

Your Business **Ways+Means**

Wall of Protection

The Internet makes it possible to do nearly everything online, including incorporate your business. Type the words “business formation services” into a search engine and you’ll be offered more than 10,000 results. Although it might seem easier and less expensive to go this route — rather than see a lawyer — be prepared before you do so. “There are certain bricks necessary in the wall [of protection],” says D.S. Berenson, a Washington, D.C., attorney specializing in the remodeling industry and a regular contributor to REMODELING. “If they’re not there, and you are sued, a good attorney on the other side will give you problems.”

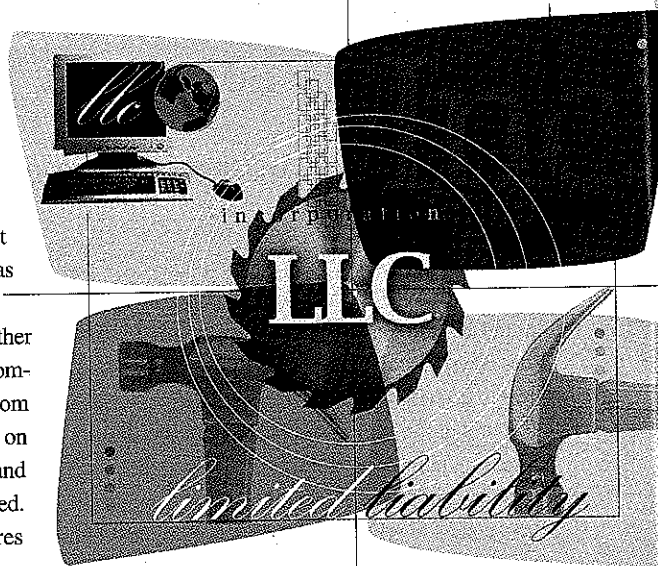
Most small businesses are sole proprietorships; they are unincorporated and any liability is personal liability. When you form a corporation, you create an entity that exists separately from you. Done properly, your personal assets are covered in case of a lawsuit.

Steven Tracy, sole proprietor for six years of Minor Details in Verona, Wis., decided to form a limited liability company (LLC) through BizFilings, a Web-based company. “It was really easy to do,” he says. “[My

accountant and I] sat down and went through the questionnaire. About 20 minutes later it was basically done.”

BizFilings offers either a basic, standard, or complete package, priced from \$99 to \$399 depending on the package chosen and the state in which it’s filed. The company prepares and files necessary documents with the proper authorities. The site also has an “incorporation assistant” with the information you need to decide what type of entity to form, an LLC or an S-corp., for example, as well as a customer support phone line. Incorporation through an experienced lawyer might cost anywhere from \$1,000 to \$1,500.

Tracy used BizFilings’ basic package, which includes a name check and the Wisconsin state filing fee, as well as access to a password-protected Web account to follow the status of his filing, and six months free access to a registered agent (an individual or company



in the state in which you file your formation documents who receives your important legal and tax documents). Minor Details is now an LLC. Tracy’s cost: \$290. Sounds simple, but Berenson cautions that when forming an LLC — using a lawyer or an online service — you’ll need the following “bricks” in place:

Well-drafted articles of formation.

This is the document that actually creates the entity at the state level.

Operating agreement. This discusses how the company will be run, tax issues, and confidentiality provisions, among other

things. “Regardless of whether your state requires one, it’s foolish not to have an operating agreement in writing,” Berenson says.

Organizational minutes. An agreement in writing between the owner and directors that says “we agree to form a company, and here is what we’re doing.”

Company record book. Holds all the organizational documents and is where records of official company actions are kept to assure limited liability to the owners that they are acting as a company, not individually.

Company seal. A tool for embossing an image on paper or card showing the company’s legally registered name. Use of the seal has legal force, although it is no longer mandatory to have one.

Tax ID number.

“There are additions to this list, but as a general rule these are the bricks for protecting the corporate veil,” Berenson says. A different entity, such as a corporation, has other requirements.

If you purchase these documents online, customize them for your business, Berenson advises. “If they’re not customized, they may not fit your situation as well as you want them to. For example, many of our clients want specific confidentiality provisions; non-competition provisions; an understanding as to how profits, losses, and voting rights are going to be allocated; and buy-sell provisions.”

Most people with these do-it-yourself forms haven’t signed, dated, or customized them, Berenson says. “And if push comes to shove, they may not offer the protection the person thinks they have.” —S.F.