

Controlling Legal Risk: Business Formation, Taxes and Intellectual Property

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AGENDA

- I. Business Formation and Taxes**
- II. Intellectual Property Rights**
- III. Business Agreements among Owners**
- IV. Doing Business in Foreign Countries**
- V. Operational Issues**

First of All...

Business Structure Matters

- **Risk** - Limiting liability
- **Finance** - Raising capital and tax considerations
- **Control** - Who controls the business?
- **Equity** - Who owns the equity?
- **Continuity** - Transferring ownership

Business Structure Matters

Resources

- Useful Resources
 - Delaware Secretary of State (www.corp.delaware.gov)
 - United States Small Business Administration (www.sba.gov)
 - Internal Revenue Service (www.irs.gov)
 - Local Chamber of Commerce
 - U.S. Patent and Trademark Office (www.uspto.gov)
- Attorney, Accountant and Banker as Strategic Advisor

I. Business Formation and Taxes

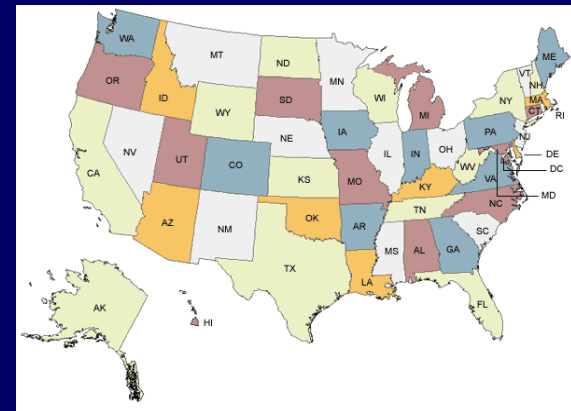
Legal and Tax Aspects of Choice of Entity

- Corporation
- Limited Liability Company
- Limited Partnership
- General Partnership
- Sole Proprietorship
- Domestic or Foreign Jurisdiction



Corporation In General

- Creature of state law.
- A distinct legal entity recognized under the law of every state.




Corporation Characteristics

- Limited Liability
- Continuity of Existence
- Centralized Management
- Free Transferability of Shares

Corporation Characteristic: Limited Liability

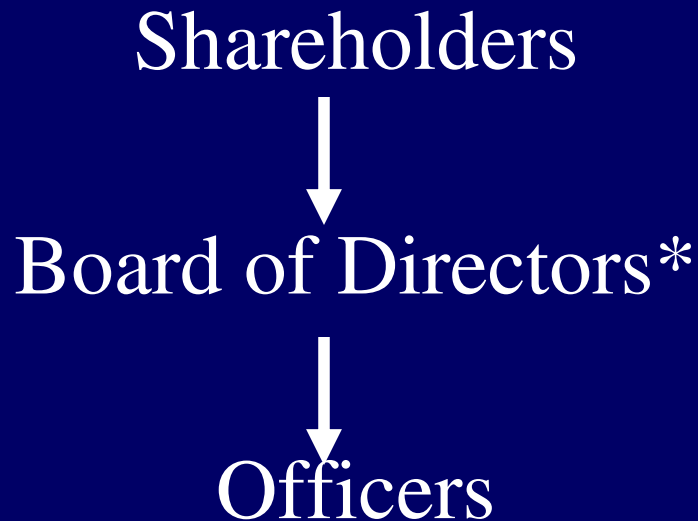
- Separate Legal Identity from Shareholders
 - May sue, be sued
 - May own property, make contracts, pay taxes, have its own employees, responsibilities, liabilities
- Risk of Loss to Shareholder
 - Limited to the capital invested
 - But... Watch Out!
 - “Pierce the Corporate Veil”

Corporation Characteristic: Continuity



Unless limited by the
Certificate of
Incorporation, a
Corporation's life is
Perpetual.

