

General Corporate Formation



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Select a Business Structure ("Choice of Entity")

Selecting a business structure requires careful consideration of filing requirements, taxation, liability, management structure, continuity, and transferability of ownership interests.

Several forms of entity are available, each with unique characteristics

- ❖ Sole Proprietorship
- ❖ General Partnership
- ❖ Corporation
- ❖ Limited Liability Company (LLC)
- ❖ Limited Partnership
- ❖ Limited Liability Partnership (LLP)



Sole Proprietorship



- Simplest and most common form of entity – exists when a single individual owns all business assets and engages in business operations under their own name.
- Owner Liability – Sole Proprietor is *personally liable* for all debts and obligations of the business.
- Continuity – Business exists only for the life of the Sole Proprietor.
- Transferability of Ownership Interest – Business ownership is non-transferable.
- Taxation – Sole Proprietor is solely responsible.

General Partnership

- Created when two or more individuals associate and carry on a business for profit.
- Management – Typically operates pursuant to a “Partnership Agreement” (either written or oral) rather than state law. Absent a Partnership Agreement, Partnership is governed by state law.
- Owner Liability – Although a business entity exists, partners may be held *personally liable* for all debts and obligations of the Partnership.
- Taxation – Not taxed at an entity level for Federal income tax purposes, but can “Check-the-Box”



Corporation



- Filing Requirements for Formation – Must file “Certificate of Formation” with Secretary of State.
- Taxation – Typically subject to “double taxation” of Corporate and Shareholder income. However, shareholders may file an election with the IRS to be taxed as an “S Corporation” (thereby avoiding “double taxation”).
- Management Structure – Board of Directors manages business and corporate affairs. Shareholders may limit Board authority through “shareholder agreements.”
- Owner Liability – Shareholders are shielded from Corporation’s liabilities or obligations (*i.e.*, “limited liability”). However, limited liability is subject to “veil piercing” in certain situations (*e.g.*, commingling of personal and business assets or affairs, failure to follow corporate formalities, etc.)
- Continuity – Perpetual existence unless specified otherwise in “Certificate of Formation.”
- Transferability of Ownership Interest – Shares are freely transferable, although transfer restrictions may be included in “Certificate of Formation” and “shareholder agreements.”

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