

Forms of Business Enterprises

The four basic forms of business enterprises are the sole proprietorship, the partnership, the limited liability company and the corporation.

A sole proprietorship is an unincorporated business with a single owner, regardless of the number of people he or she has employed. A sole proprietor has the advantage of dealing with fewer government filings and state taxes, and accordingly, a sole proprietorship is typically less expensive to maintain than other types of entities. However, sole proprietors have the disadvantage of being personally liable and responsible for the business liabilities.

The second form of business is the partnership, which is an association of two or more people who conduct business for profit and share the ownership. Partnership laws may vary from state to state. There are two basic types of partnerships: general partnerships and limited partnerships.

General partnerships are most common and can be formed with or without a written agreement. All general partners share in operating the partnership, and each partner has unlimited personal liability for the debts or other obligations incurred by the partnership.

Unlike the general partnership, a limited partnership cannot exist without a formal Certificate of Limited Partnership. This document is signed by each of the partners and is filed with the Secretary of State in Tennessee which has adopted the Revised Uniform Limited Partnership Act. A limited partnership may have one or more limited partners and must have at least one or more general partners. Limited partners are free of general liability for the debts and obligations of the partnership. They risk only their investment if the partnership fails to pay its bills or obligations. A general partner's liability, on the other hand, is not limited only to his or her capital investment, but has unlimited personal liability as well.

A limited partner may, but usually does not take part in the management of the partnership. With certain exceptions, if he does choose to take an active part in managing the business, he may be treated as a general partner and be subjected to unlimited liability for the obligations of the partnership.

Partnerships do not pay income tax. Rather, each of the individual partners reports his or her own distributive share of the partnership's income, gains, losses, deductions and credits on his or her own income tax return. In Tennessee, general partnerships are not subject to Tennessee's excise tax and franchise tax, while limited partnerships are.

Tennessee also adopted the Revised Limited Liability Company Act, which allows individuals to form a limited liability company, also known as an LLC. An LLC is formed by filing articles of organization with the Tennessee Secretary of State. An LLC has many of the attributes of a corporation including limited liability, but is more flexible than a corporation in how it can be managed and governed. For example, an LLC can be managed by its members, by one or more managers, or by a board of directors. Additionally, an LLC is treated as a partnership for tax purposes (although it can elect to be taxed as a corporation). All members of an LLC have the

protection against personal liability that a shareholder in a corporation might have, but are not limited in terms of management, as a limited partner might be in a limited partnership. Simply stated, a limited liability company is a company that has many attributes of a corporation, but is more flexible and is treated like a general partnership for tax purposes.

The fourth form of business enterprise is the corporation. A corporation is a legal entity which is separate from the people who own it - the shareholders. The government creates, regulates, taxes and sometimes dissolves corporations. A Tennessee corporation is formed by filing articles of incorporation with the Tennessee Secretary of State. Shares of stock, which represent the shareholder's financial interest in the corporation, must be issued. The life of a corporation is perpetual, unless otherwise provided by law or in the articles of incorporation.

Bylaws are governance rules adopted by the shareholders of a corporation and are normally prepared by an attorney. They contain such information as the nature and timing of director and shareholder meetings as well as the election of corporate officers. Unlike the other business enterprises, a corporation is generally managed by a board of directors that is elected by the shareholders.

The prime advantages of a corporation are its long life, greater access to capital, limited liability of shareholders and easy transfer of ownership. On the other hand, corporations are more expensive to establish and operate, shareholders generally do not participate directly in the management of corporate business, and there are more government regulations. Corporations are required to pay state franchise taxes and excise taxes, as well as U.S. income taxes in certain cases, and since shareholders also pay taxes on their dividends and capital gains, this often results in "double" taxation.

Tennessee statutes also provide for the creation of nonprofit corporations and other nonprofit organizations. In general terms, a nonprofit enterprise is an organization in which no part of the income is distributable to its members, directors or officers, except in some instances to charitable entities which hold membership in the organization. Nonprofit organizations are not prohibited from making a profit, but their ability to distribute the profit is limited. The Tennessee Nonprofit Corporation Act recognizes mutual benefit corporations and public benefit corporations. A mutual benefit corporation, which is sometimes referred to as a hybrid model, is one organized for the mutual benefit of its members and it may make distributions to members upon dissolution. Public benefit corporations include all corporations, which are recognized as exempt under [26 U.S.C.A. § 501\(c\)\(3\)](#). The Act also defines religious corporations, which are public benefit or mutual benefit corporations organized and operating primarily or exclusively for religious purposes, and which are subject to special statutory provisions. Tennessee permits the creation of nonprofit limited liability companies, the sole members of which are nonprofit corporations.

There are advantages and disadvantages of incorporating in comparison with operating as an unincorporated association, a charitable trust or other entity. The majority of nonprofit organizations are incorporated, and incorporation offers a number of benefits. It provides the

organization with limited liability for its members, centralized management and perpetual duration.

You should consult with an attorney before forming any business enterprise to make sure you are choosing the business enterprise that best suits your needs and to ensure that you are in compliance with all applicable legal requirements.

For information about forming a corporation in Tennessee, refer to "How do I Form a Corporation?"

How Do I Form a Corporation?

Are you thinking about forming a corporation in Tennessee? There many questions to be answered before you make a decision to form a corporation. Some of these questions are: What are the tax consequences of incorporation? Are you willing to follow the legal requirements which are imposed upon corporations, such as electing officers and directors, drafting and adopting bylaws, issuing stock and stock certificates, setting annual meeting dates, preparing minutes, and other items of importance? Would your needs be better met by a sole proprietorship, a general partnership or a limited partnership, or by a limited liability company or a joint venture, by an association, or by a non-profit organization, instead of by a corporation?

