
STARTING A BUSINESS

Business Organizations

Choice of Business Entity

Sole Proprietorship

Partnership

Limited Partnership

Limited Liability Partnership

Corporation

Limited Liability Company

Choices

Sole Proprietorship: Single individual owning business

Partnership: Two or more individuals co-owning a business for profit.

Limited Partnership: One general partner and other partners who have limited liability for partnership obligations and limited management rights

Choices

Limited Liability Partnership: Similar to limited partnership, however, limited partners may participate in management.

Corporation: Intangible legal entity created by the state.

Limited Liability Company: Hybrid, Combination of partnership and corporation.

Factors Influencing Choice of Organizational Form

- ✍ Ease And Expense Of **Formation** And Operation
 - ✍ **Transferability** Of Ownership Interests
 - ✍ Projected **Life** Of The Organization
 - ✍ **Control** Considerations
 - ✍ Potential **Liability** Of The Owners
 - ✍ **Tax** Ramifications
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Organizational Choices

<u>Type</u>	<u>Creation</u>	<u>Continuity</u>	<u>Control</u>	<u>Liability</u>	<u>Tax</u>
Proprietorship	Do It!	Proprietor	Proprietor	Un'l'd	Single
Partnership	Agreement	Easily Dissolved (Buy/Sell)	Equal Among Partners	Un'l'd	Single
Limited Partnership	Agree & Register	General Partner	General Partner	Gen'l- Un'l'd Ltd.- Ltd.	Single
LLP	Articles & Registration	Easily Dissolved	Equal Partners	Limited	Single
LLC	Articles & Registration	Dissolved (90 Days)	Equal Members	Limited	Single
S Corporation	Articles (<75 People)	Perpetual (Ease Of Transfer)	Shareholders Directors Officers	Limited	Single
Corporation	Articles Of Incorporation	Perpetual (Ease Of Transfer)	Shareholders Directors Officers	Limited	Double

Sole Proprietorship

- ✍ Individual going into business alone.
 - ✍ Requires few legal formalities.
 - ✍ Subject to minimal government regulation.
 - ✍ Income taxed as personal income of proprietor.
 - ✍ Personally liable for all losses.
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General Partnership

Liability: All Partners jointly and severally liable.

Management: Partners have equal
vote

Taxation: Single Tax

Statutory Law of Partnerships

- ✍ Uniform Partnership Act (1914)
 - ✍ Revised Uniform Partnership Act (1994)
 - ✍ Limited Partnership Act (1916)
 - ✍ (Revised, 1976, 1985, 2001)
 - ✍ Limited Liability Partnership
(1996 amendment to Partnership Act)
 - ✍ Uniform Limited Liability Company Act (1996)
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General Partnership

Two or more persons agree to carry on
As co-owners a business for profit.

(RUPA 101(6))

Carry on a business for profit

Requires a series of transactions over a
period of time. (Joint venture involves a
single undertaking)

General Partnership

- ✍ Carry on Business as Co-owners
 - ✍ Primary Elements
 - ✍ Sharing of Profits
 - ✍ Sharing Management
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Partnership Formation

RUPA 202

In determining whether a partnership is formed, the following rules apply:

- ✍ 1) Joint tenancy, tenancy in common, tenancy by the entirety, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.
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Partnership Formation

RUPA 202

- ✍ (2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.
-

Partnership Formation

RUPA 202

- ✍ (3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:
 - (i) of a debt by installments or otherwise;
 - (ii) for services as an independent contractor or of wages or other compensation to an employee;
 - (iii) of rent;
-

Partnership Formation RUPA 202

(iv) of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;

(v) of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, or

(vi) for the sale of the goodwill of a business or other property by installments or otherwise.

Creation of Partnership

No formalities required.

However a partnership is formed by agreement of the partners and must comply with requirements of contract law.

Agreement

Although not required it is wise for partners to enter into a partnership agreement.

Preparation of an agreement allows partners to consider, discuss and understand their relationship

In the absence of an agreement the provisions of the state's partnership statute will apply.

Issues to Discuss SECTION 401. PARTNER'S RIGHTS
AND DUTIES.

Profits:

(b) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in same proportion to the partner's share of the profits.

