



The CED Clinic is supported by the Economic Development Administration,
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Community Economic Development Clinic

Creighton Univ. School of Law

- Milo Alexander, Attorney and Director
- Senior certified law students
- State-wide
- Small businesses (≤ 5 employees)
 - New & Existing
 - Formation
 - Contracts, leases
 - Trademark, copyright
 - Labor law
 - Other
- Address: Milton R. Abrahams Legal Clinic/ 2120 Cass St/ Omaha, NE 68178
- To apply: Call 402-280-3068, 8:30 a.m. to 4:30 p.m., Monday through Friday.
- Fax: 402-280-5708
- E-mail: cedlaw@creighton.edu
- No charge for attorney time. (Client pays filing & publication charges.)

Nebraska Business Forms

- 1. Sole Proprietorship
- 2. Partnership
 - General
 - Limited
 - Limited liability
- 3. Corporation
 - C Corp
 - S Corp
- 4. Limited Liability Company (LLC)

Factors to Consider:

- Legal formalities to create and operate
- Protection owner's property from business' creditors
 - “Limited liability protection”
- Tax considerations
- Transferability

Presentation focus: formalities & limited liability, some
tax

SOLE PROPRIETORSHIP

Sole Proprietorship

- Business owned by 1 person
- Not organized as LLC or corporation
- Business automatically sole proprietorship

Sole Proprietorship

- No legal formalities to create or maintain
 - No filings with Sec of State
- **BUT:** permits, licenses, zoning depending on nature of business
 - E.g. home daycare
 - Food business

Sole Proprietor: Unlimited liability

- No protection owner's assets from business' debts
- Sole proprietorship and owner are same "person"
 - Same property
 - Same debts
 - Same creditors
- Insurance vital

Sole Proprietor Taxation

- Business' gains, expenses, losses included in owner's income tax
- Business & owner same person.

GENERAL PARTNERSHIP

General Partnership

- 2 or more owners associated for profit
- Not organized as LLC, corporation, limited partnership, limited liability partnership
- Automatically a general partnership

General Partnership

- No legal formalities to create or maintain
 - No filings with Sec of State
- BUT: permits, licenses, zoning (same as sole proprietor)
- Should have written partnership agreement
 - Contract between owners
 - Great flexibility
 - Not a public document

General Partnership: Unlimited Liability, Each Partner

- Partnership owns property
 - Distinct from partner's individual property
- Partnership has debts & creditors
 - Distinct from partner's individual debts & creditors
- **BUT each partner ultimately responsible all partnership debts**
 - **Not just proportionate share of debts**
 - **E.g. 10% owner liable for 100% of debt**

General Partnership Management

- Unless partnership agreement provides differently, each partner can contract for partnership
 - One partner's bad deal hurts all partners
- Unless partnership agreement provides differently, each partner gets equal share of profits
 - 10% owner same share as 90% owner

General Partnership Income Taxation

- Partnership does not pay income tax
- Partnership gains & loss “pass through” to owners
 - Reported on individual returns each year
 - Regardless of distribution
- Partners not taxed on distributions

LIMITED LIABILITY
LLC
CORPORATION

LLC & Corporation = Legal “Persons” Separate From Their Owners

- Business owner
 - Individual property
 - Individual debts
 - Individual creditors
 - Can sue or be sued in individual name
- LLC or Corporation
 - Business property
 - Business debts
 - Business creditors
 - Can sue or be sued in LLC or corporate name

LLC & Corporation = Limited Liability Protection

- Separate legal persons from owners
- Owners' property can't be taken by business' creditors
- Same protection, LLC & corporation
- Major advantage over sole proprietor & general partnership
- Exceptions discussed later

LIMITED LIABILITY COMPANY (LLC)

LLC FORMATION: CERTIFICATE OF ORGANIZATION

- Certificate of Organization:
 - Simple, 1 paragraph
 - Name (including form of LLC)
 - Street & mailing address “designated office” (can be home)
 - Name, street & mailing address registered agent service of process (can be owner)
- Filing fees: \$115

PUBLICATION

- Required for both S corp & LLC
- Once a week for 3 weeks
- Newspaper of general circulation in county where business is located
- Cost: about \$60.00

LLC OWNERSHIP & CLASSES OF UNITS

LLC “members”

- One member OK
- No upper limit
- No restriction on types of members
 - May include other LLCs, corporations, partnerships
- Distributions may be disproportionate to investment (but IRS “substantial economic effect” rules)

LLC OPERATING AGREEMENT

- Contract between owners re operation
- Same flexibility as partnership agreement
- Not filed; not public

