

BL Speer & Associates
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Business and Law of Creativity

National League of
American Pen Women, Inc.
Pikes Peak Branch

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DISCLAIMER!

- This may be boring
- You may not learn anything
- If you learn something, it'll probably be enough to make you dangerous
- This is **NOT** legal advice

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BUSINESS

What?
Carrying on an activity for **Profit**

Topics

- Entities
- Taxes
- Insurance
- Contracts
- Other

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LEGAL ENTITIES

- **No liability protection for principals**
 - Sole Proprietorship
 - General Partnership
- **Liability protection for principals**
 - Limited Partnership(s)
 - Corporation
 - Limited Liability Company

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Sole Proprietorship

What?
an **individual**, or sometimes a husband and wife, carrying on a **business for profit**

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Sole Proprietorship...

Advantages

- Easy to organize
- Less reporting
- No double tax
- Freedom of action

Disadvantages

- Unlimited liability
- Fewer tax benefits
- Termination on death of owner
- Limited ability to raise capital

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General Partnership

What?

an association of **two or more persons** to carry on as co-owners a **business for profit**

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General Partnership...

Advantages

- Few formalities
- Combination of resources & talents
- No double tax

Disadvantages

- Unlimited liability
- Power of each partner
- Dissolution upon death of a partner
- Partnership profits taxed as income to partners
- Managing relationships between partners

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Limited Partnership

What?

an association of **two or more persons or entities** to carry on as co-owners a business for profit; wherein at least **one partner** is a **General Partner**

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Limited Partnership...

Advantages

- General partners have additional capital
- Limited partners have limited liability
- Allocation of income and losses
- Avoids double tax
- Finite existence

Disadvantages

- Limited partners have no control
- Initial organization cost
- Partnership profits taxed as income to partners
- Compliance with state and federal securities laws

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Corporation

What?

an **organization** formed with state governmental approval to act as an **artificial person** to carry on **business for profit**

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Corporation (C corp)

Advantages

- Limited liability of shareholders
- Perpetual existence
- Flexibility of financing through outside investors
- Transfer of ownership by sale/gift of stock
- Well-accepted form of doing business

Disadvantages

- Initial organization cost
- Annual reporting requirement
- Double taxation

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Corporation (S corp)

Advantages

- Same as for C-Corporation
- Taxed at the individual shareholder level

Disadvantages

- Except for the tax consequences, same as for C-Corporation
- With minor exceptions, ONLY INDIVIDUALS can be shareholders
- Limited number of shareholders (<100)
- Limited to one class of stock
- Must use calendar year

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Limited Liability Company

What?

a hybrid legal entity that has both the characteristics of a corporation and of a partnership

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Limited Liability Company...

Advantages

- Limited liability with or without limits on management participation
- Flexible ownership and capital structure
- No double tax
- Allocation of tax benefits among members

Disadvantages

- Initial organization cost
- Transferability must be governed by buy/sell provisions

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ENTITY NAME

Formal name by which your entity (corporation, LLC, etc.) is registered with the state

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TRADE NAME

Name, *other than entity name*, under which entity *does business*; whose purpose is to trace back to the *true entity* (also registered with state)

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TAXES

Business Taxes

- Personal Income Tax
- Business Income Tax (non-pass through entity)
- Sales Tax
- Property Tax (personal and real)
- Business License Fees
- Payroll Taxes (Social Security employer match, unemployment)
- **Track Expenses!**

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Taxes...

Employee Taxes

- Payroll Taxes
 - Federal Income
 - State Income
 - Local Income (some jurisdictions)
 - Social Security (FICA)
 - Medicare

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INSURANCE

Home Coverage \neq Business Coverage

- General liability
- Product liability
- Business property
- Business interruption
- Automobile
- Employee dishonesty
- Workers Compensation

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CONTRACTS

- **DEFINITION:**
 - An agreement between two or more persons which creates an obligation to do or *not* to do a particular thing.

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Contracts...

- **ELEMENTS:**
 - Parties (who)
 - Offer & Acceptance (subject matter)
 - Consideration (value exchange)
 - Mutual Agreement (understanding)
 - Performance (who does what)

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Contracts ...

- Contract Types
 - Oral or Written
 - Unilateral or Bilateral
- Contract Statutes
 - Uniform Commercial Code

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Contracts ...

- **DO:**
 - Get it in *Writing*
 - Get it in *Advance*
 - Review Contract before Signing
 - Seek Professional *Advice*

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Contracts ...

- **DO NOT:**
 - Rely on a *form* blindly
 - Be an *uneducated* draftsman
 - Be too *cheap* to seek help
 - **Sign if you do not understand!**

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LICENSING

- **What?**
 - *Grant of Rights* in property

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Licensing...

- **Rights?**
 - *Own and use* for yourself
 - *Own and someone else uses*
 - *License*
 - *Sell and no ownership or use*
 - *Work for Hire*
 - *Commissioned Work*

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Licensing...

- **Terms?**
 - *Parties*
 - *Property Rights*
 - *Term*
 - *Territory*
 - *Transferability*
 - *Exclusivity*
 - *Quantity*
 - *Quality*
 - *Royalty*
 - *Remedies*
 - *Other*

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WORK MADE FOR HIRE

- **Work for Hire?**
 - **What?**
 - Term defined by statute
 - **Who?**
 - Parties
 - Employer and Employee
 - Employment relationship
 - Commissioner and Commissionee
 - In *writing beforehand*

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Work Made for Hire...

- **Works?**
 - *Contribution* to a Collective Work
 - Part of a *Motion Picture* or other *Audiovisual* Work
 - *Translation*
 - *Supplementary Work*
 - *Compilation*
 - *Instructional Text*
 - *Test*
 - *Answer Material* for a Test
 - *Atlas*

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Work Made for Hire...

- **Commissioned Work?**
 - **May** or **may not** fit within definition
 - **May** or **may not** transfer ownership
 - Effective ownership transfer
 - In writing
 - **Before work is done**, preferably
 - **May** or **may not** waive visual art rights

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OTHER

Home Business

- Zoning
- Covenants
- Home Occupation Ordinance
 - A **HOME OCCUPATION PERMIT** may be allowed in any residential zone **unless prohibited** by the subdivision and/or development **covenants**. There are regulations and **specific requirements** for home-based businesses with some types of occupations prohibited.

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Other...

Requirements

- **cannot disturb** or interfere with the quiet enjoyment of another's property
- **no outside employees** (those who do not reside on the premises)
- **delivery of merchandise is limited**
- **sign no greater than 2 square feet** and must be **attached** to the home

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Other...

Requirements

- conducted in an **enclosed** accessory structure
- **sales** on the property may only be made by the **residents**
- **no exterior alterations** or additions that are commercial in appearance
- **off-street parking** for the home must not be adversely impacted
- instruction to **no more than 3 persons** at a time

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Other...

Will

- Provide for **intellectual property assets** in your will
- Copyright term is for your **LIFE** plus **70 YEARS**

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QUESTIONS

- **ANSWERS**
 - The Answer to Life, the Universe and Everything is **"42"**
 - Douglas Adams, *Life, the Universe and Everything* (*Hitchhiker's Guide to the Galaxy* Trilogy)
 - **"It Depends"**
 - Universal legal answer