Corporation Characteristic: Centralized Management

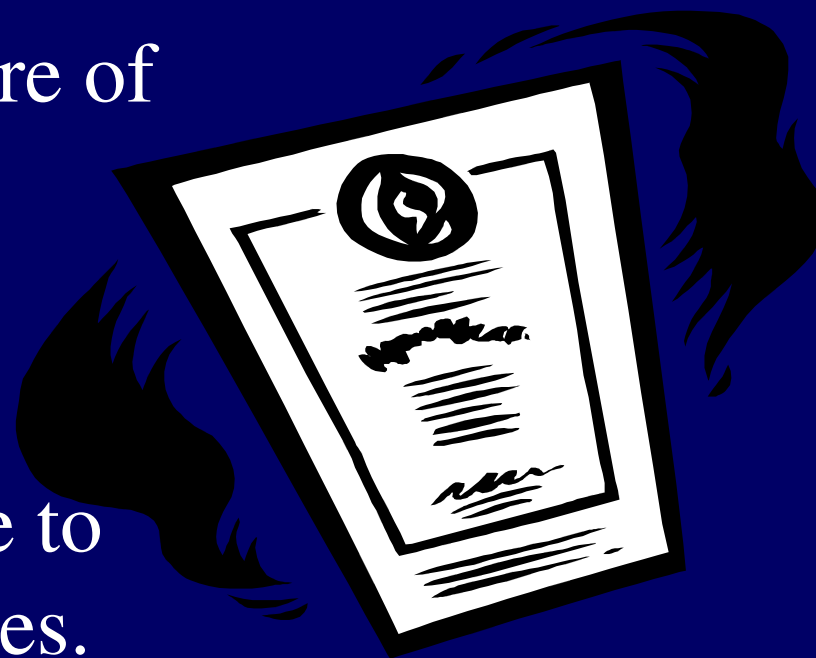


*Close corporations may elect not to have a Board of Directors.



Corporation Characteristic: Free Transferability of Shares

- Ownership in a Corporation is represented by a share of stock.
- Shares can be freely transferred to others.
- Shareholders can agree to restrict transfer of shares.



Corporation: Incorporation Process

- Check Name Availability
 - include “Company”, “Co.”, “Corporation”, “Corp.”, “Incorporated”, or “Inc.”
- File “Certificate of Incorporation” with Delaware Secretary of State (incl. statutory agent)
- Apply to IRS for Employer ID Number - Form SS-4





Delaware Certificate of Incorporation

STATE of DELAWARE
 CERTIFICATE of INCORPORATION
 A STOCK CORPORATION
 Of

- **First:** The name of this Corporation is _____
- **Second:** Its Registered Office in the State of Delaware is to be located at _____
 _____ (street), in the City of _____
 _____ County of _____ Zip Code _____
 The name of the registered agent is _____
- **Third:** The nature of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.
- **Fourth:** The amount of the total stock of this corporation is authorized to issue is _____ shares (number of authorized shares) with par value of _____ per share.
- **Fifth:** The name and mailing address of the incorporator are as follows:
 Name _____
 Mailing Address _____
 _____ Zip Code _____
- **I, the Undersigned,** for the purpose of forming a corporation under the laws of the State of Delaware, do make, file and record this Certificate, and do certify that the facts herein stated are true, and I have accordingly hereunto set my hand this _____ day of _____, 20__.

BY: _____
 (Incorporator)

NAME: _____
 (Type or Print)

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STATE of DELAWARE
 CERTIFICATE of INCORPORATION
 A CLOSE CORPORATION
 Of

 (Name of Corporation)

- **First:** The name of this Corporation is _____
- **Second:** Its Registered Office in the State of Delaware is to be located at _____
 _____ (street), in the City of _____
 _____ County of _____ Zip Code _____
 The name of the registered agent is _____
- **Third:** The nature of business and the objects and purposes proposed to be transacted, promoted and carried on, are to engage in any lawful act of activity for which corporations may be organized under the General Corporation Law of Delaware.
- **Fourth:** The amount of the total stock of this corporation is authorized to issue is _____ shares (number of authorized shares) with par value of _____ per share.
- **Fifth:** The name and mailing address of the incorporator are as follows:
 Name _____
 Mailing Address _____
 _____ Zip Code _____
- **Sixth:** All of the corporation's issued stock, exclusive of treasury shares, shall be held of record by not more than thirty (30) persons.
- **Seventh:** All of the issued stock of all classes shall be subject to one or more of the restrictions on transfer permitted by Section 202 of the General Corporation Law.
- **Eighth:** The corporation shall make no offering of any of its stock of any class which would constitute a "public offering" within the meaning of the United States Securities Act of 1933, as it may be amended from time to time.
- **I, the Undersigned,** for the purpose of forming a corporation under the laws of the State of Delaware, do make, file and record this Certificate, and do certify that the facts herein stated are true, and I have accordingly hereunto set my hand this _____ day of _____, 20__.

