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Business Structure (From Sole Proprietorship to Going Public)

Tony Kelbrat

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Just about the first thing you should consider before deciding to start or purchase a business or start one is the legal form you will be operating under. There are basically seven choices:

Sole proprietorship
Partnership
Limited partnership
Corporation.
Limited Liability Corporation
Co-operative.
Nonprofit organization.

Each has a number of advantages and disadvantages. Every state regulates these types of businesses in their own way. The Federal Trade Commission regulates franchises as well as the state governments.

The type of business you decide to form determines how simple or complex it will be to run, taxes you will pay, control of it and liability for the business from your personal assets.

Under all the major forms of business (sole proprietorship, partnership, corporation), wages and salaries paid to employees are subject to withholding of state and federal income taxes, Social Security (FICA) taxes, and unemployment taxes so there is no advantage to any one in terms of these issues.

Nolo Press (950 Parker St., Berkeley, CA 94710, 800-992-6656, nolo.com) publishes books about how to set up different manner of businesses. You might find such books at #346.73 at the library.

The following are some ideas to help you limit the possibility of business liability which comes down to:

1.) The government trashing you for nonpayment of taxes or some other violation of law.

2.) Getting in too deep with creditors.

3.) Doing something such that people sue you be it something as simple as mopping your floor and letting people walk across before it dries and someone slips, having a defective product that injures or hurts people or doing something to purposely deceive people for your profit like price goughing or deceptive company reports.

Firstly, think twice about the liabilities of operating without proper licenses and registrations. If you begin to advertise or are fortunate enough to make the news in some way, you will probably hear from a local official. You will pay with embarrassment, time and money if your business is not properly licensed.

Buy insurance. Get a prepaid legal services plan.

Have a distinct separation between personal assets and business assets. Use your business truck for work and your car for the home even if it means you can't deduct it as a business expense on taxes. Keep two accounts; one business and one personal.

With a sole proprietorship or a partnership, you as the individual and the business are one and the same which means creditors and litigants can go after your personal assets as well as your business so incorporating might be a good idea because it separates your personal assets from the business.
Rather than get a risky loan with your business as collateral, consider going without it if it could wipe you out should the creditor call it in.

Don't be lenient with your customers about payment of their bills to you. Get on them. If they don't pay, cut them off. Bad debts could wipe you out.

In order to avoid misunderstandings, second guessing or somebody trying to rip you off, write out all your policies and make clear written contracts for everything.

In your contract, put a clause in saying your maximum potential liability can't exceed a fixed amount like $5000.

If you enter a partnership, include a buy-sell clause that any of you can get out or vote one of you out for a reasonable cash deal should it come to that.
If the company is profitable, you can protect the profits by forming what is called a holding company. You could also form a third company called a sister company which buys all the assets of your main company, owns them and leases them back to the main company such that the main company doesn't own them therefore has no assets if sued.

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