Regardless of Ownership Interest

Compensation

h) A partner **is not entitled** to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

Issues to Discuss Section 401

Management

(f) Each partner has equal rights in the management and conduct of the partnership business.

Regardless of Ownership Interest

Issues to Discuss SECTION 701. PURCHASE OF DISSOCIATED PARTNER'S INTEREST

Sale of partnership interest/ Buy out

e) If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause **to be paid, in cash** to the dissociated partner the amount the partnership estimates to be **the buyout price** and accrued interest, reduced by any offsets and accrued interest under subsection

(c).

Issues to Discuss SECTION 405. ACTIONS BY
PARTNERSHIP AND PARTNERS

Dispute Resolution

a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief,.....

May agree to Arbitrate Partnership Disputes

Principal Characteristics Liability

1. Partners have unlimited liability for partnership obligations.

SECTION 306. PARTNER'S LIABILITY.

- ✍ (a) All partners are liable **jointly and severally** for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.
 - ✍ (b) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.
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Partners Liability

SECTION 703

a) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection b.

Partners Liability

(b) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, ...within two years after the partner's dissociation, only if ... at the time of entering into the transaction the other party:

(1) reasonably believed that the dissociated partner was then a partner;

(2) did not have **notice** of the partner's dissociation; and

(3) is not deemed to have had knowledge under....Section 704(c).

Partners Liability

SECTION 704. STATEMENT OF DISSOCIATION.

(a) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership. (Filed with secretary or state)

(c) A person ... is deemed to have notice of the dissociation 90 days after the statement of dissociation is filed.



[Limited Partnership]

Liability: General partner personally liable.

Limited parties limited liability

Management: Managed by General
Partner

Taxation: Single Tax

Limited Partnership

A. Partnership that has two types of partners

a. At least one general partner

Manage the partnership and have unlimited liability

b. Limited partners

No liability for partnership debts beyond investment in partnership

Limited Partnership

- ✍ Uniform Limited Partnership Act

- ✍ ULPA

- ✍ 1916

- ✍ Revised Limited Partnership Act

- ✍ RULPA

- ✍ 1976, amended 1985,

- ✍ Revised Limited Partnership Act

- ✍ 2001

Limited Partnership (RULPA 201)

FORMATION:

In order for a limited partnership to be formed, a certificate of limited partnership must be delivered to the [Secretary of State] for filing. The certificate must state:

Limited Partnership

NAME (RULPA 108)

The name of a limited partnership **may** contain the name of any partner and **must** contain the phrase “limited partnership” or the abbreviation “L.P.” or “LP”

Prior law prohibited the use of a limited partner’s name in the name of a limited partnership except in unusual circumstances.

NO LIABILITY AS LIMITED PARTNER FOR LIMITED PARTNERSHIP OBLIGATIONS RLPA 303

Revised Act

A limited partner is not personally liable..... for an obligation of the limited partnership solely by reason of being a limited partner, even if the limited partner participates in the management and control of the limited partnership. (2001)

Prior Act: Earlier Revised Uniform Limited Partnership Act

Section 7 of the **original Uniform Limited Partnership Act**

provided that “A limited partner shall not become liable as a general partner [i.e., for the obligations of the limited partnership] unless . . . he takes part in the control of the business.”

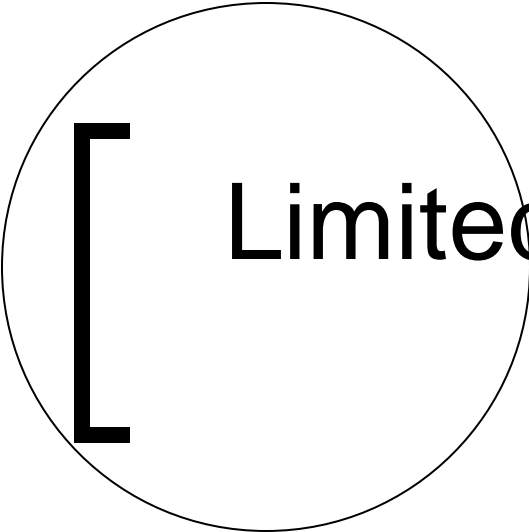
Limited partner participating in management loses limited liability

Limited Liability Limited Partnership

A limited partnership which has elected limited liability status for all of its partners, including general partners.

