

Options for Forming Your Business

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What Are The Choices?

- Corporations
- Partnerships
- Limited Liability Companies
- Cooperatives



Why Form an Entity?

- Conventional – “everyone does it”
- Avoid liability
- Raise capital
- Save on taxes
- Segregation of business
- Brand the company

Avoiding Liability

- Goal – limit liability to the entity
- No liability for officers and directors
- Investors can always lose their investment
- No avoiding liability for your own acts – fraud, torts
- “Piercing the veil”

Raising Capital

- “Show me the money”
- Investors contribute money in exchange for part ownership of the entity
- Ownership interests can be tailored in a variety of ways, e.g., common stock, preferred stock
- Tradeoffs – expansion vs. control



Corporations

- Constituents – shareholders, directors, officers
- Formation – select name, file Articles of Incorporation with state, adopt bylaws and appoint officers
- Capital structure – common stock, varieties of preferred stock
- Taxation – “C” corporation, “S” corporation
- Directors and fiduciary duties



Partnerships

- Joint ownership
- Agreement necessary, oral or written
- Personal liability
 - General partnership – all partners fully liable
 - Limited partnership – GPs fully liable, not LPs
- Tax efficient – income and losses pass through to partners
- Complex allocations require complex agreements
- Used for real estate developments, small business, and investment partnerships

Limited Liability Companies – LLCs

- New creature of state law – all 50 states
- Owners are members
- Best of both worlds
 - Limited liability like a corporation
 - Pass-through for tax purposes
- Formation: file certificate of formation with state, and create operating agreement for members
- Structure very flexible –raises complexity and allocation issues
- Management – can be by members, or by separate management

Cooperatives

Member owned and controlled

- Serves members, who use its services or products
- Surplus revenues returned to members in proportion to their use of the co-op
- Revenues distributed to members based on their business with co-op are not taxed to co-op – single tax treatment
- Entity -- business corporation, LLC, or special co-op entity under state law
- Limited Liability

Tips for Success

- Plan for raising capital
 - Have a life cycle business plan
 - Use a corporation or LLC
- Control, control, control
 - Valuation
 - Don't bother trying to lock in control for founders
- In organizational documents, maximize board's flexibility

More Tips for Success

- In organizational documents, limit liability of board of directors, and authorize indemnification
- Use experienced advisors – consultants, attorneys, CPAs
- Follow corporate formalities
 - Use corporate name
 - Sign documents properly
- Resist giving guarantees