BY: _____
 (Incorporator)

NAME: _____
 (Type or Print)

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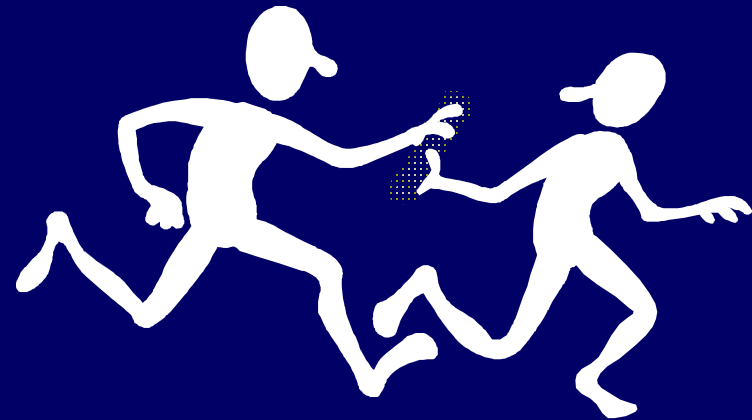
Form SS-4 (Rev. January 2010) Department of the Treasury Internal Revenue Service		Application for Employer Identification Number (For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.) ▶ See separate instructions for each line. ▶ Keep a copy for your records.		OMB No. 1545-0003	
				EIN	
Type or print clearly.	1 Legal name of entity (or individual) for whom the EIN is being requested				
	2 Trade name of business (if different from name on line 1)		3 Executor, administrator, trustee, "care of" name		
	4a Mailing address (room, apt., suite no. and street, or P.O. box)		5a Street address (if different) (Do not enter a P.O. box.)		
	4b City, state, and ZIP code (if foreign, see instructions)		5b City, state, and ZIP code (if foreign, see instructions)		
	6 County and state where principal business is located				
	7a Name of responsible party			7b SSN, TIN, or EIN	
	8a Is this application for a limited liability company (LLC) (or a foreign equivalent)? <input type="checkbox"/> Yes <input type="checkbox"/> No			8b If 8a is "Yes," enter the number of LLC members <input type="checkbox"/> ▶	
	8c If 8a is "Yes," was the LLC organized in the United States? <input type="checkbox"/> Yes <input type="checkbox"/> No				
	9a Type of entity (check only one box). Caution: If 8a is "Yes," see the instructions for the correct box to check.				
	<input type="checkbox"/> Sole proprietor (SSN) _____ <input type="checkbox"/> Estate (SSN of decedent) _____ <input type="checkbox"/> Partnership <input type="checkbox"/> Plan administrator (TIN) _____ <input type="checkbox"/> Corporation (enter form number to be filed) ▶ _____ <input type="checkbox"/> Trust (TIN of grantor) _____ <input type="checkbox"/> Personal service corporation <input type="checkbox"/> National Guard <input type="checkbox"/> State/local government <input type="checkbox"/> Church or church-controlled organization <input type="checkbox"/> Farmers' cooperative <input type="checkbox"/> Federal government/military <input type="checkbox"/> Other nonprofit organization (specify) ▶ _____ <input type="checkbox"/> REMIC <input type="checkbox"/> Indian tribal governments/enterprises <input type="checkbox"/> Other (specify) ▶ _____ <input type="checkbox"/> Group Exemption Number (GEN) if any ▶ _____				
9b If a corporation, name the state or foreign country (if applicable) where incorporated		State	Foreign country		
10 Reason for applying (check only one box)					
<input type="checkbox"/> Started new business (specify type) ▶ _____ <input type="checkbox"/> Banking purpose (specify purpose) ▶ _____ <input type="checkbox"/> Hired employees (Check the box and see line 13.) <input type="checkbox"/> Changed type of organization (specify new type) ▶ _____ <input type="checkbox"/> Compliance with IRS withholding regulations <input type="checkbox"/> Purchased going business <input type="checkbox"/> Other (specify) ▶ _____ <input type="checkbox"/> Created a trust (specify type) ▶ _____ <input type="checkbox"/> Created a pension plan (specify type) ▶ _____					
11 Date business started or acquired (month, day, year). See instructions.		12 Closing month of accounting year			
13 Highest number of employees expected in the next 12 months (enter -0- if none). If no employees expected, skip line 14.		14 If you expect your employment tax liability to be \$1,000 or less in a full calendar year and want to file Form 944 annually instead of Forms 941 quarterly, check here. (Your employment tax liability generally will be \$1,000 or less if you expect to pay \$4,000 or less in total wages.) If you do not check this box, you must file Form 941 for every quarter. <input type="checkbox"/>			
		Agricultural	Household	Other	
15 First date wages or annuities were paid (month, day, year). Note: If applicant is a withholding agent, enter date income will first be paid to nonresident alien (month, day, year) _____ ▶					
16 Check one box that best describes the principal activity of your business.					
<input type="checkbox"/> Construction <input type="checkbox"/> Rental & leasing <input type="checkbox"/> Transportation & warehousing <input type="checkbox"/> Health care & social assistance <input type="checkbox"/> Wholesale-agent/broker <input type="checkbox"/> Real estate <input type="checkbox"/> Manufacturing <input type="checkbox"/> Finance & insurance <input type="checkbox"/> Other (specify) _____ <input type="checkbox"/> Accommodation & food service <input type="checkbox"/> Wholesale-other <input type="checkbox"/> Retail					
17 Indicate principal line of merchandise sold, specific construction work done, products produced, or services provided.					
18 Has the applicant entity shown on line 1 ever applied for and received an EIN? <input type="checkbox"/> Yes <input type="checkbox"/> No					
If "Yes," write previous EIN here ▶ _____					
Complete this section only if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form.					
Third Party Designee	Designee's name		Designee's telephone number (include area code)		
	Address and ZIP code		Designee's fax number (include area code)		
Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief it is true, correct, and complete.		Applicant's telephone number (include area code)			
Name and title (type or print clearly) ▶		Applicant's fax number (include area code)			
Signature ▶		Date ▶			
For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 10055N Form SS-4 (Rev. 1-2010)					

