



⋮ **WELCOME** ⋮

VISUALIZE YOUR BUSINESS
LEGAL STRUCTURE AND ORGANIZATION

PRESENTED BY: Christopher S. McIlveen

INTRODUCTION

We Are Coughlin & Gerhart LLP



Coughlin & Gerhart, LLP has proudly been serving clients for over 125 years and has grown to a multi-service law firm, consisting of more than 55 lawyers with a professional support staff. The firm provides comprehensive legal services to clients across numerous practice areas. C&G has offices across the Southern tier of New York and into northern Pennsylvania.



INTRODUCTION

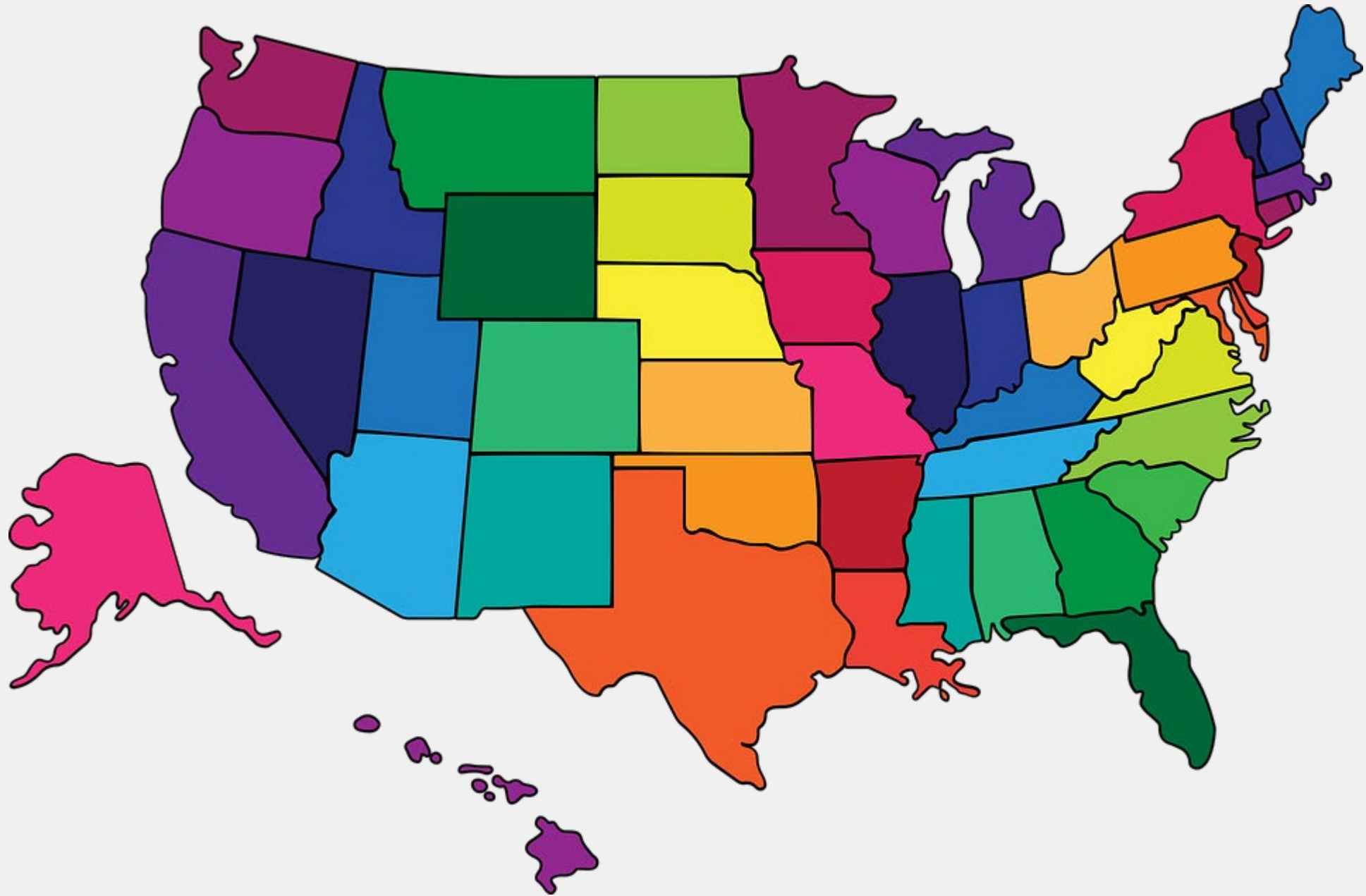
1. Who Am I?
2. Entity Selection and Structure
3. Q&A



