

## Does Your LLC Protect You From Personal Liability?

**May 6, 2021**

As a general rule, limited liability companies (LLCs) protect business owners' personal assets from liability for financial obligations, judgments, and other problems the business might experience. But there are situations in which LLC members can face personal liability. It's important to make sure the LLC is properly formed and in compliance with all legal requirements. At Rosen Hagood, we help South Carolina business owners form LLCs and explain their rights and obligations under the law.

South Carolina has a statute that lays out a number of provisions concerning LLCs, including a section that limits the personal liability of a LLC member for the debts, obligations, and liabilities of the LLC.

Although this statute clearly shields the personal assets of members of the LLC, it is not an absolute protection. In limited circumstances, a court can impose personal liability on LLC members, such as when a member or manager of the LLC commits a legal wrongdoing, such as fraud.

One example is the 2012 case titled *16 Jade Street, LLC v. R. Design Construction Co., LLC*. This case involved Carl Aten and his wife who were sole members of R. Design Construction. Aten accepted a job on behalf of his company to be the general contractor for 16 Jade Street's condominium project. Problems arose during the construction of the condominium project, and Aten was sued personally as one of the members of the LLC. Although Aten contended that his personal assets were shielded under our state's limited liability law, the South Carolina Supreme Court held that Aten could be held personally liable for his own negligence in course of conducting the company's business. The Court drew a distinction between Aten and his wife – the other member of the R. Design LLC – by noting that she could not be held liable because she had committed no wrongdoing. Ultimately, the Court concluded that the Legislature had not intended to create a sweeping liability shield and recognized the long-standing right to sue one's tort-feasor, even if that individual was acting in his/her capacity as a member of a LLC.

The lesson to be drawn from the 16 Jade Street case is that merely being a member of an LLC does not shield a member of an LLC from his or her own wrongdoing. If you commit a tort in furtherance of your LLC, you can expect to face personal liability. Examples of other torts for which you could be personally liable include, but are not limited to, intentional misrepresentation and fraud.

There are other ways in which an LLC member may be held personally liable. For example, if

you sign a personal guarantee for a debt incurred for your business, you can be held personally responsible if the business cannot repay the money. You should also avoid signing a company contract in your personal name and using personal credit cards or loans for business purposes, as creditors may then charge you personally with the debt.

When formed correctly, an LLC offers members the peace of mind of knowing they won't be held personally liable for the problems of their business. But maintaining that protection requires understanding your responsibilities as a member and how to avoid personal exposure. We're here to help you meet those objectives.

The business and corporate law attorneys of Rosen Hagood understand the concerns of new business owners. That's why we work closely with our clients to help them decide what sort of legal structure will best protect them and their businesses. Call us today to get started.