



# Get Down to Business

## What should I be? A Sole Proprietorship, Partnership, Corporation, etc.?

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# What Kind of Business Structure is Best for My Operation?

- **There Are Several Different Business Structures**
- **There Are Many Factors To Consider**
- **Selection Of A Business Structure Should Be Based Upon Adequate Information**
- **The Decision Should Be Made After Weighing All Considerations**



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## Choosing the Best Business Structure

### Choosing the Legal Structure of Your Business

- ◆ Sole Proprietorship
- ◆ Partnership
- ◆ Limited Liability Company
- ◆ Corporation



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## **Choosing the Best Business Structure**

### **Issues/Questions to Ask**

- ◆ **How easy is it to set up, manage, operate and liquidate?**
- ◆ **Taxation - What are the tax advantages and disadvantages?**
- ◆ **Asset Protection - What are your potential legal liabilities?**
- ◆ **Fringe Benefits – What can the company provide & deduct?**
- ◆ **Estate Planning - What happens to the business at ones death?**



# Choosing the Best Business Structure

Type of Entity	Main Advantages	Main Drawbacks
<b>Sole Proprietorship -</b> A sole proprietorship is a business owned and operated by one person for profit	Simple and inexpensive to create and operate Owner reports profit or loss on his or her personal tax return Easy to liquidate.	Owner personally liable for business debts Business ends with death of owner.



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## Choosing the Best Business Structure

### Formation of Sole Proprietorship

*Easiest Form of Business to Set Up and Operate*

- ◆ No formal process.
- ◆ Obtain all necessary federal, state, and local licenses and permits.
- ◆ Register Assumed Name Certificate (if necessary).
- ◆ Obtain Employer Identification Number (if necessary).



# Assumed Name Certificate

- **General rule - if the business (e.g., sole proprietorship & general partnership) is conducted under an assumed name (a name other than the surname of the individual (s)), an assumed name certificate (commonly referred to as DBA) should be filed or registered in the county of the business premise**



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## Choosing the Best Business Structure

# Types of Partnerships

- ◆ General Partnership
- ◆ Limited Partnership
- ◆ Registered Limited Liability Partnership



# Choosing the Best Business Structure

Type of Entity	Main Advantages	Main Drawbacks
<u>General Partnership</u> - two or more individuals who contribute money, labor, and skill to a business, and who share in its profits, losses, and management.	Simple and inexpensive to create and operate Owners (partners) report their share of profit or loss on their personal tax returns Easy to liquidate.	Owners (partners) personally liable for business debts Terminates upon death or withdrawal of partner, unless there is a partnership agreement to the contrary.



# Choosing the Best Business Structure

Type of Entity	Main Advantages	Main Drawbacks
<p><b><u>Limited Partnership</u> - has at least one general partner and one or more partners who have limited liability who are not involved in management and decision-making</b></p>	<p>Limited partners have limited personal liability for business debts as long as they don't participate in management</p> <p>General partners can raise cash without involving outside investors in management of business</p>	<p>General partners personally liable for business debts</p> <p>More expensive to create than general partnership</p> <p>Suitable mainly for companies that invest in real estate</p>



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## Choosing the Best Business Structure

# Limited Liability Company (LLC) *Definition*

- ◆ Created by state law.
- ◆ Cross between a partnership and a corporation, with mostly partnership characteristics.
- ◆ Tax advantages of a partnership.
- ◆ Limited liability of a corporation.



# Choosing the Best Business Structure

Type of Entity	Main Advantages	Main Drawbacks
Limited Liability Company	<p>Owners have limited personal liability for business debts even if they participate in management</p> <p>Profit and loss can be allocated differently than ownership interests</p> <p>Moderately easy to liquidate.</p>	<p>More expensive to create than partnership or sole proprietorship</p> <p>May or may not terminate upon death or withdrawal of member</p> <p>Cannot have more than two of the four characteristics of a corporation</p>



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## Choosing the Best Business Structure

# Corporations *Types*

- ◆ C Corporation
- ◆ S Corporation (an election)
- ◆ Professional Corporation



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## Choosing the Best Business Structure

### Corporation *Characteristics*

- ◆ The most complex form of business to set up and operate.
- ◆ Monitored by federal, state and local agencies – more regulations
- ◆ Profits may be subject to double taxation.
- ◆ Limited legal liability (some exceptions, e.g., P/R taxes).
- ◆ Business continues after death of owner/transferability of shares.
- ◆ Difficult and expensive to liquidate.
- ◆ C Corp – deduct officer & employee fringe benefits.



# Choosing the Best Business Structure

Type of Entity	Main Advantages	Main Drawbacks
<u>C Corporation</u> (regular corporation) -formed under state or federal law. Legally it is treated as an artificial person, distinct from the individuals who own it.	Owners have limited personal liability for business debts Fringe benefits can be deducted as business expense Owners can split corporate profit among owners and corporation, paying lower overall tax rate	More expensive to create than partnership or sole proprietorship Paperwork can seem burdensome to some owners Separate taxable entity



# Choosing the Best Business Structure

Type of Entity	Main Advantages	Main Drawbacks
<u>S Corporation</u>	<p>Owners have limited personal liability for business debts</p> <p>Owners report their share of corporate profit or loss on their personal tax returns</p> <p>Owners can use corporate loss to offset income from other sources</p>	<p>More expensive to create than partnership or sole proprietorship</p> <p>More paperwork than for a limited liability company which offers similar advantages</p>



# Choosing the Best Business Structure

- The Information Presented Herein Is For Educational Purposes And Should Not Be Considered A Substitute For The Advice And Services Of An Attorney And Tax Specialist In Deciding On The Business Structure.
- This presentation is a modification of the Home-Based and Micro Businesses materials and includes several references, available from the presenter.



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## Choosing the Best Business Structure

# Small Business Primer on Legal Issues

*A Resource Available on the World Wide Web*

The North Carolina Cooperative Extension Service provides information on legal issues as a guide for small business owners at:

<http://www.ces.ncsu.edu/depts/fcs/business/welcome.html>