

ENLISTED TO ENTREPRENEUR

By Vicki Garcia

Choosing the Right Business Entity for You!

Every month, courtesy of Homeland Magazine, I offer up my best entrepreneurial intelligence. Not being a practicing lawyer (I do have a Juris Doctorate), legal tips are above my pay grade.

Kelly Bagla, Esq., Attorney at Law and bestselling author of *Go Legal Yourself* has kindly offered to provide the following valuable information. Kelly has a special interest in helping vets and active military to become financially independent through business ownership.

As a San Diego business attorney, I am frequently asked: "What type of business should I be?" It generally depends on what kind of business you want to conduct. The type of business entity should reflect the kind of business you do.

"What business entities are commonly used?"

There are generally six most common business entities used today which are:

- Sole Proprietorship
- General Partnership
- Limited Partnership
- Limited Liability Company
- Corporation
- Subchapter S Corporation

"What is the difference between the different types of business entities?"

Here is a breakdown of the differences:

1. SOLE PROPRIETORSHIP

A SOLE PROPRIETORSHIP = is a business owned and operated by an individual. Sole proprietorships are the basic forms of business organizations, which require no formal type of government filings to form the business and are not required to follow any type of operating formalities.

The BENEFIT = of a sole proprietorship is the taxability of business income and the deductibility of business losses on the business owners individual tax returns.

The LIABILITY = of a sole proprietorship is that the business owner is personally liable for all liabilities and obligations of the business, which liability extends, not only to liabilities in excess of the amounts invested in the business including any insurance coverage, but also to the business owner's personal assets.

2. GENERAL PARTNERSHIP

A GENERAL PARTNERSHIP = is an association of two or more persons to carry on a business. A general partnership is another type of business entity which is easy to form but requires a written partnership agreement to govern the operations of the partnership and the relationship among the partners.

COMPLIANCE REQUIREMENTS = for a partnership are minimal and require that a Statement of Information be filed with the State and the partnership maintains records to provide to the partners in connection with the proper exercise of the partner's rights and duties under the partnership agreement.

MANAGEMENT = in a general partnership extends to each partner whereby each partner is an agent of the business and their actions generally bind the business. **The LIABILITY** = of a general partnership is that a partner's liability not only extends to that partner's percentage interest in the business but also to the partner's personal assets as well.

3. LIMITED PARTNERSHIP

A LIMITED PARTNERSHIP = is a partnership formed by two or more persons that has one or more general partners and one or more limited partners as co-owners of a business. A written partnership agreement should be established between the business and its partners and a written partnership agreement should also be established between the partners themselves establishing the classes of general or limited partners.

COMPLIANCE REQUIREMENTS = for a limited partnership require more formal filings with the State, such as, filing a Certificate of Limited Partnership and obtaining an agent for service of process.

MANAGEMENT = in a limited partnership extends to one or more general partners who have exclusive management authority thus limiting the decisions of the limited partners in the business.

The LIABILITY = of a limited partnership is that the general partner is personally liable for the partnership's debts, obligations and liabilities. However, the limited partnership allows limited partners to avoid subjecting their personal assets outside of their investment. A limited partner is granted limited liability as long as the partner does not participate in the control of the partnership business.



- Sole Proprietorship
- General Partnership
- Limited Partnership
- Limited Liability Company
- Corporation
- Subchapter S Corporation

4. LIMITED LIABILITY COMPANY

A LIMITED LIABILITY COMPANY = is an entity having one or more members, organized under State statute. Limited liability companies have all the powers of natural people, which include the ability to transact business, sue or be sued, make contracts, own and transfer real estate, and issue stock subject to limitations.

COMPLIANCE REQUIREMENTS = for a limited liability company require more formality in formation and operation, such as, filing Articles with the State, filing a Statement of Information with the State, obtain an agent for service of process, and establish an operating agreement.

MANAGEMENT = in a limited liability company can be conducted by all its members or by one manager. Officers may be appointed to conduct the affairs of the business.

The LIABILITY = of a limited liability company is limited for all its members, managers and officers. As long as the State's statutory requirements are followed, the members, managers and officers of the business are not personally held liable for any debt, liability or obligations of the business arising in contact, tort or otherwise solely by being a member, manager or officer of the business.

5. CORPORATION

A CORPORATION = commonly known as a C or regular corporation, is by far is the most common and well-known form of business entity. All corporations are governed by the State of incorporation and are treated as separate and distinct legal entities separate from its owners with all the rights to own property, make contracts and sue in its own name.



Vicki Garcia is the Co-Founder of *Veteran Entrepreneurs Today (V.E.T.)* & President of *Marketing Impressions*, a 30+ year old marketing consulting firm. Email her at vicki@veteranentrepreneurstoday.org for free help in starting and running your business.

COMPLIANCE REQUIREMENTS = for a corporation require strict statutory compliance, such as, filing the Articles of Incorporation with the State, filing a Statement of Information with the State, obtaining an agent for service of process, establishing bylaws, issuance of stock, establishing a board of directors, appointment of officers, holding annual shareholder meetings, holding annual director meetings, and maintaining books and records of written minutes.

MANAGEMENT = in a corporation is generally conducted by the board of directors with the day to day operations of the business ran by the officers. The overall decision making lies with the shareholders of the business.

The LIABILITY = of a corporation is limited for all its shareholders and the shareholder's personal liability is limited to the investment.

As long as the State's statutory requirements are followed, the shareholders, directors and officers of the business are not personally held liable for any debt, liability or obligations of the business arising in contact, tort or otherwise.

6. SUBCHAPTER S CORPORATION

A SUBCHAPTER S CORPORATION = commonly known as an S corporation, is a corporation that has elected to be taxed under Subchapter S of the Internal Revenue Code and is treated as a partnership for most tax purposes. The income of the S corporation is passed through to its shareholders therefore avoiding double taxation. Other than the different tax treatment, the S corporation operates identically to that of a C or regular corporation.

COMPLIANCE REQUIREMENTS = for an S corporation are identical to that of a C or regular corporation, however, for a corporation to qualify as an S corporation certain requirements must be met.

MANAGEMENT = in an S corporation is identical to that of a C or regular corporation.

The LIABILITY = of an S corporation is identical to that of a C or regular corporation.

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