

# The Curious Corporation of Benjamin Button

Corporate Formalities, Compliance  
and Succession Planning





# Introduction & Panelists

**Craig Nevin**

Partner, Kimball, Tirey & St.  
John LLP



**Michael (Mike) Kasin**

Owner, Guided Growth Legal



**Kimberleigh (Ali) Ferrando**

Associate Attorney,  
Brothers Smith LLP



The background is a solid teal color. In the upper right corner, there are several decorative elements: a small light teal circle, a larger light teal circle with a smaller dark teal circle inside it, and another small light teal circle below the larger one. All these circles have a slight gradient and a soft shadow.

**WHO ARE THE  
“PATIENTS” AND WHO IS  
YOUR CLIENT?**

# What exactly are “corporate formalities”?



# Why are corporate formalities important to observe ?

- Promotes good record keeping practices
- Limitation of Liability - preservation of the corporate veil



# Patient #1: The Dated Corporation

## Patient Facts

- State of Incorporation: California
- Year of Incorporation: 1989
- Tax Status: S-corporation
- Line of Business: Construction
- Ownership: Single Shareholder



# The Consult

## Request

- Corporate Book
- Governing Documents
- Shareholder/ Buy-Sell Agreement(s)

## Learn

- The corporation's principal line of business
- Where the corporation does business/ where it is registered to do business
- Fictitious business names
- Parent and/or subsidiary companies
- Key officers, directors and shareholders
- Client's succession goals
- Preexisting succession plans

# The Diagnosis

Review and Evaluation of Corporate  
Records







# The Treatment Plan

- Verify standing with the California Secretary of State and Franchise Tax Board
  - Cure any suspensions
- Register the corporation in additional states where business is conducted
- File applications for fictitious business names (“FBN”) in the counties where business is conducted under FBN/DBA
- Ensure compliance with California law and governing documents
- Verify current shareholders, number of shares owned by each and update stock certificates and ledgers
- Begin succession planning based on Client’s goals

# Patient #2: The Incorporated / Unincorporated Non Profit

## Patient Facts

- **State of Incorporation:** California
- **Year of Incorporation:** 2009
- **Tax Status:** They say they are a Non-Profit
- **Line of Business:** Collect money for DNA Research
- **Ownership:** Board of three

# The Consult

## Request

- Corporate Binder
- Governing Documents
- Federal Tax Id number
- State Tax Id Number
- Last 990 EZ forms
- Last CT-1

## Learn

- What is the Non-Profits Purpose?
- Where does Charity do business?
- Where is the charity registered?
- Perform a Franchise Tax Board Search?
- Perform a CA non-profit search.
- Who are the current directors/officers?
- Client's succession goals



# The Diagnosis

Review and Evaluation of Non-Profit Records.



# The Treatment Plan

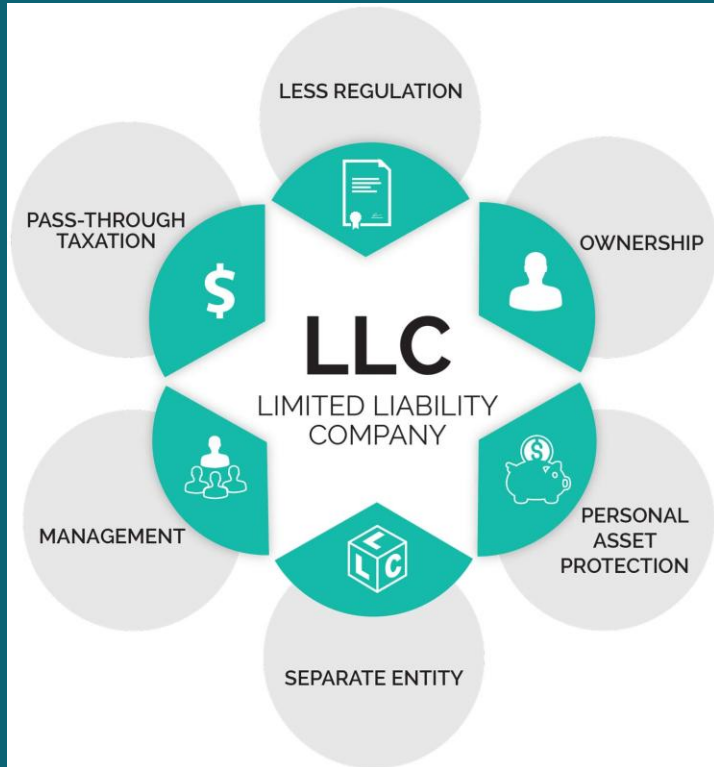
- Determine which documents are missing and which were never filed.
- Hold a meeting (can be a consent in lieu) resolving to give you the authority to create a viable nonprofit.
- Work with CPA to file taxes. 990 EZ AND CA CT-1 Cards
- File the CA form 3500A
- File 1023 EZ with IRS
- Clear up as many issues as you can.



