

CORPORATIONS AND LIMITED LIABILITY COMPANIES

If you have an existing business or are starting a new business, you may need to consider creating a Corporation or Limited Liability Company. You should work closely with your attorney, certified public accountant and lender to assure that you make the best decisions for your business.

Liability. One of the reasons for adopting a Corporation or Limited Liability Company is to limit your liability to the money and resources you have invested in your business. A Corporation or LLC will help shield your personal assets from business claims and expenses.

Taxes. Before proceeding with a Corporation or LLC, you should familiarize yourself with the tax implications. Some entities allow for a pass-through of the business expenses to be offset against your personal income. Other entities provide for entirely separate tax treatment under certain circumstances. You should consult with a CPA regarding the best treatment for your particular circumstances.

Personal Guarantees. If your business is borrowing money, your lender will likely require a personal guarantee on your loans, even if the Corporation or LLC is the borrower.

Business Formalities. A Corporation or LLC will often help create structure and formality for a business, especially if there are two or more owners. A Corporation or LLC will help with identification of ownership, management responsibilities, a buy-sell agreement and other important matters.

Business Name. Before we can create a new Corporation or LLC, we will need to determine if the name that you choose is available for your new entity. The first step is to research your business name on the Iowa Secretary of State's website at http://www.sos.state.ia.us/corp/corp_search.asp. We may also search the Federal Trademark Office listings at <http://www.uspto.gov/tmbd/index.html>.

Forms of Business. A sole proprietorship is the simplest and most common form of operating a business. A sole proprietorship by definition involves only one individual owner. For many such individuals, a Corporation or LLC is not necessary. However, you should find out if you need a business license, sales tax permit or any type of government registration. Keep in mind that in a sole proprietorship, the owner's individual assets are not protected from creditors of the business.

Another popular form of doing business is a partnership, which involves two or more owners. Many partnerships are created informally, without a written agreement. A basic partnership agreement is always advisable. The general partners will be liable for company debts without limitation to their investment in the company.

A popular business entity is the Corporation. The primary advantage of a Corporation is that the owners (ie: stockholders) are only liable for corporate debts and obligations to the extent of their investment in the company. Other advantages include continuity of life of the business, centralized management in a Board of Directors, and ownership may be freely transferable if the Corporation is not closely held. The limited liability of a Corporation may be lost if a Court determines that the "corporate formalities" have not been followed. Therefore, it is important that you have an attorney and CPA assist with the creation and ongoing minutes and record keeping of the Corporation.

The Corporation is taxed as an entity separate from its owners. This can be a disadvantage since some income from the Corporation passing in the form of dividends to shareholders will be subject to double

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taxation - once at the corporate level and a second time at the shareholder's individual rates.

The S-Corporation is a Corporation which has met certain specific requirements and is therefore entitled to the liability limitations of a C-Corporation, but is taxed like a partnership. The individual owners are able to pass through losses incurred early in the business' existence for their own advantage, unlike the C-Corporation. An S-Corporation requires additional filing with the Internal Revenue Service within a specified time period and has limitations to which C-Corporations are not subject, including that an S-Corporation may not have more than 75 shareholders, may not have a corporate shareholder, and can have only one class of stock.

A Limited Liability Company is in many respects similar to a Corporation. It retains the limitation of liability of a Corporation, with the option of being taxed like a partnership. Business losses may pass through to the individual owners. Organization and maintenance of the LLC is similar to that of a Corporation. With an LLC, instead of having Directors and Officers, there are Managers; and instead of Shareholders, there are Members.

Before making a decision on the type of entity for your business, you should consult with our firm and your CPA to determine all of the advantages and disadvantages of each form of business.

You should also be certain that you have all of the necessary and appropriate insurance for your business, including, but not limited to liability, property, casualty, automobile, key person, business interruption, director and officer, and workers compensation insurance.

For any business that has two or more owners, you should have a "buy-sell" agreement which provides for the valuation and purchase of ownership in the event of the death, disability or withdrawal of one of the owners.

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