It is best to consult your attorney or accountant before you decide to form a corporation. If you do decide to form a corporation, it is important that the name of your new corporation is not too similar to the name of an existing corporation or limited liability company. To prevent your application from being rejected due to a name conflict, you may call the Secretary of State's "name-availability" section in Nashville at 615-741-0537, or you may visit the Secretary of States' website and informally clear the name you plan to use. You may then formally reserve for a 4-month period the name you want to use for a \$20.00 fee.

A corporation is legally born when you file a document called the "charter" with the office of the Secretary of State. You may obtain a sample charter by writing to or calling 615-741-2286, the Secretary of State, Corporation Division, 18th Floor, James K. Polk Building, Nashville, Tennessee 37219, or by visiting the website. When you file the charter, you provide several items of information, including: (1) the name and street address of your corporation; (2) the name of the person or persons who are forming the corporation; (3) the total number of shares of stock which your corporation is authorized to issue; (4) the name and street address of the person in Tennessee on whom legal papers will be served if the corporation ever gets sued (the registered agent and registered office of the corporation); and (5) a statement that the corporation is for profit. The fee for filing the charter is \$100.

The completed charter may be mailed to the Secretary of State, Corporation Division, 18th Floor, James K. Polk Building, Nashville, Tennessee 37219. After the Secretary of State returns the charter to you, it must be filed in the county where the principal office of the corporation is located, and a fee of \$7 must be paid to the County Register to have this done.

You should consult an attorney to be sure that when your corporation issues stock, you are complying with the Tennessee securities laws. Securities laws violations can result in serious civil and/or criminal liability.

What is a Patent, Trademark, and Copyright?

WHAT IS A PATENT?

A patent grants a legal right to an inventor to exclude others from making, using or selling an invention for a period of time. The patent is a reward to the inventor for disclosing the invention to the public. When the patent ends, anyone may make, use, sell, or offer to sell the invention. As a patent does not provide a right to make, use, sell, or offer to sell the invention, an issued patent does not mean the patented invention may not infringe another patent.

The United States Government issues three kinds of patents to inventors. First are utility patents that protect inventions of useful, new, and nonobvious processes, machines, articles of manufacture, or compositions of matter. Utility patents last for 20 years from the filing date with the payment of the required periodic fees. Second are design patents that protect new and nonobvious ornamental features of manufactured articles. Design patents do not address nor protect the functional aspects of the design. Design patents last for 15 years from the date of issuance. Third are plant patents that protect new varieties of plants, such as shrubs, trees, and flowers.

You may apply for a patent by filing a patent application in the United States Patent and Trademark Office. You may prepare and file the application yourself; however, since the value of a patent often depends upon the skill with which the application is prepared, it is usually in your best interest to consult a patent attorney who is skilled in the technology of the invention. The attorney likely will first recommend a prior art search to determine if the invention appears patentable. If a patent application is to be filed in the United States, it must be filed within one year from the time the invention was first sold, offered for sale, used publicly, or described in a printed publication.

In certain other countries, a patent application must be filed before any public disclosure takes place anywhere in the world. The filing of a patent application in the United States Patent & Trademark Office before any public disclosure will preserve the right to file in those countries for a period of one year after the U.S. filing. It is best to file a patent application as soon as possible since procedures in the United States Patent & Trademark Office give precedence to the first to file when two or more people file applications claiming the same legal invention. Only after a patent application is filed in the United States Patent & Trademark Office can a product incorporating the invention be marked as "Patent Pending."

For further information about patents, see <http://www.uspto.gov/patent>.

WHAT IS A TRADEMARK?

A trademark is a name, phrase, word, symbol, or emblem identifying goods as originating from a particular source. The owner of a trademark may prohibit others from using the trademark or other trademarks that may be confusingly similar. Trademarks help to protect the purchaser

from being confused, mistaken, or deceived as to the source of goods. Trademarks also protect the good will and reputation of the owner of the trademark. Service marks are similar to trademarks except that they are used to designate the origin of services rather than of goods. Mark owners have a legal duty to defend their marks against known infringement by copiers. Trade dress covering the nonfunctional look of a product or produce packaging may be similarly protected.

Rights in a trademark, service mark, or trade dress are obtained by using the marks on goods or in connection with services that are sold in interstate or foreign country commerce. If goods or services bearing a mark have been shipped or sold in interstate or foreign commerce, or if there is a bona fide intent to use a mark in interstate or foreign commerce, an application may be filed to register the mark in the United States Patent & Trademark Office. After the mark is registered, the owner of the mark may place a ® near the trademark to indicate that the mark is registered. Since the choice and protection of trademarks involve meeting various legal requirements, an attorney familiar with the nuances of trademark and service mark law should be consulted before a mark is adopted.

For further information concerning trademarks, see <http://www.uspto.gov/trademark>.

WHAT IS A COPYRIGHT?

A copyright is the right of an artist, author, or composer to exclude others from copying certain original works, such as literature, music, drama, pictures, sculpture, motion pictures, software, and sound recordings. A copyright also may be obtained on an original collection of works. A copyright on a published work is indicated by placing a notice of the copyright on the first and every subsequent copy of the work. Unpublished works need not have a notice thereon.

The work can be registered with the United States Library of Congress by making an application for registration to the Register of Copyrights. The application may need to be accompanied by a specified number of copies of the work together with a fee. Most intellectual property attorneys are familiar with the forms and procedures required for placing a copyright notice on a work and for registering a copyright.

Further information concerning copyrights may be found at <http://www.copyright.gov/>.

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