



HEW & BORDENAVE
A LIMITED LIABILITY LAW PARTNERSHIP LLP

I am (or my Spouse is) in the Military and We Move Around, What do I do about my LLC?

You've made a serious commitment to serving our country and every time you think you've settled down in one state you get your next Permanent Change of Station (PCS). It is time to pick up the whole family and move again. Not only that, but you also have a business that you've been operating. However, LLCs are not tangible things that you can box and ship. There is no federal law that makes it easy for military personnel and their spouses, when they own a LLC, to transition that LLC to a new state. Part of the reason is that LLCs and corporations are created at the state-level, and there are 50 different states. While there are similarities in LLC law amongst all the states, each state is responsible for their own business registration. For instance, Hawaii has a Department of Commerce and Consumer Affairs, whereas California has a Secretary of State.

The bottom line is you are going to have to decide to either: (a) keep the current LLC and register as a foreign entity in your new state; or (b) doing some type of action that ends the current LLC and forms a new one. For choice (b) there are several different methods, including (i) merging two LLCs, the old with the new one; (ii) liquidating and transferring the assets of the old LLC to the new one; or (iii) having members of the old LLC transfer their membership interest to the new LLC.

Which One of the Options is Best for Me?

It depends. There are multiple factors to consider. For example, if you have a retail store in your old state, then could choose to keep the LLC registered there and when you move, you then register as a foreign business entity in your new state so you can open a business bank account under the LLC's name there. Another choice is to switch from a Member-Managed to Manager-Managed LLC, so you can hire a manager to run the LLC in the old state for you. Another example is maybe you have online digital content business, but there are valuable licenses and agreements associated with the old LLC, but those contracts allow a successor entity to continue the agreements, so you consider a merger of the old state's LLC with the new state's LLC thus continuing the business. There are all types of businesses, and their owners all have different goals and that in turn means they all have different factors to consider when moving.

Can I Run my Business in the New State Without Registering it?

It is not recommended to move to a new state and not register your business as a foreign LLC if you are operating and running it within that state. There are consequences for failing to register. Consider: (i) your business could be denied access to the state's courts, which means you can't sue others for wronging your business; (ii) the new state upon discovering your unregistered business it could slap you with fines and penalties; and sometimes your personal decision in choosing not to register means you could lose the limited liability shield of the LLC. So consider how you intend to run your business when you move and what kind of business it is as you weigh your options for registering the LLC.

Anything Else to Consider?

It is best to consult with a CPA or tax professional about your business and personal taxes when moving a business. Sales tax (or in Hawaii's case the general excise) is different from state-to-state. Additionally, depending what option you choose you may have to get new tax ID numbers. Also the profits/losses coming from the business needs to be considered as each option may impact your personal income taxes.

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