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Choosing the Right Legal Structure for Your Business

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This chart summarizes the various characteristics, advantages, and disadvantages of the most popular business entity options. Every business has its own opportunities and faces its own risks. You should consult a lawyer about the unique needs of your business before finalizing your entity selection, and to put the appropriate documents in place.

Concern	General Partnership	Limited Partnership	LLC	Corporation (sometimes referred to as a "C Corporation")	S-Corporation
Limited Liability? (liability limited to the amount of investment)	No	Yes, for the limited partner(s) No, for the general partner(s)	Yes	Yes	Yes
Pass through taxation? (taxation passes through the entity to the individuals)	Yes	Yes	Yes (can elect other forms of taxation)	No ("double taxation," meaning both the corporation and shareholders pay taxes on profits)	Yes (but you still need to file a corporate tax return)
Continuous life or tenuous?	Tenuous (absent agreement to the contrary) Possibility of dissolution by any partner withdrawing	Somewhat tenuous (absent agreement to the contrary) A limited partner does not result in dissolution, but a general partner leaving does	Very stable (duration as stated in the agreement)	Very stable (stockholders may come and go with little or no effect)	Very stable (stockholders may come and go with little or no effect)
Management and authority to control affairs	Shared equally by all partners	Centralized in the general partners	Flexible – either shared or centralized; managed by members (member managed) or by managers (manager managed)	Centralized in the board of directors	Centralized in the board of directors
Number of persons or entities needed to form?	2 or more	2 or more (1 or more limited partners and 1 or more general partner)	1 or more	1 or more	1 or more; but see limits on owners below under "Disadvantages"
Formalities and fees for formation?	Informal Usually no filing or fees required to set up and manage	More formal than general partnership, less than other entities Limited filings and fees	Formal requirements for filing and fees Less formalities to observe after formation (as compared to a corporation) but more than a general partnership or limited partnership	Formal requirements for filing and fees Corporate formalities must be strictly observed (maintenance of separate books, records, and accounts; completion of various filings; periodic meetings or written consents of directors and shareholders)	Formal requirements for filing and fees plus additional IRS election (form 2553) Corporate formalities must be strictly observed (maintenance of separate books, records, and accounts; completion of various filings; periodic meetings or written consents of directors and shareholders)
Interest transferrable to 3rd parties?	Limited transferability One cannot transfer entire interest, absent agreement to the contrary; share of profits can be transferred	Limited transferability Partners have more flexibility in transferring their interest in capital and assets are assignable, but cannot assign reserved interest in control	Restricted transferability In most jurisdictions, transferability restrictions on ownership interest Will often depend on buy/sell provisions in the operating agreement and state law	Freely transferable Absent agreement to the contrary, freely transferable among shareholders	Freely transferable Free transferability but there are restrictions on the type and number of shareholders (corporations, trusts and nonresident aliens may not be shareholders)

Advantages	Easy to establish Tax benefits	Easier to establish than LLCs and corporations Tax benefits Limited liability for limited partners Business decisions may be easier than general partnership (no need to consult with limited partners for most decisions) Limited partners share in profits/losses without having to be very involved in business	Flexible ownership and management (member managed or manager managed) Ability to issue several classes of stock Less formalities than a corporation Limited liability Tax benefits	Sometimes cheaper than setting up LLC Annual report fees may be less than LLC Longer history and larger body of case law therefore less uncertainty when making decisions If seeking to go public in the future, this entity is usually most desirable Limited liability Eligible for a dividends received deduction (a federal tax deduction on the dividends it receives from another corporation it has ownership in)	Sometimes cheaper than setting up an LLC Annual report fees may be less than an LLC Favorable tax treatment Limited liability
Disadvantages	Partners are jointly and individually liable for the actions of other partners and the partnership itself The partnership may have a limited life; it may end upon the withdrawal or death of a partner	Risks for general partners Must still comply with some formalities (annual meetings) Must create a detailed partnership agreement	Higher fees than with partnerships in many states (taxes, filing, and annual fees) Relatively new entity. Because there is little case law concerning LLCs, there is often more uncertainty. May have a more difficult time raising capital	Higher taxes Less flexibility Must maintain full corporate formalities	Not all states recognize S-corporations and some states require additional fees Must maintain full corporate formalities Not eligible for a dividends-received deduction that a C-Corporation is eligible for. Various limits and restrictions on ownership: 1. Maximum of 100 shareholders; 2. All shareholders must be US citizens or permanent residents; 3. Cannot derive more than 25% of income from passive activities (rents, property ownership, investments); and 4. Can only have one class of stock (i.e., no preferred stock)

Please visit our website (www.themckenziefirm.com) for more information about entity selection, buy-sell agreements, contracts, employer issues, and other legal issues small businesses typically face.

When you're ready to form your business, give us a call at 303.578.2745.

ABOUT DAN MCKENZIE

Dan McKenzie opened the McKenzie Law Firm, LLC in 2013, following 10 years of work as a trial lawyer. As a trial lawyer, Dan helped consumers who had been defrauded by unfair business practices or who had been physically injured by poorly designed and inadequately tested products. Since opening his own office, Dan's goal has been to help clients identify and mitigate their risks to the full extent possible, with the goal of avoiding expensive and time-consuming litigation.

Dan is a Colorado native and is happy to now be raising four kids of his own here. As a parent, he makes it a point of special emphasis to help other parents of dependent children appreciate the need to have a proper estate plan in place.



Credentials

Dan graduated from Northwestern Law School and has been practicing law since 2003. Super Lawyers magazine has named him a "Rising Star" three years in a row. He is an active participant in the Colorado Bar Association's Trust and Estate's section, and is also a member of WealthCounsel, a national membership organization of estate planning attorneys and financial advisors. Dan works hard to ensure that his knowledge about the constantly-evolving rules governing estate planning and business formation, as well as the firm's resources, are always on the cutting edge.

Proactive Problem Solving

For many of our clients, their experience with us is their first substantial encounter with the legal system. We feel a heavy obligation to ensure that our clients' experiences are positive and that they come away from it feeling that they learned a lot and got great value in exchange for what they paid. We don't just sell documents. We sell service, and we pride ourselves on providing the best service around. We don't have one plan that we fit everyone into. We listen to our clients, and provide solutions to the problems they are trying to solve.