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CONSIDERATIONS WHEN GETTING STARTED



- How am I starting the business?
(buying, fresh start)
- How am I raising capital?
(loans, investors, personal contribution)
- How do I envision the company in the future? (Active or passive management?)
- What are my long-term plans?
(Building to run? Building to sell?)

What are my risks?

SELECTING AND FORMING AN ENTITY

- Sole Proprietor
- Partnerships
- Limited Liability Company
- C-Corporation
- S-Corporation



Sole Proprietor

What is it?

- Single business owner operating under the individual's name or dba
- No separate entity

How is it formed?

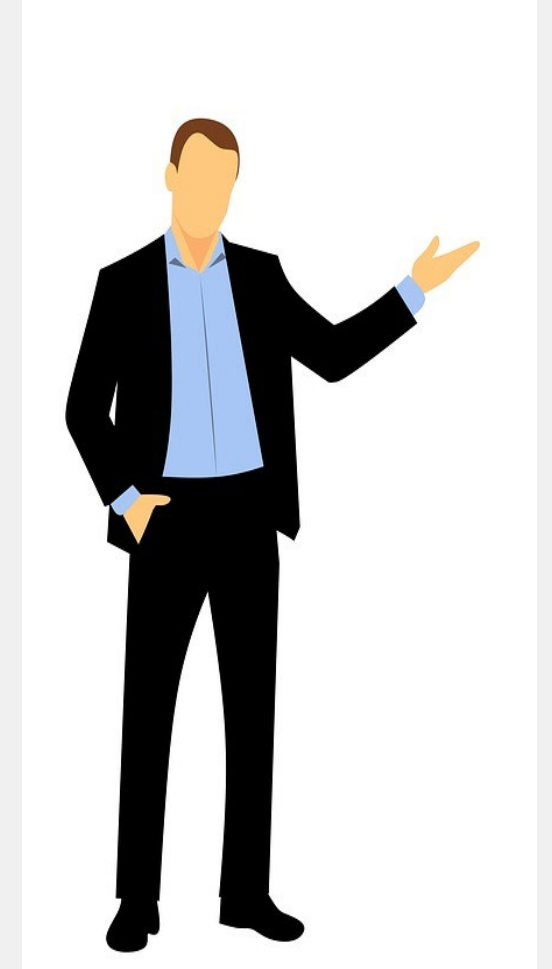
- File d/b/a with the county clerk – cheap (\$25-30)

Pros

- Ease of formation
- Complete control and freedom over business
- No sharing profits

Cons

- Full personal liability
- Hard to raise money



DBA (Doing Business As) AKA FICTITIOUS NAME FILING



- Allows an individuals to call themselves by another legal name
- Provides no legal protection as to the name (i.e., it is not a trademark)

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General Partnership

What is it?

- Two or more people carrying on as a business for profit

How formed?

- Informally - sharing profits or behaving together as business owners
- Semi-formally - written partnership agreement

Pros

- Ease of formation
- Shared management and responsibility

Cons

- Unlimited personal liability
- Liable for the acts of both the partners & the partnership
- Tough to raise capital from investors due to informal nature



LIMITED PARTNERSHIP

What is it?

- Like a general partnership but with limitation of liability only for a certain class of partners

How formed?

- File Certificate of Limited Partnership with Department of State
 - Publication in 2 newspapers for 6 consecutive weeks
- Partnership agreement



Pros

- Limited liability for limited partners (non-managing partners; investors)



Cons

- Unlimited liability for general partners (managers)
- If limited partners manage, liability attaches
- Formal filing requirements

LIMITED LIABILITY PARTNERSHIP (LLP)



What is it?

- A more-formal general partnership with limitations on liability for all partners



How is it formed?

