

# ORGANIZATIONAL STRUCTURE

**SOLE PROPRIETORSHIP** -- For a sole proprietorship:

- (1) You are the sole owner of an unincorporated business.
- (2) The businesses' liabilities are your personal liabilities, i.e. unlimited personal liability.
- (3) You file IRS Schedule C, *Profit or Loss From Business*, with your personal tax return.

**PARTNERSHIP (GENERAL)** -- A partnership:

- (1) Is not a taxable entity.
- (2) Is the relationship existing between two or more persons who join together to carry on a trade or business where each person shares in the profits and losses of the business. Partners have unlimited personal liability.
- (3) Must file an application with the State Corporation Commission who then notifies the locality.
- (4) Must file IRS Form 1065, *U.S. Partnership Return of Income*.
- (5) Partners are taxed like sole proprietors: *Profit and Loss From Business*, on personal tax return (1040).

**LIMITED PARTNERSHIP** -- A limited partnership:

- (1) Is not a separate taxable entity.
- (2) Consists of one or more general partners and one or more limited partners, who have no individual liability other than their initial investment.
- (3) Limited partners are restricted in their ability to participate in managing the business.
- (4) Is created by express written agreement that defines the roles of each partner and must be signed by each partner.
- (5) Must file certificate of limited partnership with State Corporation Commission.
- (6) Must file annual report with State Corporation Commission.

**C CORPORATION** -- A C corporation:

- (1) Must file for a corporate charter with the State Corporation Commission.
- (2) Is authorized to issue shares of stock to raise capital.
- (3) Must file IRS Form 1120, *U.S. Corporation Income Tax Return*, even if it had no taxable income for the year.
- (4) Cannot have the same or similar name as another Virginia corporation.
- (5) Must submit an annual report to the State Corporation Commission.
- (6) Shareholders generally have no individual liability.
- (7) Different classes of economic rights (stock) permitted, i.e. common, preferred, etc.

**S CORPORATION** -- An S corporation:

- (1) Is a corporation which is taxed like a sole proprietorship and is not a taxable entity.
- (2) Must file for a corporate charter with the State Corporation Commission.
- (3) Must **promptly** file Form 2553, *Election by a Small Business Corporation*, with the IRS to choose S corporation status.
- (4) Must file IRS Form 1120S, *U.S. Income Tax Return for an S Corporation*.
- (5) Must be domestic, have only one class of stock (voting/non-voting distinctions are permitted), and have no more than 75 shareholders who are only individuals, estates, and certain trusts.
- (6) Must have shareholders who are citizens or residents of the U.S.
- (7) Owners/shareholders generally have no individual liability.

**LIMITED LIABILITY COMPANY**-- A limited liability company:

- (1) Is created by filing *Articles of Organization* with the State Corporation Commission. LLCs generally prepare a written operating agreement specifying management and related roles, much like a partnership agreement
- (2) Requires two or more members and is neither a partnership nor a corporation, but has attributes of each.
- (3) Like partnerships and S corporations, is not a taxable entity if its organizational documents are properly drafted.
- (4) Like corporations, no individual liability for its members.
- (5) Like C Corporations, different classes of ownership are permitted, and there are no restrictions on the types or numbers of members as apply to shareholders of S Corporations.
- (6) No automatic continuity of LLC or free transferability of LLC interests.

For more information, attend our Legal Start course.