Limited Partnership

Limited partnerships and Limited liability limited partnerships are used primarily in tax shelter ventures such as real estate investment, oil and gas drilling and professional sports.



[Limited Liability Partnership
(LLP)]

Liability: Limited

Management: All Partners
equal vote

Taxation: Single

Limited Liability Partnership (LLP)

In a Limited Liability Partnership (LLP) there is no general partner. All partners are limited partners.

(All partners can participate in management)

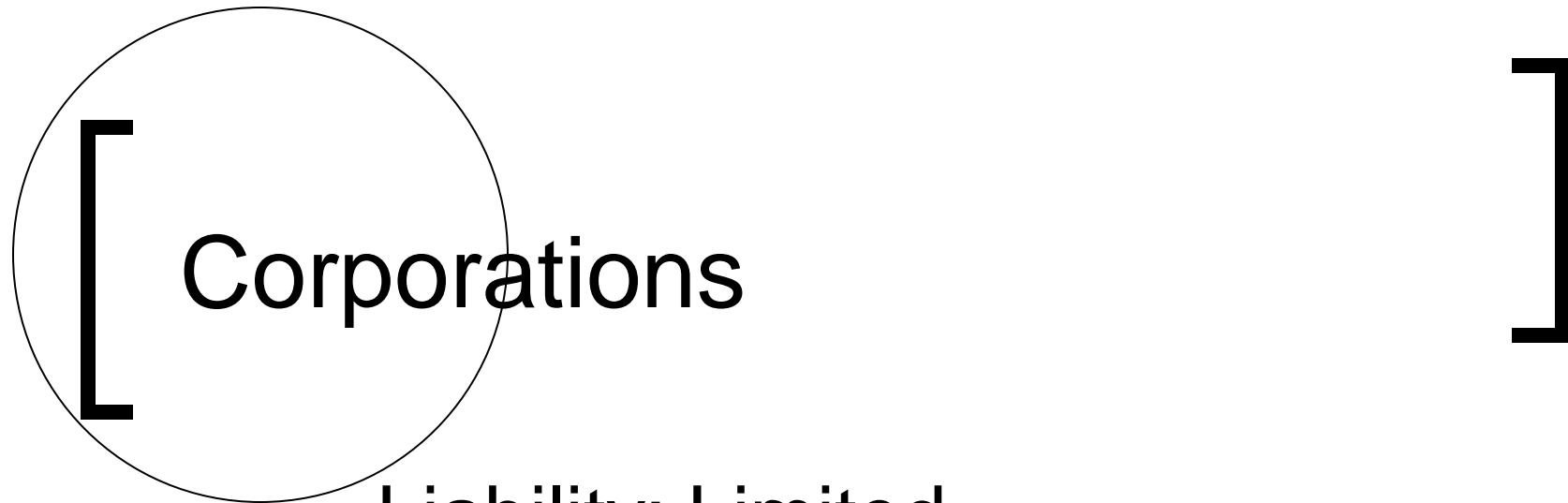
Created for large accounting firms, law firms
And other professionals to offer services
under an umbrella of limited liability.

Limited Liability Partnership

AMENDMENTS TO UNIFORM PARTNERSHIP ACT (1994)

SECTION 1002. NAME.

The name of a limited liability partnership must end with "Registered Limited Liability Partnership", "Limited Liability Partnership", "R.L.L.P.", "L.L.P.", "RLLP," or "LLP".



Corporations

Liability: Limited

Management: According to
Corporate Statute

Taxation: Double

Definition

A corporation is a **legal entity** created by state law to accomplish a stated purpose.

Three Types:

1. Corporations for profit
 2. Corporations not for profit
 3. Government owned corporations
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For Profit Corporation

Stockholders invest in corporation with expectation of earning a profit on their investment in the form of dividends or increased market value of their shares

Shareholders have limited liability.

Both Corporation and Shareholders pay taxes.

Subchapter S Corp./ Avoids double tax

Not-for-profit Corporation

None of the surplus revenue (profit) may be distributed to shareholders (members).