- Requires a written partnership agreement
- File Certificate of Registration with Dept of State
- Publication requirement



Pros

- All partners can participate in management
- Limited liability
 - Not liable for negligence of other partners
- Flexible



Cons

- Annual filing requirements
- Sometimes malpractice insurance is required



LIMITED LIABILITY COMPANY (LLC)

WHAT IT IS?

- Hybrid corporation and partnership
- Members own and manage
 - Membership interest vs stock

HOW FORMED?

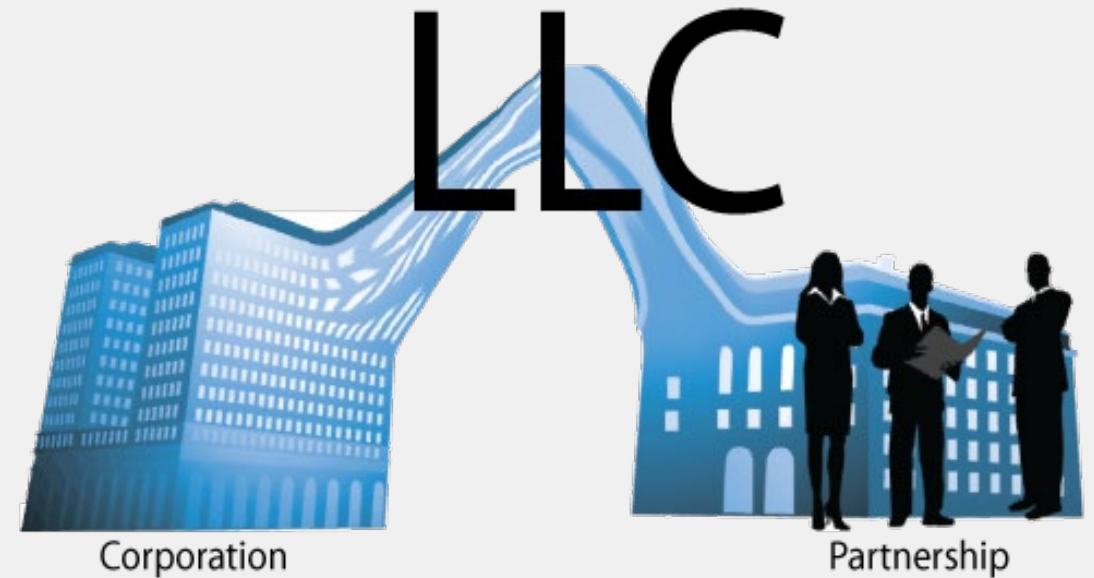
- File Articles of Organization with Dept of State
- Publication requirement
- Operating Agreement

PROS

- Limitation on liability like a corporation
- Highly flexible
- Less statutory oversight than a corporation

CONS

- Formation is more expensive and involved
- Requires continued biennial filing with Department of State
- Raising money



LLC: MEMBERS MANAGED V. MANAGER MANAGED

MEMBER MANAGED

- Members are the owners and operators
- Any member can make business decisions for the company (pursuant to the operating agreement)

MANAGER MANAGED

- Members appoint Managers
- Managers make business decisions for the company (pursuant to the operating agreement)

C-Corporation

What is it?

- A separate legal entity (like the other entities discussed, can sue, be sued, enter contracts, etc.)
 - Entity is a corporation. The “C” is the tax classification
- Owned by stockholders and “guided” by board of directors

How formed?

- Filing certificate of incorporation with the Department of State
- By-laws govern how the corporation operates (meetings, notices for meetings, director election and duties, officer appointment and duties)
- Shareholder agreement (transferability and valuation of shares)

Pros

- Limited liability
- Ease of raising capital

Cons

- Record keeping
- Heavily regulated (meetings with notice requirements)
 - Securities and Exchange Commission and New York law



CORPORATE STRUCTURE

- Shareholders are the actual owners of the Corporation
- Shareholders elect a board of directors who guide the Company and appoint Officers
- Officers run day to day operations

- Shareholders



- Board of Directors



- Officers (President, VP, Treasurer, CFO)

S-Corp

What is it?