# What about limited liability companies (“LLC”)?



# LLC Formalities & Compliance



LLCs generally have less compliance requirements than corporations

- No annual meetings & minutes required
- Most actions of the Members and/or Managers do not require a written consent
- Required to maintain accurate records (Cal Corp Code § 17701.13)
- Vote of all members required for certain actions (Cal Corp Code § 17704.07)- best practice prepare written consents of the members

# Patient #3: The Divorcee

## Background

Once upon a time in the bustling city of Metroville, there lived a woman named Sarah. She was a talented and driven entrepreneur who had built a successful bakery business called "Sweet Delights." Sarah had poured her heart and soul into her bakery, creating delicious treats that had won the hearts of the entire community. However, Sarah was facing a challenging situation in her personal life.

Sarah had recently gone through a divorce with her husband, Mark, and their separation had not been amicable. Unfortunately, Mark had a significant stake in Sweet Delights due to their marriage, and the divorce had left the business entangled in a web of legal complexities. Mark insisted on retaining his share of the bakery, which was causing numerous problems for Sarah. She needed to find a way to extricate her business from the complications of the divorce so she could continue pursuing her passion for baking without constant interference.



# Patient #3: The Divorcee

## Patient Facts

- State of Incorporation: California
- Year of Incorporation: 2017
- Tax Status: LLC
- Line of Business: Bakery
- Ownership: Multi-Member LLC
- Management: Manager-Managed
  - Sarah is the Managing Member



# The Consult

## Request

- Corporate Binder
- Articles of Organization
- Operating Agreement
- Statements of Information
- Marriage Settlement Agreements
- Family Law Court Orders

## Learn:

- When was the LLC formed/acquired by Sarah & Mark
- What is Mark's relationship to the LLC?
- How are the Membership Interests owned?
- What agreements have already been reached between Sarah and Mark?
- Sarah's goals for the LLC

# The Diagnosis:

Only the Articles of Organization were submitted to the Secretary of State. No other formation or governing documents have been adopted or executed.

Without an operating agreement, is there a valid LLC?



## Yes! There is an LLC.

- California law does not require LLCs to adopt a *written* operating agreement
- An operating agreement is *highly* advisable and a best practice for LLCs
- An operating agreement outlines the:
  - management structure,
  - member roles and responsibilities,
  - operating procedures of the LLC
  - defines rules and regulations that govern the relationships between its members.
- LLCs that do not adopt an Operating Agreement will be bound by the “default rules” found in the California Revised Uniform Limited Liability Company Act (Cal. Corp Code § 17701.01-17713.13)
- The default rules will also apply if the LLC has an Operating Agreement but the agreement is silent on a particular issue



# The Treatment Plan

Propose a Buyout:

One spouse will need to either pay the other spouse **50%** of what the business is worth or concede an interest in another asset (perhaps a family house or a retirement account) as a means of equalizing the division of assets. A buy-out typically only works when the spouse taking ownership is able to transfer a lump sum owed to the other spouse.