Incorporation Process

- Apply for workers' compensation, unemployment, sales tax, and other necessary licenses or permits
- Corporate Formalities
 - Adopt Bylaws
 - Elect Directors and Officers
 - Issue Stock Certificates
 - Sign banking account resolutions and signature cards

Incorporation Process: Compliance with Securities Laws

- Securities law compliance is required for all stock transactions.
 - Federal and state laws.
 - Exemptions
 - Accredited Investors
 - Private Placement
 - Public Offering
 - Disclosure, disclosure, disclosure...



Describing Corporations

- Regular (“C”) Corporation
- “S” Corporation
- “Close” Corporation
- Professional Corporation
- Non-Profit Corporation

Regular (“C”) Corporation

- *Separate Entity* – Treated as a separate entity under corporate law and for IRS purposes.
- *There’s History* - Large body of case law for corporations; therefore more guidance in decision-making.
- *Capital Structure Flexibility* - Ability to create different classes of stock containing varied distribution and voting rights.



Regular (“C”) Corporation

Disadvantages

- *Double Taxation* - A C-corp is subject to corporate income tax on its profits, and its shareholders are taxed on any dividends at capital gain rates of 15%.
- Beginning in 2013, dividends are taxed as ordinary income at rates up to 39.6%.
- Rates can go higher if Congress needs more \$\$\$.

United States Tax System (A Very Simple Example)

C-Corporation	2011	2013
Income	200,000	200,000
Corporate Tax	(61,250)	(61,250)
Net Profit	138,750	138,750
Dividends to Owners	138,750	138,750
Personal Income Tax 2011 rate = 15% 2013 rate = ordinary	20,813	29,291
Net to Owners	117,937	109,459

Subchapter “S” Corporation

- *Subchapter S Election* - File IRS Form 2553, all shareholders must consent.
- *“Pass-Through” Entity* - No Double Taxation!