- A tax election that a corporation or a LLC can make

Restrictions

- Less than 100 stockholders
- Must all be human beings and U.S. citizens
- One class of stock only (can have voting and non-voting shares; cannot have preferred and non-preferred shares)

Pros

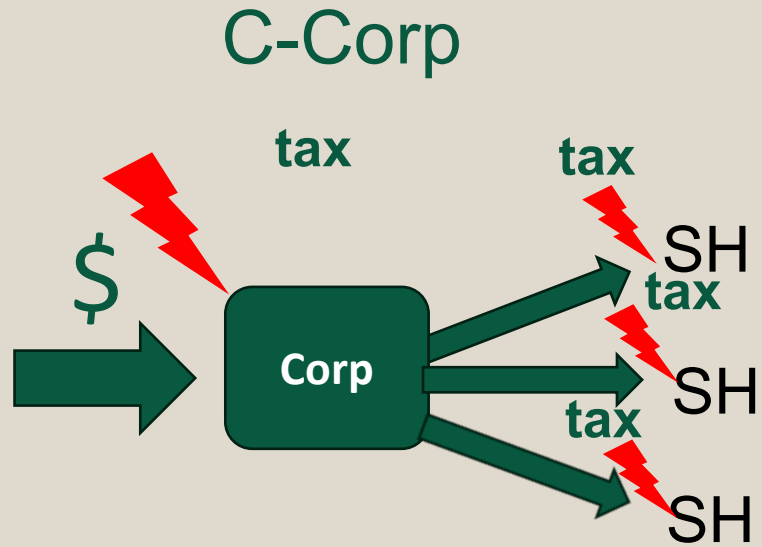
- Tax benefits (single tax; reasonable salary to the owners; no self-employment tax)

Cons

- Can't be publicly traded
- Shareholder eligibility limitations and restrictions

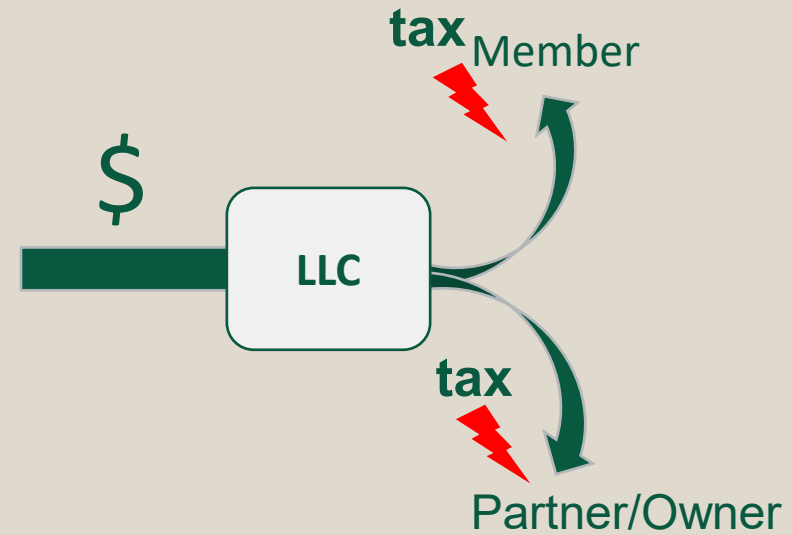


TAXATION OF ENTITIES



Double taxation

S-Corp, LLC, Partnership



Flow-through

PROFESSIONS AND RESTRICTIONS

- Certain Professions must have “Professional” companies (i.e., attorneys; accountants; medical providers; architects; engineers; land surveyors; licensed social worker; etc.)
- Restricted Professionals generally cannot insulate themselves from professional negligence/malpractice

RESTRICTED

ISSUES WITH NAMES AND LOGOS INTELLECTUAL PROPERTY



- No two companies may register with a Secretary of State with identical names
- First in Time, First in Right – but not always
- Your corporate registration is not a trademark!

STRUCTURE DOCUMENTS

- Operating Agreement (LLCs)
- Bylaws & Shareholders' Agreement/Buy-Sell Agreement (Corporations)
- Partnership Agreements
- How do owners get paid? When do they get paid?
- What actions require votes? What do not?
- What actions can have you removed as an owner? Can you be?
- Can owners sell their shares to anyone?
- What happens if an owner dies?

PROFESSIONAL NETWORK

- **Accountants**
- **Insurance agents**
- **Bankers**
- **Lawyers**



Visualize Your Business



THANK YOU

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