

**2017 UT Law LLCs, LPS, and Partnerships Conference
Nuts & Bolts Primer
Choice of Entity (Including Tax Considerations), Legislative Update, Choice of
Jurisdiction, and Ethical Considerations**

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CHOICE OF ENTITY

An individual may conduct a business as a sole proprietor. If one or more persons desire to form an entity to conduct a business, the following are the most common choices:

- General partnership—not formed by a filing and is the default entity when two or more people join together to conduct a business
- Limited partnership
- Limited liability partnership
- Limited liability company
- C corporation
- S corporation

CHOICE OF ENTITY

- **Sole Proprietorship**
 - Does not require creation of new entity
 - Individual proprietor has unlimited liability
- **General Partnership**
 - Requires 2+ partners
 - Each partner has unlimited liability for debts and obligations of the partnership
 - Subject to agreement, each general partner has an equal right to manage
 - Flow-through tax treatment
- **Limited Liability Partnership (LLP)**
 - General partnership that makes a filing with the Secretary of State—Filing fee is \$200/partner
 - Limits vicarious liabilities of partners

CHOICE OF ENTITY

- **Limited Partnership**
 - Formed by filing with Secretary of State—filing fee is \$750
 - General partners have control and unlimited liability
 - Limited partners have no right to manage (but can have limited voting rights) and no liability for partnership obligations
 - Flow-through tax treatment in most cases
 - A limited partnership may file to become a limited liability partnership—eliminates vicarious liability of general partners and that of a limited partner who takes part in control—Filing fee is \$200/general partner

CHOICE OF ENTITY

■ Limited Liability Company (LLC)

- ☐ Formed by filing with Secretary of State—filing fee is \$300
- ☐ Provides limited liability for members
- ☐ Managed by members or managers—must be specified in certificate of formation
- ☐ If two or more members, will be taxed as a partnership (flow-through tax treatment) unless elect to be taxed as corporation
- ☐ A single-member LLC will be disregarded for federal income tax purposes unless it elects to be taxed as a corporation—a single-member LLC that is disregarded for income tax purposes is regarded for federal employment and certain excise tax purposes
- ☐ Texas authorizes the formation of series LLCs—don't try this at home

CHOICE OF ENTITY

■ C Corporation

- ☐ Formed by filing with Secretary of State—filing fee is \$300
- ☐ Provides limited liability for shareholders
- ☐ Managed by board of directors unless shareholders enter into a shareholders agreement pursuant to Subchapter C of Chapter 21 of the BOC or the corporation is a close corporation under Subchapter O of Chapter 21 of the BOC
- ☐ Separately taxed entity
- ☐ Ownership interests usually represented by stock certificates
- ☐ In case of uncertificated interests, notice must be given to the owners of such interests unless required information is in the governing documents
- ☐ Shareholders may enter into a shareholder agreement to provide for restrictions on transfer, etc. The BOC provides a non-exclusive list of permissible restrictions and allows the corporation to file notice of the restrictions with the Secretary of State in certain circumstances.

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