United States Tax System (A Very Simple Example)

(2011 Tax Rates)	C-Corp	S-Corp
Income	200,000	200,000
Corporate Tax	(61,250)	-0-
Net Profit	138,750	200,000
Dividends to Owner A	69,375	100,000
Owner B	69,375	100,000
Personal Income Tax	(20,813)	(44,244)
Net to Owners	117,937	155,756

Subchapter “S” Corporation

- *Same Limited Liability as a C-Corp - A Subchapter S corporation conducts business as a corporation, including the same limited liability, but is taxed in the same manner as a partnership.*

Subchapter “S” Corporation

Disadvantages

- *One Class of Stock* - must be individuals (but, no non-resident aliens), qualified trusts and estates
 - otherwise you lose your S election
 - must wait 5 years to apply again if you lose the election
- *Voting and Non-Voting Common Stock is Allowed.*
- *No More than 100 Shareholders.*

Other Types of Corporations:

Professional Corporations

- *For “Professionals”* - Allows Doctors, Lawyers, Accountants and certain other certain licensed professionals to incorporate (see statute).
- *Still Watch for Malpractice!* - Does not absolve a professional for personal liability for own negligence/malpractice.
- *Get Tax Benefits Too* - Can elect to be a Subchapter S Corporation.
- *Also Available to Professionals* – LLCs, LLPs

Other Types of Corporations:

Close Corporations

- *Statutory* - Governed by Section 341-356 of Delaware Corporation Law.
- Close Corporation Charter allows shareholders to act in lieu of directors, restrict transfer of shares, and generally allows the corporation to operate without corporate formalities—be careful!

Other Types of Corporations: Non-Profit Corporations

- *Purpose* - Allows people to form an organization for charitable and other specific purposes (such as a trade association or labor union).
 - Tax-exempt
 - Contributions may be deductible if charitable
- *Can Make a Profit* - but it must be reinvested for the purpose of the organization!
- *501(c)(3) or (6)* - Most Common Tax Exemptions

Other Types of Corporations: Non-Profit Corporations (Contd.)

- *Similar Formation* - Formation is similar to that of a For-Profit Corporation
 - Must file “Certificate of Incorporation” (incl. Statutory agent)
 - Bylaws
 - Elect Board of Directors/Trustees/Officers
- *IRS Paperwork* – Must file IRS Form 1023 to determine charitable status

Limited Liability Companies (LLC) - In General

- Every State has LLCs
- State laws provide certain default rules, however, an LLC can be highly creative form of business organization.
- *Limited Liability* - Just like a Corporation.
- *Being Single is OK* - Single member LLCs are permitted.
- *Separate Legal Identity* - Just like a Corporation.

LLC Characteristic: Formation

- Name Availability Check
 - Include “Limited Liability Company”, L.L.C., or “LLC”.
- File “Certificate of Formation” with the Delaware Secretary of State (incl. statutory agent)
- Single Member LLC: Written Declaration
- More than One Member: LLC Agreement
- Apply to IRS for Employer ID Number – Form SS-4

LLC Certificate of Formation

STATE of DELAWARE
LIMITED LIABILITY COMPANY
CERTIFICATE of FORMATION

- **First:** The name of Limited Liability Company is _____

- **Second:** Its Registered Office in the State of Delaware is to be located at _____
_____ (street), in the City of _____
_____ County of _____ Zip Code _____
The name of the registered agent is _____
- **Third:** (Use this paragraph only if the company is to have a specific effective date of dissolution: "The latest date on which the Limited Liability Company is to dissolve is _____.")
- **Fourth:** (Insert any other matters the members determine to include herein).

- **Fifth:** The name and mailing address of the incorporator are as follows:
Name _____
Mailing Address _____ Zip Code _____

In Witness Whereof, the undersigned have executed this Certificate of Formation this ____ day of _____, 20____.

