

What You Should Know About Incorporating Your Business

As discussed on the [Sticky Brand Lab Podcast](#)
with Special Guest, Attorney Tanya Bower

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Founder's Common Mistakes

- ▶ Failing to establish an appropriate business entity immediately
- ▶ Insufficient tax planning
- ▶ Expectation setting between founders
- ▶ Proper contract review
- ▶ **Plan for the future and keep the end goal in mind**
- ▶ **In sum, not doing everything possible to PREVENT problems from arising in the future**

STARTUP

- ▶ Entity Selection
- ▶ Financing

SELECTION OF LEGAL ENTITY

- ▶ Sole Proprietorship
- ▶ General Partnership
- ▶ Limited Partnership
- ▶ Corporation
- ▶ Limited Liability Company

- ▶ Nonprofit and Benefit Corporations

Sole Proprietorship

- ▶ Any single owner business without entity formation
- ▶ Fictitious Name (d/b/a)
- ▶ Certain municipalities may require a business license depending on the type of business
 - ▶ Construction business needs state contractor's license and local business license
 - ▶ Salon business needs state license and local business license
- ▶ State Filing Requirements: not required, no annual state fees
- ▶ Owner Liability: Unlimited joint and several
- ▶ Taxation: Pass Through (on your Form 1040, Schedule C)

Partnerships

- ▶ Any multi-owner business without entity formation
- ▶ Business Name
 - ▶ File as partnership in Florida
 - ▶ File a Fictitious Name (d/b/a)
- ▶ Licenses: depending on the type of business
- ▶ Taxation: Pass Through (Form 1065, Schedule K)
 - ▶ Each Partner taxed on his or her share
 - ▶ Example: A owns 40%, B owns 10%, and C owns 50%; taxed on their percentage of the Partnership's income and deductions
 - ▶ Employer Identification Number (EIN) required
- ▶ Rights of partners laid out in Florida Statutes or in Partnership Agreement
- ▶ Two Types:
 - ▶ General Partnerships
 - ▶ Limited Partnerships

General Partnership

- ▶ Each Partner is the agent of the partnership
- ▶ Partner/Owner Liability - joint and several liability with the partnership and the other partners
 - ▶ The debt your partner incurs or the liability your partner incurs is YOUR liability, too!
- ▶ Formation:
 - ▶ Agreement (can be oral or written, or even implied)
 - ▶ Partaking in a business with more than 1 person
 - ▶ File with FL Secretary of State (not required) (Filing Fee \$50; Annual Fee \$0)
 - ▶ File Fictitious Name (d/b/a)

Limited Partnership

- ▶ Each general partner is an agent of the partnership
- ▶ Limited partner cannot manage or act in day-to-day business
- ▶ Must have at least 1 General Partner and 1 Limited Partner
- ▶ Partner/Owner Liability:
 - ▶ Each General Partner has unlimited joint and several liability with the partnership and partners
 - ▶ Limited Partner has limited liability up to the amount of the investment
- ▶ Formation:
 - ▶ File with FL Secretary of State (Filing Fee \$1000; Annual Fee \$500)
 - ▶ Partnership Agreement
- ▶ Distributions:
 - ▶ The “Waterfall” of Available Cash for Distribution
 - ▶ Return of Capital, Preferred Returns

Corporation

- ▶ Legal entity
- ▶ Incorporated by filing with Florida Secretary of State (Filing Fee \$70; Annual Fee \$150)
- ▶ Shareholders' Agreement
- ▶ Ownership issued by "stock"
 - ▶ Voting vs. non-voting
- ▶ Control by Directors
- ▶ Taxation:
 - ▶ Employer Identification Number (EIN) required
 - ▶ Subchapter C - Separate from Owners (Double Tax)
 - ▶ Subchapter S - Pass Through

Corporation - Subchapter C (Form 1120)

- ▶ Distributions (dividends) are double-taxed
 - ▶ Taxable at corporate level as corporate income
 - ▶ Taxable at owner level as owner income
- ▶ Owner Salaries or Bonuses
 - ▶ Helps avoid double taxation by reducing income (salaries are deductions)
- ▶ Income Splitting
 - ▶ Pay owner salary and leave income in the corporation (keeping both owner and corporation in lower bracket)
- ▶ Economic ownership can differ from control ownership
 - ▶ For example, I can own 50% but only receive 30% in distributions

Corporation - Subchapter S (Form 1120S)

- ▶ Pass Through
 - ▶ Taxable on owner level based on owner's percentage ownership
- ▶ No Self-Employment Tax, but must be paid a reasonable salary
- ▶ Limitations:
 - ▶ Must be domestic corporation or LLC
 - ▶ Must have less than 100 shareholders/members
 - ▶ Entities cannot be stockholders (limited exceptions)
 - ▶ No Two Classes of Stock - All Shares Must have same Economic Terms
 - ▶ Less Flexibility for Economic Differences Amount Shareholders

Corporations - Liability

- ▶ Liability limited to corporation
- ▶ Exceptions:
 - ▶ Owner's Torts (fraud, negligence, etc.)
 - ▶ Piercing the Corporate Veil

Limited Liability Company

- ▶ Legal entity
- ▶ Formation: file Articles of Organization with Florida Secretary of State (Filing Fee \$125; Annual Fee \$138.75)
- ▶ Owned by members, issued by membership interests
 - ▶ Voting vs. non-voting
- ▶ Managed by a Manager
- ▶ Operating Agreement
- ▶ Liability - limited to LLC
 - ▶ Exceptions: personal guarantees, torts of owners, piercing corporate veil
- ▶ Flexible Economics
 - ▶ Distribution Waterfall is available as long as not taxed as S-Corp
- ▶ Taxation Types:
 - ▶ Pass Through (single member)
 - ▶ Taxed as Corporations
 - ▶ Subchapter C - Separate from Owners (Double Tax)
 - ▶ Subchapter S - Pass Through

Nonprofit Corporations

- ▶ Legal entity
- ▶ Incorporated by filing with Florida Secretary of State (Filing Fee \$70; Annual Fee \$61.25)
- ▶ Control by Directors
- ▶ Profits go to public purpose
- ▶ If liquidated, assets go to other nonprofits
- ▶ Taxation:
 - ▶ Employer Identification Number (EIN)
 - ▶ 501(c)

Benefit Corporation

- ▶ Legal entity
- ▶ Treated like a corporation, only affects purpose
- ▶ Default duty is not to make money, but to have a "general public benefit"
- ▶ might choose this over a 501(c) because you can have shareholders who invest as opposed to having to solicit donations; then you can offer a profit to those shareholders in exchange for investment.
- ▶ Taxation: like a corporation

Organizational Documents

- ▶ Governs the relationship between multiple owners of a business
- ▶ Partnership Agreements
- ▶ Operating Agreements
- ▶ Shareholders' Agreements

- ▶ Generally provides for:
 - ▶ Who gets to make which management decisions
 - ▶ How expenses are divided
 - ▶ How profits are allocated
 - ▶ Under what circumstances a member can (or may be forced to) sell his or her ownership in the business
 - ▶ What occurs in the event of a death or disability of a member
 - ▶ How to resolve disagreements
 - ▶ Plan ahead for the sale of your business - everyday

Financing Documents

- ▶ Promissory Notes (Loans)
- ▶ Investor Documents
 - ▶ Organizational Documents
 - ▶ Subscription Agreements
 - ▶ Convertible Promissory Notes