



Where you want to do business

Legal Aspects of Starting a Business

Deciding what form of legal entity your business will take is an important decision. This will have an impact on the future of your business including your protection under the law, and the rules and regulations (for example, federal and state taxes) that will apply to you.

It is recommended that before you enter into any of these four forms of business that you contact an attorney, CPA, or other qualified individual. Speaking with someone informed about the legal entities of business will reduce the risk of mistakes in the business setup. You can probably do the necessary paperwork and procedures yourself, but it makes sense to leave it up to the professionals. Also, contact the Small Business Development Center for more information.

THERE ARE FOUR BASIC FORMS THAT A NEW BUSINESS CAN TAKE:

- Sole Proprietorship
- Partnership (General or Limited)
- Corporation (C or S)
- Limited Liability Company

A **Sole Proprietorship** is usually owned and operated by one person. Under the law, it is not actually considered a legal entity. It is instead considered an extension of the person who owns the business. This individual has sole ownership of assets, but is also solely liable for the debts of the business.

A **Partnership** can be formed in two ways. A general partnership is comprised of two or more individuals who join to start a business. Each person has proportional ownership of the business assets and proportional liability for business debts. Each person also has authority in running this business. A partnership agreement can be drawn up to alter each person's particular liability. However, despite this document, creditors may collect from each and every member of the partnership (this may include personal assets).

A **Limited Partnership** is made up of one or more general partners as well as one or more limited partners. Limited partners contribute capital and share in profits/losses. These limited partners, however, take no part in the running of the business and are not held liable for the organization's debts.

Whether taking part in a general or limited partnership, it is advisable that you draw up a partnership agreement. This document will detail each partner's rights and responsibilities. Partnerships are required to file both federal and state income tax. While the partnership is not typically taxed, each partner reflects charges for the partnership on his/her personal tax returns.

A Corporation is an entity, which must be approved by the State of Georgia through the Office of the Secretary of State. A corporation must file federal, state and local taxes on its operations. One advantage to a corporation is the protection from liability afforded to shareholders. However, when an organization is small, creditors may require personal guarantees of predominate owners. Another advantage to the corporation is the ease of raising capital through the sale of common or preferred stock. A disadvantage of the corporation is that the organization's income will essentially be taxed twice (once for the business and again on the shareholders personal income tax after collecting dividends). There are two types of corporations: C and S.

The C corporations have their own tax identification numbers and pay their own taxes. The S corporation is the opposite. It is not taxed as if it is a corporation at all. Instead it is taxed similarly to a partnership. Its gains and losses are reflected on the personal income tax of the shareholder. The S corporation does not provide protection from liability to its shareholders. (The distinctions between S and C corporations can be complicated. It is very important that you consult with someone who is knowledgeable on the subject before making a decision.)

In order to incorporate your business, contact the Office of the Secretary of State. You will then reserve your corporation name. The incorporation process must be completed within 90 days. The Office of the Secretary of State will instruct you in the completion of all documents needed. You will be required to pay an incorporation fee every year by April 1.

The Office of the Secretary of State

315 West Tower
2 Martin Luther King Jr., Drive
Atlanta GA 30334
(404) 656-2817
www.sos.state.ga.us

This incorporation process includes publishing your intent to incorporate in the local newspaper's legal publication. Newspapers do charge for this service. To publish your intent to incorporate, contact:

Franklin County Citizen
PO Box 580
Lavonia GA 30553
(706) 356-8557

An attorney can usually perform the necessary procedures for you for several hundred dollars. How much it will cost depends on the attorney and your business.

The **Limited Liability Company (LLC)** is one that is owned by two or more persons known as members. It is a mixture of other forms of organization. This form combines some of the partnership's, corporations, and S corporation's best features. Similarly to a corporation, you must reserve a name and file the articles of incorporation. You and your fellow members should write an operating agreement to control the conduct of the business.

An LLC shields the personal assets of members as if they were shareholders in a corporation. It also eliminates double taxation. Because and LLC is a somewhat new organizational form, it is unclear how the partnership tax rules will apply. You may not be able to conduct inter-state trade as an LLC. Many state and foreign governments have not yet approved this form. In addition, an LLC may not have a perpetual life. While this form of organization is gaining popularity, you must take great care in the establishment of an LLC to insure pass-through tax treatment.

Labor and Safety Regulation Information

The Georgia Department of Labor is available to provide consultation to new businesses in the state. The local and state departments offer educational seminars and presentations throughout the year. These classes cover a wide range of labor-related topics such as labor laws, labor issues, prevailing wages, unemployment insurance, benefits, and employment services. It would be advisable to contact the local Georgia Department of Labor (GDOL) office regarding these classes. These seminars are intended to provide you with all the information you need to prepare you for the employment aspects of running a business. You should begin these classes up to one year before your intended start-up. At these seminars you will be provided with a section of the instructional workbook. After attending a certain number of these seminars, you will have the entire workbook. The Georgia Department of Labor can help walk you through all of your employment and labor problems.

Georgia Department of Labor

Toccoa Career Center
112 N. Alexander Street
Toccoa GA 30577
(706) 282-4514

OSHA

The issuing and enforcing of occupational and safety health regulations is handled by the United States Department of Labor. The Occupational Safety and Health Administration (OSHA) is the federal agency which administers these policies. The requirements put forth by OSHA include posting notices to employees and maintaining accurate records of employee injuries. OSHA will provide you with information on all requirements as well as related publications. OSHA policies and regulations must be posted in the workspace where all employees may see.

In addition to OSHA the US government also supports the Employment Standards Administration, Mine Safety and Health Administration, Veterans Employment and Training Service and the Pension and Welfare Benefits Administration. Each of these departments is designed to protect both the employer and employee. Similar to OSHA, each issues and enforces a unique set of requirements and regulations.

Occupational Safety and Health Administration

U.S. Department of Labor

1375 Peachtree Street N.E. Suite 587

Atlanta GA

(404) 374-3573

www.osha.gov