BY: _____
Authorized Person(s)

NAME: _____
(Type or Print)

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LLC Characteristic: Formation

- Apply for workers' compensation, unemployment, sales tax, and other necessary licenses or permits
- Organizational Formalities
 - Negotiate and execute an LLC Agreement
 - Sign banking account resolutions and signature cards

LLC Characteristic: Management

- Interests represented by “Units”
- Management by “Members” or by designated “Managers”
- Corporate style with a “Board of Directors” and “Officers” is permitted

LLC Characteristic: Tax Considerations

- Typically structured like a Partnership for tax purposes (i.e. “pass-through taxation”), however, may elect to be taxed as a corporation.
 - The LLC’s gains, losses, income, deductions, credits and other tax items flow through to Members *pro rata* or by agreement.

United States Tax System (A Very Simple Example)

	C-Corp	S-Corp	LLC
Income	200,000	200,000	200,000
Corporate Tax	(61,250)	0	0
Net Profit	138,750	200,000	200,000
Dividends to Owner A	69,375	100,000	150,000
Owner B	69,375	100,000	50,000
Personal Income Tax * = 15% Dividend Rate ** = Ordinary Rate	20,813*	44,244**	44,244**
Net to Owners	117,937	155,756	155,756

LLC Common Characteristics: Securities Laws and Transfers

- Membership Units in LLCs are securities so be aware of the need to comply with State and Federal Securities Laws
- Transfers of Membership Units Covered by the LLC Agreement
 - Can transfer Economic Rights only,
 - Can transfer Membership (Voting Rights)

LLC Disadvantages

- Some Legal History on LLCs (but some gaps v. corporate law).
- High dependency on solid internal governing documents (i.e. the LLC Agreement) and state statutes.
- Are Arthur Andersen LLC members personally liable for the Enron scandal?

Limited Partnership

- *Two Classes of Partners:*
 - General Partners - NO limited liability
 - Limited Partners - Limited liability
- *General Partner(s)*
 - Handles Day-to-Day Business Operations and Decisions-Making
- *Limited Partners*
 - Passive Investors
 - Stay out of Day-to-Day Business
 - Hire General Manager

Limited Partnership Formation

- Why Form an LP?
- Must file a “Certificate of Limited Partnership” with the Delaware Secretary of State
- Name must include: “Limited Partnership”, “L.P.”, or “Ltd.”
- Limited Partnership Agreement

Limited Partnership

Economics and Taxation

- Sharing of Profits and Losses as Agreed by the Partners or based on capital contributions if no agreement.
- Business earnings are reflected on the Partner's personal tax return.

Limited Partnership Securities Laws

- Limited Partnership Interests are securities, so compliance with state and federal securities laws is required.
- Must have an exemption or register the securities before any offer and sale.

General Partnership

- More than One Person + For Profit = General Partnership
- *No Limited Liability* - Used when participants unconcerned about potential liabilities, want control prerogatives.
- *GP or LLC?* - Now more common to use LLC instead of General Partnership.

General Partnership Formation

- Two or more persons to carry on a business for profit.
- No filings with the state, unless you want to use a trade or fictitious name.
- Partnership Agreement
 - oral or written



General Partnership Economics and Taxation

- Profits and Losses allocated per the Partnership Agreement or based on Capital Contributions.
- Business Earnings are reflected on partners' personal tax returns.

General Partnership Liability and Management

- Partners are jointly or jointly and severally liable for all business obligations.
- Each partner has the power to bind the partnership in the ordinary course, and broader power if authorized by the other partners.
- Each partner is an agent of the other.

