere for the above period was _____ (c) \$ _____

(d) at or from places of business in Illinois for the above period was _____ (d) \$ _____

ALLOCATION FACTOR = $\frac{b + d}{a + c} = \frac{\cdot}{(6 \text{ decimal places})}$ *(Write this figure on line 11b below.)*

10.) (a.) ALL property of the corporation is located in Illinois and ALL business of the corporation is transacted at or from places of business in Illinois.

(b.) The corporation ELECTS to pay franchise tax on the basis of 100% of its total paid-in capital.

ALLOCATION FACTOR = 1.00000 *(Write this figure on line 11b below.)*

STOP! Item 9 or 10 must be completed before continuing TO Item 11.

11.) ANNUAL FRANCHISE TAX AND FEES

(a.) Total Paid-in Capital <i>(Enter amount from Item 7a from the other side of report. If late, enter the greater of 7a or 7b.)</i>	a.		
(b.) ALLOCATION FACTOR <i>(Enter from Item 9 or Item 10 above)</i>	b.		
(c.) ILLINOIS CAPITAL <i>(Multiply line (a.) by line (b.))</i>	c.		
(d1.) Multiply line (c.) by .001 <i>(Round to nearest cent)</i>	d1.		
(d2.) ANNUAL FRANCHISE TAX <i>(Enter amount from line (d1.), but not less than \$25)</i>	d2.		
(e1.) If Annual Report is late, multiply line(d2.) by .10	e1.		
(e2.) If Annual Franchise Tax is late, multiply line (d2.) by .01 for each month late or part thereof (minimum \$1.00)	e2.		
(e3.) INTEREST & PENALTIES <i>(Add lines (e1.) and (e2.))</i>	e3.		
(f.) ANNUAL REPORT FILING FEE <i>(\$75)</i>	f.		+ 75.00
(g.) TOTAL ANNUAL FRANCHISE TAX, FEES, INTEREST, & PENALTIES DUE <i>(Add line (d2.) + line (e3.) + line (f.))</i>	g.		

MAKE CHECKS PAYABLE TO ILLINOIS SECRETARY OF STATE.
(Place corporate file number on check.)

IMPORTANT!

If there have been changes in Items 6 or 7, form BCA 14.30 must be executed and submitted with this annual report in the same envelope.

C-289.6



LLC: Formation Checklist

- Articles of Organization
- Operating Agreement
- EIN Application
- Disclosure Letter
- Annual Report

LLC: Articles of Organization

- Basics
 - Name
 - Principal Place of Business
 - Effective Date
 - Registered Agent & Office
- Purpose
- Duration

*Form available in Supplementary Materials
as well as via www.cyberdriveillinois.com*

<p>Form LLC-5.5 October 2009</p> <p>Secretary of State Department of Business Services Limited Liability Division 501 S. Second St., Rm. 351 Springfield, IL 62756 217-524-8008 www.cyberdriveillinois.com</p> <p><small>Payment must be made by certified check, cashier's check, Illinois attorney's check, C.P.A.'s check or money order payable to Secretary of State.</small></p>	<p>Illinois Limited Liability Company Act</p> <p>Articles of Organization</p> <p>SUBMIT IN DUPLICATE Type or print clearly.</p> <p><small>This space for use by Secretary of State.</small></p> <p>Date: Filing Fee: \$500 Approved:</p>	<p>FILE #</p> <p><small>This space for use by Secretary of State.</small></p>
--	---	--

1. Limited Liability Company Name: _____
The LLC name must contain the words Limited Liability Company, L.L.C. or LLC and cannot contain the terms Corporation, Corp., Incorporated, Inc., Ltd., Co., Limited Partnership or L.P.

2. Address of Principal Place of Business where records of the company will be kept: (P.O. Box alone or c/o is unacceptable.)

3. Articles of Organization effective on: (check one)
 - the filing date
 - a later date (not to exceed 60 days after the filing date): _____
Month, Day, Year

4. Registered Agent's Name and Registered Office Address:

Registered Agent: _____
First NameMiddle InitialLast Name

Registered Office: _____
(P.O. Box alone or c/o is unacceptable.)
NumberStreetSuite #

IL

CityZIP Code

5. Purpose(s) for which the Limited Liability Company is organized:
The transaction of any or all lawful business for which Limited Liability Companies may be organized under this Act.
(LLCs organized to provide professional services must list the address(es) from which those services will be rendered if different from item 2. If more space is needed, use additional sheets of this size.)

