

Forms of Business in Delaware
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One of the most important decisions you'll make in starting a business is to decide which legal form it will take. In this outline, we'll cover some of the most common forms of business and discuss the advantages and disadvantages of each.

SELF-PROPRIETORSHIP

A single person owns this.

Advantages:

Almost no paperwork; easy to form; no extra reporting requirements.

Disadvantages:

You are required pursuant to the 6 Del. Code 3101 to file with the Prothonotary a fictitious name registration.

Owners are personally liable on all business obligations. However, the purchase of liability insurance can help insulate the owner from personal responsibility for torts. No such protection for obligations of the business: they become personal obligations of the owners.

Risk grows as business grows.

A lawsuit against the business puts all personal assets at risk.

GENERAL PARTNERSHIP

This is a form of business owned by more than one person.

Advantages:

Can be done quickly without a formal document, although this is not suggested. Co-ownership need not be expressed. Oral agreement to share profits is sufficient to establish a general partnership.

No double tax, only pass-through taxes on profits.

Disadvantages:

A claim against one partner becomes a claim against the partnership. Therefore, personal assets of a partner are put at risk in the event of a lawsuit.

A partner may dissolve the partnership at any time, saying, "I quit," or "I want out" (unless an agreement to the contrary).

Partnership is bound by the acts of a partner when he acts within the apparent scope of authority. In effect, each partner is an agent for his co-partners in matters dealing within the scope of the business. Partners are criminally and civilly liable for the wrongful actions of other partners if they have authorized those acts, or if the wrongful acts are committed within the course and scope of business.

Filing requirements: There is no IRS filing requirement; however, pursuant to the Delaware Code, 6 Del. Code 3103, the partnership trade name must be filed with the Prothonotary's office.

LIMITED LIABILITY COMPANIES

Advantages:

The debts of a firm are only those of the LLC and the partners are not personally responsible. Limited liability for all participants whether or not they are active in managing the business.

There is maximum freedom of contract. Very popular for small businesses and owners of real estate.

Provides for benefits of incorporation without the limitations and rules applied to corporations. May be member managed, owner managed, or both. LLC's are replacing general and limited partnerships.

Tax benefit: pass through taxation like a partnership.

Entity can continue even if a partner withdraws.

Disadvantages:

If fraudulent acts precede the formation of the LLC, the members are not shielded because they are now members.

This business form has not been fully tested in Court.

Formation of an LLC requires an operating agreement and documentation much like a corporation.

CORPORATIONS

Advantages:

The filing articles of incorporation of a new legal entity is created.

Provides for limited liability for all investors and participants, whether active or passive.

Acts as a real person.

Disadvantages:

Assets of the corporation are subject to seizure by creditors of the corporation.

The participants may incur personal liability if they themselves are fraudulent or negligent.

Requires a great deal of paperwork, including separate tax returns, corporate meetings, and yearly business meetings.

Requires a registered agent and a registered office.