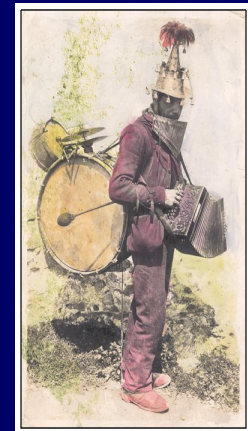
General Partnership

Continuity and Transferability

- Any partner can dissolve the partnership at any time.
- Dissolution at the death of a partner (unless otherwise agreed by the other partners)

Sole Proprietorship

- *“One Man Band”* that does not incorporate or organize.
- *No Formalities - No Organization Formalities and No Name Requirements.*
 - May want a fictitious or trade name.
- *Full Personal Liability - for Business Obligations.*
- *Full Management Authority.*
- *Business Earnings Reflected on Personal Tax Return.*
- *Business Life is the Life of the Owner.*



“Doing Business” in another State

- What if you want to do business in other states?
 - Must the business pay or collect out of state taxes?
- You must apply with that state to be a Foreign Corporation / LLC / or LP if:
 - Recurring contacts
 - You have Employees in that state
 - You have an office in that state
- NOT applicable for General Partnerships and Sole Proprietors.

II. Intellectual Property Rights

- A. Patents
- B. Trademarks
- C. Copyrights
- D. Trade Secrets/ Know-how
- E. Confidentiality and Non-Competition





United States Patent and Trademark Office

An Agency of the Department of Commerce

A. Patent

Definition: The right to exclude others from making, using or selling the invention in the U.S.

Utility Patent – A new and useful invention

Design Patent – Unique visual/ornamental

Plant Patent – Unique genetic makeup which can be duplicated via asexual reproduction

- Patent must be filed within 12 months of first sale, public use or publication.
- Provisional Patent – One year to decide
- Utility and Plant patents – 20 years
- Design Patent – 14 years
- Patent becomes a public document
- Patent holder must enforce patent rights
- **PATENT SEARCH A MUST**, to be sure



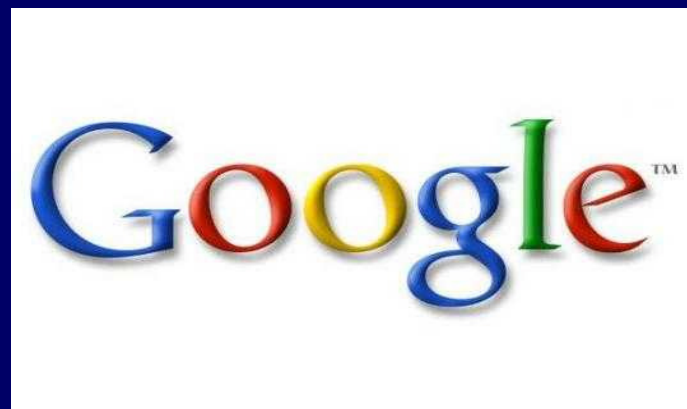
B. Trademark



Definition: Words, names, symbols, sounds or colors that distinguish goods and services from those manufactured or sold by others and to indicate the source of the goods.



Trademark can be renewed forever, but it will lapse if it is not used and/or defended.



Trademark Symbols:

™ Unregistered Trademark

® Registered Trademark

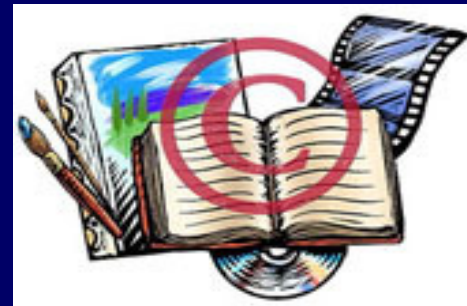


C. Copyright

Definition: Right granted to protect original literary, artistic and other creative works, including right to copy, distribute and adapt the work.

© Symbol denotes automatic copyright.

Term extends through author's life plus 70 years.



D. Trade Secrets and Know-how

Definition: Information that is kept secret to provide an advantage over competitors; knowledge of “how to” that is not generally available to the public.

- The “Coca Cola” Formula
- No expiration date, but must keep the secret from being divulged to the public.

E. Confidentiality and Non-Competition

Definition:

1. Contract with “receiving party” that all proprietary information is to be kept “confidential”.

2. Contract with “receiving party” not to use the confidential information to compete with the “disclosing party” for a specified time in a specified territory.

- Restrictions must be reasonable.
- Injunctive remedies are available to stop disclosure and prohibited competition.