6. Latest date, if any, upon which the company is to dissolve: _____
(Leave blank if duration is perpetual.) Month, Day, Year

♻️ Printed on recycled paper. Printed by authority of the State of Illinois. June 2010 — 2M — LLC 4.14

LLC: Articles of Organization

- Regulation of Internal Affairs
- Member vs. Manager Managed
- Organizers

*Form available in Supplementary Materials
as well as via www.cyberdriveillinois.com*

LLC-5.5

7. (Optional) Other provisions for the regulation of the internal affairs of the Company: (If more space is needed, attach additional sheets of this size.) _____

8. The Limited Liability Company: (Check either a or b below.)

a. Is managed by the **manager(s)** (List names and business addresses.)

b. has management vested in the **member(s)** (List names and business addresses.)

9. **Name and Address of Organizer(s)**
I affirm, under penalties of perjury, having authority to sign hereto, that these Articles of Organization are to the best of my knowledge and belief, true, correct and complete.

Dated _____, _____
Month & Day Year

1. _____ Signature	1. _____ Number Street
_____	_____
Name (type or print)	City/Town
_____	_____
Name if a Corporation or other Entity, and Title of Signer	State ZIP Code
2. _____ Signature	2. _____ Number Street
_____	_____
Name (type or print)	City/Town
_____	_____
Name if a Corporation or other Entity, and Title of Signer	State ZIP Code

Signatures must be in black ink on an original document. Carbon copy, photocopy or rubber stamp signatures may only be used on conformed copies.

Printed on recycled paper. Printed by authority of the State of Illinois, June 2010 — 2M — LLC 4.14



LLC: Operating Agreement

- Formation of LLC
- Assets
 - Name
 - Albums
 - Domain
- Definitions
- Purpose
- Members
- Term
- Principal Office

LLC: Operating Agreement

- Capital Contributions
 - Initial
 - Additional
 - Capital Accounts
- Distributions and Payments
- Allocations of Profits and Losses
- Books and Records
- Fiscal Year
- Company Funds
- Rights and Duties of Members

LLC: Operating Agreement

- Meetings of Members
 - Place
 - Quorum
 - Voting
- Powers, Rights, and Duties of the Manager
- Transfer of Membership Interest
- Dissolution
- Amendment of Operating Agreement and Articles of Organization
- Admission of New Members
- Miscellaneous

LLC:

Employer Identification Number (EIN)

- Sometimes referred to as a Tax Identification Number (TIN)
 - Can obtain [online](#)

Step 1: Determine Your Eligibility

- You may apply for an EIN online if your principal business is located in the United States or U.S. Territories.
- The person applying online must have a valid Taxpayer Identification Number (SSN, ITIN, EIN).
- You are limited to one EIN per [responsible party](#) per day.

Step 2: Understand the Online Application

- You must complete this application in one session, as you will not be able to save and return at a later time.
- Your session will expire after 15 minutes of inactivity, and you will need to start over.

Step 3: Submit Your Application

- After all validations are done you will get your EIN immediately upon completion. You can then download, save, and print your EIN confirmation notice.

[Apply Online Now](#)

LLC: Disclosure Document

- Often a letter directed to the new “Band LLC”
 - Explain LLC formalities and operating procedures
 - Record Book
 - Annual Report
 - Tax Returns
 - Changed Circumstances

Choice of Entity: Recap

- General Partnership
- “S” Corporation
- Limited Liability Company (LLC)

About LCA

Lawyers for the Creative Arts is an Illinois nonprofit organization providing pro bono legal services to individuals and organizations engaged in all areas of the arts – the visual, music, performing and literary arts, as well as arts education and nonprofit organizations in general. Services are provided by LCA staff and a roster of volunteer attorneys experienced in all areas of law which affect the arts. LCA also provides mediation and facilitation services through its Patricia Felch Arts Mediation Service and numerous educational outreach programs. To apply for legal help on your arts-related matters, complete the form at

www.law-arts.org/application.

About LCA

This project is partially supported by a CityArts Grant from the City of Chicago Department of Cultural Affairs & Special Events, and by the Chicago Community Trust. Other funding gratefully acknowledged from Alphawood Foundation, The Chicago Bar Foundation, Gaylord and Dorothy Donnelley Foundation, The Richard H. Driehaus Foundation, and the Illinois Arts Council, a State Agency.



Thanks for viewing

For more information on this topic, as well as model agreements, please see the Supplementary Materials included with this CLE program.

Please check out the remainder of our series on Representing the LCA Music Client and the rest of the LCA Video Law Library.