LLC OPERATING AGREEMENT

- Law presumes existence. Should be written.
- If verbal or implied, court may have to interpret
- Agreement, not LLC Act, controls.
 - Act applies only to issues not covered by agreement

LLC OPERATING AGREEMENT

Should address:

- Management rights & powers
- Division of profits, losses
- Procedures sale of interest
- Procedures death of member
- Member's bankruptcy, disability, divorce
- Many other possibilities

LLC Income Taxation

- 1 member LLC taxed as sole proprietorship
- Multimember LLC taxed as partnership
- LLC does not pay income tax
- LLC gains & losses “pass through” to members
- Taxed each year on allocated share regardless of distribution/receipt
- Distributions to members not taxed

S CORPORATION

S CORP/C CORP

- Both corporations. Taxed differently.
 - “C” & “S” refer sections Internal Rev. Code
- C Corp pays its own income taxes
- Corp gains & losses do not affect shareholders’ income taxes
- Owners pay income tax on any distributions by C corp
- “Double taxation” at corp & individual levels

S CORP OWNERSHIP & CLASSES OF STOCK

S Corp “shareholders”

- One member OK
- 100 shareholders max (family = 1 shareholder)
- Individuals only (narrow exceptions)
 - Single owner LLC OK
- No nonresident aliens
- One class of stock only: distributions proportionate to stock held

S CORP FORMATION: ARTICLES OF INCORPORATION

- Filed Secretary of State
- Bus. name, “authorized shares,” “par value”
- Street address registered office & agent
- S corp restrictions
- S corp election
- Filing fee: \$75 if less than 10,000 authorized shares

S Corp Publication

- Same as LLC
- Once a week for 3 weeks
- Local paper
- Cost about \$60

S CORP: ORGANIZATIONAL MEETING

- Elect board of directors & officers
 - Board can be one person
 - One person can hold all offices
- Adopt bylaws
- Other business

S CORP: BYLAWS

- Must be written. Not filed; not public
- Less flexible. More statutory requirements.
- Procedures Bd elections, annual mtgs, etc.
- S Corp membership limitations
- Conditions for transfer of stock
- Share of profits, losses proportionate to investment

LIMITED LIABILITY EXCEPTIONS

- 1. Personal guarantee of note, contract
 - Signing in your own name
 - Signing owner personally liable for that loan
- 2. Personal negligence
 - Run stop sign while driving company car
 - Only negligent owner liable

LIMITED LIABILITY EXCEPTIONS

- 3. “Piercing corporate veil”: Failure maintain separate existence of LLC or S corp
 - Use business account for personal expenses
 - Business has no assets of its own
 - Failure to observe corp formalities for S corp
 - **Results in total liability**
 - **Especially dangerous for single owner**

Formalities: Formation

	Sole Prop	Gen Partship	LLC	S Corp
Filing with Sec. of State	No	No	Yes Cert of Org \$115	Yes Art of Inc \$65
Publication	No	No	Yes \$60	Yes \$60
Org. Meeting	No	No	No	Yes

Formalities: Operation

	Sole Prop	Gen Partship	LLC	S Corp
Governing Document	None	Partner-ship Agmt	Op Agmt	Bylaws
Bd of Dir	No	No	No	Yes
Officers	No	No	No	Yes
Shareholder Meetings	No	No	No	Yes
Minutes & Resolutions	No	No	No	Yes

Formalities: Operation

	Sole Prop	Gen Partship	LLC	S Corp
Shareholder Meetings	No	No	No	Yes
Minutes & Resolutions	No	No	No	Yes
Biennial Report to Sec of State	No	No	Yes \$25	Yes \$25

Limited Liability Protection

	Sole Pro	Gen Partship	LLC	S Corp
Limited Liability	No	No	Yes	Yes

Income Taxation

- Sole Proprietorship
 - Business gains & losses also owner's
- General Partnership
 - Pass-through taxation
- LLC
 - 1 member: Sole proprietorship treatment
 - Multi-member: Partnership treatment
- S corporation
 - Pass-through taxation

Self-Employment Tax

- Social Security & Medicare for Self-Employed
 - 15.3% as of 1.1.13
- Must be paid on compensation
- No exemptions or deductions
 - Paid on 92% of compensation
- S corp shields some profit from self-employment tax
 - LLC can elect to be taxed as S corp

TRANSFERABILITY

- Difficult for individual owners partnerships and multi-owner LLCs, corporations without consent of other owners
- Restrictions in governing document
- Remaining owners control fate of buyer.
 - No management rights unless remaining members agree to accept