III. Business Agreements Among Owners



- Shareholder Agreements
- Limited Liability Company Agreements
- Close Corporation Agreements
- Partnership Agreements
 - Limited Partnerships and General Partnerships.
- Employment Agreements (Confidentiality and Non-Competition)

Shareholder Agreements

- Used for Corporations, but the provisions of Shareholder Agreements are often used in LLC Agreements



Shareholder Agreements

Common Provisions

- Voting Rights
- Rights of First Refusal
- Drag Along and Tag Along Provisions
- Provide instructions in the event of a Shareholder's death, disability, retirement, divorce, bankruptcy

Shareholder Agreements

Common Provisions (Contd.)

- Life and Disability Insurance
- Employment Contracts
- Confidentiality and Noncompetition Restrictions
- Intellectual Property
- Valuation of Shares
- Dispute Resolution
- Liquidity Events
- Incentive Compensation of Key Employees

Family Business Issues

- Who votes the shares?
 - Voting and non voting stock
- Who owns the future equity growth?
- Can gift and estate taxes be minimized?
- Liquidity planning



IV. “Doing Business” in another Country



- Choice of U.S. or foreign entity or branch,
- Trade issues: GATT, NAFTA, Tax treaties,
- Commerce
 - Letters of credit, shipping, insurance and assuring payment
- Banking relationships are critical
- Intellectual property protection varies from country to country

Option 1—Create your own entity

- Wholly owned foreign subsidiary
- “Effectively connected” branch office
- “In Country” management is very important
- “Transfer Pricing” and repatriating \$\$\$ to US are key issues

Option 2—Joint Venture

- JV with a foreign partner creates vested interest in your success (built in expertise)

Option 3—Contract Manufacturing or Service

- Primary concern is terms of commerce, export import regulations, delivery and quality
- Intellectual property is very much “at risk”

Tax Treaty Issues

- US taxation of worldwide income = incentive to set up foreign subsidiaries
- Avoid double taxation in US and foreign country
- Reduce tax rates on dividends, interest, royalties and other passive income

V. Operational Issues



- Accounting
- Taxes, including Payroll Taxes
- General Liability and Property Insurance
- Employment
- Intellectual Property
- ISO 9000
- Environmental
- Other Regulatory Agencies

Accounting and Standard Forms



- Operating Reports
- Internal Monthly Statements
- Annual CPA Statements
 - Compile, review or audit
- Compliance with Bank Covenants
 - Working capital, debt to equity, debt service coverage
- “Standard” Forms
 - Customer Invoices, purchase orders, quotations
 - Terms and conditions

Insurance



- ***Property*** – replacement value, co-insurance
 - Broad form coverage
 - Deductibles
- ***General Liability*** (with umbrella)
 - “Slip and Fall” coverage for negligence, libel, slander
- ***Business Interruption***
 - Gross or net income protection during business shut-down.
- ***Product Liability*** – when customers get hurt
- ***Errors and Omissions*** – When officers make mistakes

Insurance (contd.)

- *Directors Liability*
- *Employee Claims*
 - Federal and state statutory claims due to discrimination, workplace issues, FMLA, worker's compensation
“gap” coverage
- *Vehicles*
 - Employee's use of their own car for company purposes
- *Environmental*
 - Accidental “releases” into the environment

Insurance (contd.)

- Find a Good Agent!
- Keep old policies forever.
- Obtain certificates of insurance from suppliers and/or customers.

Taxes

- Payroll Tax
 - Withholding = Personal Liability of “Responsible Persons”
- Social Security and Medicare
- Unemployment Tax (state and federal)
- Sales Tax
- Franchise Tax
- Income Tax
- Multi-state tax compliance

Employment Law Issues

- Employment Agreements
- OSHA
- FMLA
- Worker's Compensation
- Health Insurance
- Hiring and Firing Policies
- Sexual Harassment and Discrimination Policy
- Labor Agreements
- Confidentiality, Non-Compete and Non-Solicitation

Sarbanes-Oxley: What Has Changed?



- CEO and CFO must swear to financial statement accuracy
- Focus on Independence of Board and Audit committee
- Audit Committee must disclose financial expertise
- Limit on non-audit services
- Whistleblower process
- No officer/director loans
- Jail time for tampering with records
- Code of ethics for Senior officers

Questions?

Frank P. Nagorney, Esq.



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