The CED Clinic is supported by the Economic Development Administration, U. S. Department of Commerce, through its University Centers Program.
**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
• 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 “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 to 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

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<thead>
<tr>
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<th>Sole Prop</th>
<th>Gen Partnership</th>
<th>LLC</th>
<th>S Corp</th>
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Formalities: Operation

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# Limited Liability Protection

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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