

Construction contractors in Florida are incorporating

By James W. Martin

A stock certificate, minutes electing officers, articles of incorporation, and other legal forms are being signed by construction contractors all over Florida.

The Florida Division of Workers' Compensation sent a notice to 130,000 individuals in the construction industry informing them of a new law that took effect January 1. The law allows only officers of a corporation or limited liability company (LLC) to elect to be exempt from workers' compensation laws in Florida.

The notice stated that sole proprietors in the construction industry who had elected to be exempt from workers' comp laws would lose their exemption unless they incorporate and file an application for re-issuance of their exemption. Since most contractors do not know how to form a corporation, prepare minutes, elect officers, issue stock certificates, and draft legal forms, it is important that they seek legal advice if they want to remain exempt from workers' comp.

Benefit; Premium. While the workers' comp laws are beneficial to employees since they provide medical benefits and disability income payments if employees are injured on the job, the premiums for workers' compensation insurance in the construction industry have become so high that many sole proprietors are unable to pay them. For those sole proprietors in the construction industry who choose to waive the benefits of workers' comp, it appears that forming a corporation (or LLC) is a way to stay in business without obtaining workers' comp insurance.

Subcontractors. Of course, this assumes that the sole proprietor is the only employee of the new entity. If there are other employees, or if there are other independent contractors who are sole proprietors or partners, then the contractor probably needs to obtain workers' comp insurance coverage on them unless they also form a new entity. Thus, the sole proprietor contractor who uses others as subcontractors might need to form his or her own corporation and require that the subs form their own corporations in order to avoid having to obtain workers' comp insurance coverage on them.

Chain Reaction. Thus, the new state law has created a chain reaction that requires all sole proprietors in the construction industry to form a corporation or LLC in order to continue to be exempt from workers' comp.

Florida Corporation or LLC. In Florida, it is possible for one person to be

the sole incorporator, director, and officer of the corporation. A corporation rather than an LLC is usually preferred. A corporation must file a separate tax return, unlike a single-member LLC, but corporate officers have long been allowed to file an exemption from workers' compensation, whereas members of an LLC only recently (October 2003) became allowed to file an exemption, so the corporate entity will usually be preferred over a limited liability company.

Articles, Bylaws, Minutes, and Stock Certificate. As part of the incorporation

process, the contractor's lawyer should prepare articles of incorporation, bylaws, minutes of organizational meeting, share certificate, and minute book. The lawyer also can assist in filing the renewal application for workers' comp exemption.

Licenses and Insurance. When the corporation is formed, the contractor must obtain an

occupational license in the name of the corporation. The contractor must also obtain revised licenses and insurance to show the corporation's name instead of the individual contractor's name.

Accountant. The contractor should also engage an accountant to assist in obtaining an IRS tax ID number for the corporation, apply for S election, set up corporate accounting books, set up corporate bank accounts, prepare tax returns, etc.

Workers' Compensation Exemption Renewal. After the corporation is formed, the contractor must file a renewed application for exemption from workers' comp along with copies of the contractor's share certificate and occupational license.

Annual Report and Annual Minutes. Once formed, the corporation must file an annual report (UBR) with the Florida Department of State with an annual filing fee of \$150 and must hold at least one meeting a year (annual meeting). The corporation may be dissolved or disregarded if the contractor fails to do these two things every year.

Conclusion. So, if a painter, plumber, cabinet installer, or other sole proprietor in construction asks you to form a corporation to continue a workers' comp exemption, do not be surprised but do be ready to form it quickly for one very good reason: Your client might not be able to find work without it.

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