Often have members rather than shareholders

Examples:

Charities, Churches, Fraternal Organizations

Government Corporations

Municipalities

School Districts

Federal Insurance Deposit Corporation

Nature of A Corporation

1. Corporations are distinct legal entities which exist separate from shareholders (Shareholders have limited liability)
 2. Corporations can sue and be sued
 3. Corporations can own property
 4. Corporations may and usually have a perpetual life.
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Formation

Corporations are created by compliance with state corporation statutes which usually require,

- a. filing Articles of Incorporation with the secretary of state, and
- b. paying a fee

Corporate existence begins when the articles of incorporation are filed, unless a delayed effective date is specified in the articles. (2.03 (a))

Corporate Powers

Sources of power:

State Corporation Statute

Articles of Incorporation

Bylaws and Board resolutions

Implied powers: Barring express prohibition a corporation has certain implied power to perform acts reasonably appropriate and necessary to accomplish its corporate purposes. For example: Borrow and lend money and/ or extend credit.

Shareholders (Own the Corporations)

Powers:

1. Elect Board of Directors.
 2. Approve fundamental corporate changes:
 - a. Amend articles of Incorporation
 - b. Amend bylaws
 - c. Approve merger or dissolution
 - d. Approve sale of substantially all of corporate assets
-

Operation of the Corporation

Shareholders

Shareholders

- A. Elect Board of Directors.
- B. Approve fundamental corporate changes:
- C. Amend articles of Incorporation
- D. Amend bylaws
- E. Approve merger or dissolution
- F. Approve sale of substantially all of corporate assets

Directors

✍ Board Of Directors

✍ Overseers and policy makers.

✍ Must authorize and approve:

✍ Payment of dividends, other capital changes.

✍ Selection and removal of officers.

✍ Executive pay.

✍ Corporate bylaws.

✍ Policy regarding products, services, labor relations.

Officers And Managers

Officers And Managers

 Actual management of the corporation's affairs.

Director's Duties

Directors and Officers are considered to be in a fiduciary relationship with the Corporation which relationship imposes certain duties.

1. Obedience
 2. Due care
 3. Loyalty
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BUSINESS JUDGMENT RULE

Directors and Officers are not liable for decisions which adversely affect the Corporation so long as they:

1. Engaged in a reasonable investigation prior to making the decision (Well informed decision)
 2. Had no conflicts of interest
 3. Had a rational basis for believing the decision was in the best interests of the company.
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LIMITED LIABILITY
COMPANY

Liability: Limited

Management: Choice/ Members or
Manager

Taxation: Single

UNIFORM LIMITED LIABILITY COMPANY ACT (1996)

Brings together the best features of all other
business forms

Owners obtain both a corporate-styled
liability shield and the pass-through tax
benefits of a partnership.

Name

SECTION 105. NAME.

The name of a limited liability company must contain "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LL", "L.C.", or "LC".

"Limited" may be abbreviated as "Ltd.", and "company" may be abbreviated as "Co.".

LIMITED LIABILITY COMPANY AS LEGAL ENTITY.

SECTION 201

A limited liability company is a legal entity distinct from its members.

Similar to Corporation

ORGANIZATION.

SECTION 202.

One or more persons may organize a limited liability company, consisting of one or more members, by delivering articles of organization to the office of the [Secretary State] for filing.

LIABILITY OF MEMBERS AND MANAGERS. SECTION 303

The debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company.

A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager.

Similar to Corporation

MANAGEMENT OF LIMITED LIABILITY COMPANY.
SECTION 404

In a member-managed company:

(1) each member has equal rights in the management and conduct of the company's business; and

(2).....any matter relating to the business of the company may be decided by a majority of the members.

Similar to Partnership

MANAGEMENT

In a manager-managed company:

(1) each manager has equal rights in the management and conduct of the company's business;

(2)..... any matter relating to the business of the company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers

MANAGEMENT

Whether a company is member operated or manager operated is set forth in the articles of organization

MANAGEMENT

A company will be **member-managed unless it is designated as manager-managed** under the articles of organization. Absent further designation in the

The designation of a limited liability company as either member- or manager-managed is important because it **defines who are agents and have the apparent authority to bind the company.**

In a member-managed company, the members have the agency authority to bind the company. In a manager managed company only the managers have that authority.
