

Selecting A Business Structure

Generally, businesses are created and operated in one of the following forms:

Sole proprietorship

The most common and the simplest form of business is the sole proprietorship. In a sole proprietorship, a single individual engages in a business activity without necessity of formal organization. If the business is conducted under an assumed name (a name other than the surname of the individual), then an assumed name certificate (commonly referred to as a DBA) should be filed with the office of the county clerk in the county where a business premise is maintained. If no business premise is maintained, then an assumed name certificate should be filed in all counties where business is conducted under the assumed name.

General partnership

A general partnership is created when two or more persons associate to carry on a business for profit. A partnership generally operates in accordance with a partnership agreement, but there is no requirement that the agreement be in writing and no state-filing requirement. If the business of the partnership is conducted under an assumed name (a name that does not include the surname of all of the partners), then an assumed name certificate (commonly referred to as a DBA) should be filed with the office of the county clerk in the county where a business premise is maintained. If no business premise is maintained, then an assumed name certificate should be filed in all counties where business is conducted under the assumed name.

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Corporation

A Texas corporation is created by filing a certificate of formation with the Texas Secretary of State. The Secretary of State provides a form that meets minimum state law requirements. Online filing of a certificate of formation is provided through SOSDirect.

A corporation is a legal person with the characteristics of limited liability, centralization of management, perpetual duration, and ease of transferability of ownership interests. The owners of a corporation are called "shareholders." The persons who manage the business and affairs of a corporation are called "directors." However, state corporate law does provide for shareholders to enter into shareholders' agreements to eliminate the directors and provide for shareholder management. Choosing the best management structure for your corporation is a decision you make with the advice of an attorney. The Secretary of State cannot assist you.

An "S" corporation is not a matter of state corporate law but rather a federal tax election. A for-profit corporation elects to be taxed as an "S" corporation by filing an election with the Internal Revenue Service. Please contact the IRS or competent tax counsel regarding the decision to be taxed as an "S" corporation and the requirements for filing the election. This is not a matter with which the Secretary of State may assist.

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Generally, businesses are created and operated in one of the following forms:

Limited Liability Company

A Texas limited liability company is created by filing a certificate of formation with the Texas Secretary of State. The Secretary of State provides a form that meets minimum state law requirements. Online filing of a certificate of formation is provided through SOSDirect.

The limited liability company (LLC) is not a partnership or a corporation but rather is a distinct type of entity that has the powers of both a corporation and a partnership. Depending on how the LLC is structured, it may be likened to a general partnership with limited liability, or to a limited partnership where all the owners are free to participate in management and all have limited liability, or to an "S" corporation without the ownership and tax restrictions imposed by the Internal Revenue Code. Unlike the partnership, where the key element is the individual, the essence of the limited liability company is the entity, requiring for its creation more formal requirements. ¹ William D. Bagley & Phillip P. Whynott, *The Limited Liability Company*, §2.10, (2d ed. 2d rev. James Publishing, 1995)

The owners of an LLC are called "members." A member can be an individual, partnership, corporation, trust, and any other legal or commercial entity. Generally, the liability of the members is limited to their investment and they may enjoy the pass-through tax treatment afforded to partners in a partnership. As a result of federal tax classification rules, an LLC can achieve both structural flexibility and favorable tax treatment. Nevertheless, persons contemplating forming an LLC are well advised to consult competent legal counsel.

A limited liability company can be managed by managers or by its members. The management structure must be stated in the certificate of formation. Management structure is a determination that is made by the LLC and its members. The Secretary of State cannot give advice about management structure.

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Generally, businesses are created and operated in one of the following forms:

Limited Partnership

A Texas limited partnership is a partnership formed by two or more persons and having one or more general partners and one or more limited partners. The limited partnership operates in accordance with a partnership agreement, written or oral, of the partners as to the affairs of the limited partnership and the conduct of its business. While the partnership agreement is not filed for public record, the limited partnership must file a certificate of formation with the Texas Secretary of State. The Secretary of State provides a form that meets minimum state law requirements. Online filing of the certificate of formation is provided through SOSDirect

Limited Liability Partnership

In order to limit the liability of its general partners, a general or limited partnership may opt to register as a limited liability partnership. The Secretary of State provides a form for registration as a limited liability partnership. Online filing of the registration is provided through SOSDirect.