

Limited Partnership or Limited Liability Partnership

These different entities each have one “general partner” who is liable for everything, and other “limited partners” whose liability is limited.

Limited Liability Company

The “LLC” combines the flexibility of a partnership with the protection of a corporation. The LLC is a common tool for land-holding companies but can be used for any business purpose. LLCs are treated as sole proprietorships or partnerships for tax purposes. LLCs may alternatively choose to be treated as corporations, with the same tax options as corporations.

“S” or “C” -- YOU AND THE IRS

Subchapter “S”

The IRS Code allows small businesses to keep things simple by treatment under Subchapter “S”. “S” corporations file an advisory tax return called a Form 1120-S and shareholders receive a Schedule K-1. “S” corporations do not pay taxes: All tax liability flows through to the owners, who pay their own taxes. The advantage to this is that your money from the company is only taxed once. Deadlines to file the proper forms to make your corporation an “S” company are short.

Subchapter “C”

Any corporation which does not receive approval for Subchapter “S” status is treated under Subchapter “C,” filing Form 1120. These companies pay corporate income tax, but a wider variety of tools and deductions are also available.

A FEW COMMON MISTAKES

- **Using the Wrong Name**
Companies must not register to use any name except the full, official name on their Articles.
- **Neglecting Formalities**
Failure to use proper corporate practice makes it easier for creditors to reach through the “corporate veil” to touch the owners.
- **Not Filing Everything On Time**
“Do-it-yourself-ers” often neglect required IRS forms, workers’ compensation forms, permits etc. and miss important filing deadlines.
- **Forgetting Your Anniversary**
Business companies must register and pay the State every year. Failure to do so terminates the company altogether.

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- *Agree to establish and maintain objective experience criteria for their panel attorneys,*
- *Provide a mechanism for client feedback and resolving client complaints*
- *Do not limit the number of attorneys who may join the Lawyer Referral and Information Service, provided that they meet the objective requirements for panel membership,*
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Organizing A Business

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Organizing A Business

WHY USE A BUSINESS ENTITY?

There are a variety of options for organizing a business in Maine. Formally organizing a business is detailed work, and failure to get the details right can cause problems. While filling out the papers can be quick and simple, the process of choosing the best mechanism for your business requires analysis of both tax practice and general law.

In general, creating a business entity may serve four ends: 1) presenting the business image; 2) organizing owners' affairs; 3) protecting owners; and 4) saving on taxes.

1) Business Image

Your business name is the first thing people learn about your business. An anonymous name – “General Services Co.” – may lend credence to a home-based business. A name that tells people what you do – “Portland Fishing Gear” – makes it easy to find. If you think your name or reputation is going to be a major part of the draw, you may want to attach your name to the company – “Ed Johnson Co.”

2) Organizing Owners' Affairs

Formalizing your business will allow you and your partners to make and set out agreements about who controls what and what happens if someone wants or needs to leave. Even the most congenial of

3) Protecting Owners

People often have the misconception that they can “set up a corporation and protect themselves from everything.” A business company may protect you from things done by other people involved in your business. **No business company protects you from things you do.** If you drive a company car from one job to another and hit a school-bus you are in trouble. If your employee does the same, you personally should not be liable, but your company will be. In short, a business entity provides some protection, but it is not a replacement for good insurance, or the main reason for creating a legal business entity.

With regard to trade-debt and contract liability, a properly-established, bona-fide business entity is distinct from its owners, and, unless you personally guarantee a loan or contract, you should not be liable for the debt – in theory. In practice, lenders usually require small business owners to guarantee any substantial debt or liability.

4) Tax Savings

As the owner of a sole proprietorship business, you will pay self-employment tax on every dollar you earn. Setting up a business company may allow you to take home both a fair salary *and* a profit. Both may be subject to income tax but only the salary is subject to employment tax. The savings can be worthwhile. Investment in the detailed analysis and advice of a tax professional can save you from costly

TYPES OF ENTITIES

Sole Proprietorship

A sole proprietorship is an informal business owned personally by one person. The advantage is that no formalities are required and the business appears on Schedule C of the owner's tax return. The main disadvantages are that the owner is liable for everything, and the “wage and profit” distinction, as well as many types of tax breaks, are not available.

General Partnership

A general partnership is an unincorporated, multiple-owner business. Owners *may* have a written agreement but none is required by law. Each partner is equally liable for all acts or omissions of the business, and all share equally in income, unless they agree otherwise. No matter what an agreement says, though, any partner can be held liable to outsiders for 100% of any liability of the business. Partnerships file a separate tax return and send each owner a Schedule K-1 reflecting the business' loss or gain.

Corporation

A corporation is the most common type of business entity. A corporation is created by filing *Articles of Incorporation* with the Secretary of State. There will be a modest fee. The owners or shareholders of the corporation also create rules for operation, or “Bylaws.” These must be available to all shareholders, but do not need to be filed with the state.