

# Selecting a Legal Structure for Your Business

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# DISCLAIMER



# Outline of Today's Presentation:

- I. Choosing a solid legal and accounting team
- II. Choosing a business entity
- III. Trademark considerations



# I. Choosing a solid legal and accounting team.

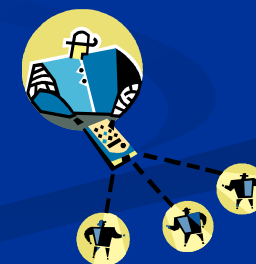
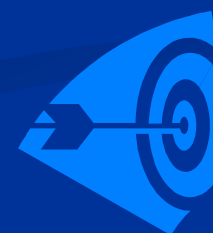
- Someone who you can build a long term relationship with.
- Someone who has an understanding of your industry.
- Someone who can anticipate your legal needs.
- Someone who can serve as a resource and a person with whom you can network.
- Find this person through referrals, other business owners, call the Chicago Bar Association.



## II. Choosing a Business Entity

# Considerations when choosing a business entity:

- Cost / Maintenance
  - State filing fees, annual filings, etc.
- Tax Liability
  - Pass-through taxation / Double taxation, and other issues determined by your accountant.
- Legal Liability
  - Personally liable or Protect your own assets with a corporate shield.
- Ownership / Management
  - Shareholders or Partners? Differing degrees of flexibility. Who do you want to be the decision-makers?



# Types of Business Entities:

- Sole proprietorship
- General partnership
- "C" Corporation
- "S" Corporation
- Limited Liability Company



# Sole Proprietorship

- Few recurring costs beyond state business license fees and fees to maintain business name. (No state filing necessary.)
- Individual and business are identical.
- You file taxes for the business on Schedule C of your personal income tax return.
- Can't take advantage of special business tax rates.
- Not protected from personal liability.



# Sole Proprietorship: Example

- Grandma's homemade sweaters that she sells on eBay and to family and friends.
- Jimmy's grass-cutting services.
- Any business can, in theory, be a sole proprietorship.



# General Partnership

- Two or more legal entities (persons or other businesses) form a general partnership.
- Each partner is liable for any of the other partners' mistakes.
- All partners are considered self-employed for purposes of income tax.
- The partnership itself doesn't pay any taxes.



# General Partnership: Example

- Two dentists working together in an office.
- Flower shop owned by two friends.
- Two people wanting to make a movie.



# "C" Corporation

- \$175 fee in Illinois.
- Limited liability unless a court finds that you do not follow corporate formalities and the corporation is really an "alter ego" - Piercing the Corporate Veil.
- Can have multiple classes of stock.
- Double taxation - Income is taxed at the corporate level and shareholders have to pay taxes whenever they receive income from the corporation.



# Note: Piercing the Corporate Veil

- Some factors courts consider:
  - Inadequate capitalization
  - Failure to issue stock / observe corporate formalities
  - Non-payment of dividends (most payments to LLC members are *distributions*, not *salary*)
  - Absence of corporate records
  - Commingling of funds
- Applies to: C-Corp, S-Corp, LLC

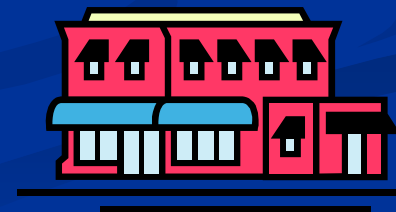
# “C” Corporation: Example

- Many big companies you have seen (Sony, Apple Computer, etc.)



# "S" Corporation

- \$175 fee in Illinois.
- Most complex to create and administer, but if you have a good legal and accounting team, this can alleviate much of the headaches associated with an S Corporation.
- Max 75 shareholders, only one class of stock, shareholders must be domestic individuals.
- Allows shareholders to claim share of corporation's income on personal tax form, eliminating "double taxation."
- Piercing the corporate veil.



# “S” Corporation: Example

- Small video production company.
- Any of the small-business examples from before (flower shop, etc.) can be set up as an “S” Corporation.



# Limited Liability Company (LLC)

- \$500 fee in Illinois.
- LLCs enjoy the tax and liability benefits of corporations and the management structure of a partnership.
- Percentage interests instead of shares.
- Very flexible - operating agreement can be specifically tailored to the type of business.
- Piercing the corporate veil.



# Limited Liability Company: Example

- Film productions
- Professional service organizations
- Real estate ventures
- Small businesses with more than one partner



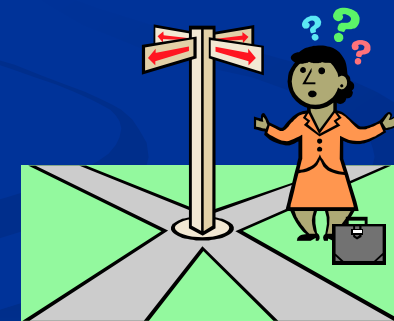
# Which business entity should I choose?

- Frances makes pottery and sells it at flea markets.
- Boris wants to start a car wash.
- Pathik wants to open a restaurant.
- Three college friends (Maria, Arman, and Winston) want to start a software company.



# Simple Steps for Setting up a Business Entity

- 1) Decide which state you want to form your company in.
- 2) Choose a name for the company (and make sure it's available, [cyberdriveillinois.com](http://cyberdriveillinois.com)).
- 3) Fill out the appropriate form(s).



# Finding The Forms

- Go to [cyberdriveillinois.com](http://cyberdriveillinois.com), select “Business Services Online Filings” and then “Publications and Forms”
- Corporation (C or S)
  - Articles of Incorporation – Form BCA-2.10
- Limited Liability Company
  - Articles of Organization – Form LLC-5.5

# III. Trademark Considerations

# How to choose a business name.

- Search on [cyberdriveillinois.com](http://cyberdriveillinois.com) to see if taken (in Illinois).
  - Click on “Business Services Online Filings”
  - Click on “Corporate/LLC Search / Certificate of Good Standing”
  - Search the Real Time Corporate/LLC Database



# Federal Trademark Registration

- A trademark can be anything that helps consumers identify the source of goods or services (words, jingle, tagline, packaging).
- Federal registration provides nationwide protection, but requires that you aren't just using the trademark locally.
- \$325 fee (per class of goods)
- Two types of applications:
  - Use-Based / Intent to Use



# Questions?



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