

# “The Choice is Yours”

Sole Proprietorship  
General Partnership  
Limited Partnership  
Corporation  
Close Corporation  
Limited Liability Company  
Close Limited Liability Supplement  
Statutory Trust  
Limited Liability Partnerships



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This pamphlet is available in alternate formats upon request.

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## **“The Choice is Yours”**

You have a product, a service or an idea to develop and market. You know how to make the item or perform the service. The problem is should the business be incorporated, remain a proprietorship, or become a Wyoming Limited Liability Company? The following information is intended to provide the initial exposure to ways a business can elect to be treated. Entities are legal associations or statutory creations that limit liability, that affect taxation and or facilitate raising capital. After you read this pamphlet you will have the basics necessary for discussing tax implications and potential legal liability with your accountant or attorney.

It may become very important to consider attributes of several different entities when first starting your business. These lists of factors obviously do not address every aspect of each entity, but they hit the major points to consider when choosing your entity. As you read through the lists, picture your proposed plan of business using each of the entities and how each characteristic might work for you.

# Sole Proprietorship

“America’s traditional form of business”

The term “sole proprietorship” means that the business is the same as its owner. The assets and liabilities of the business are one and the same as the owner. No entity is created; the business is destined to the same financial fate as the owner since they are one and the same.

## General Characteristics

- The “traditional form of a business” - there are more proprietorships than any other form of business.
- Legal basis - common law.
- Limited life span - its life is limited to that of its owner; when the owner dies, the business transfers to the heirs for continuation, restructure or winding up the business.
- Unlimited personal liability - no limitations on personal liability exist because the business is the same as the owner both legally and fiscally.
- Owner operated - proprietorships have no board of directors, no stockholders and no partners.
- Limited financing - must finance operations by borrowing money or reinvesting profits.

## Advantages

- No entity filing requirements - quick and inexpensive to start and get in operation.
- Simple to operate - owner makes all the decisions.
- May register a trade name.
- No separate taxation - the owner pays all taxes personally.

## **Sole Proprietorship, Cont.:**

### Disadvantages

- Unlimited liability - if the business is sued the owner's personal assets are at risk.
- No continuity of life - if the owner dies the business transfers to the heirs for continuation, restructure or winding up the business.
- Limited financing - proprietorships raise money only by borrowing or dipping into savings.

### Tax Implications

- Personal taxation - profits are taxed as personal income on IRS Form 1040, Schedule C or Schedule C-EZ, as well as Schedule F and sometimes Schedule E.
- Self Employment Tax - obtain and read IRS Publication 533.
- Estimated tax payments - obtain and read IRS Publication 505 and Form 1040 ES.
- Obtain and read IRS "Tax Guide for Small Business" Publication 334 by calling 800-829-3676. Forms and publications are also available from:

IRS Tax Fax - (703) 368-9694

IRS Website: <http://www.irs.ustreas.gov>

- Will need to file on Form SS4 for a "Federal Tax Identification Number" if the proprietor hires employees, or will be liable for any Federal Excise Taxes. See Publication 510 ("Excise Taxes"), Form 2290 and Instructions ("Highway Use Tax") and Publications 15 and 15A ("Federal Employment Taxes").

*IRS tax forms and publications may be obtained from the IRS Website at:*

*<http://www.irs.ustreas.gov>*

## General Partnership

“Give as much thought to picking your business partners as you would give to picking a spouse.”

A general partnership is an association of at least two persons who co-own a business. Partnerships are formed when two or more people, partnerships, corporations or associations desire to share ownership, management, profits, and liabilities of a business venture. Partnerships may be formed by a contractual understanding between the parties and may be written in the form of “Partnership Agreements” or may be oral agreements. You may look at partnerships as separate entities because they may contract in their own name, may hold title to assets in their name, may be sued in their own name, must file income tax returns, and are recognized as entities by bankruptcy laws. Individual assets of partners may not be sheltered from judgments against the partnership, so the partnership is not a true entity separate and apart from its owners. Wyoming’s Uniform Partnership Act is found at 17-21-101 et seq. and covers general partnership law.

### General Characteristics

- Quick and inexpensive to form - two or more persons may contract to form a partnership either by written agreement or verbal agreement.
- Legal basis - express contract of owners or implied contract in law by courts.
- Not a separate entity - while partnerships may hold title or sue or file income tax returns, there is no limitation on liability accruing against individual partner assets.
- Easy operation - any partner may make decisions without meetings or resolutions through sharing of management and profit.
- Unlimited liability - any partner may bind all other partners jointly and severally. Each partner’s individual assets may be used to satisfy a judgment arising from the acts of any partner.
- Limited life - the partnership must be dissolved and reformed upon death or incompetency of any partner.
- Favorable taxation - a partnership return is filed but profits are taxed as income to the partners and not at the partnership level.

## **General Partnership, Cont.:**

### Advantages

- Simple and inexpensive to form - no state, federal or local filings are required to form a partnership.
- Easy to operate - partners may make quick decisions without required meetings.
- May file a statement of partnership authority with the Secretary of State to record the partnership agreement and names of partners.
- No separate taxation - partners pay taxes for their share of partnership gains thus avoiding double taxation.
- Quasi-entity status - may own assets, contract in partnership name, may sue and be sued in partnership name.
- Equal sharing of profit and management - profit divided according to agreement and each partner manages.

### Disadvantages

- Unlimited liability - any partner is held absolutely liable individually for the acts of the partnership or any of the other partners.
- No continuity of life - if any partner dies or becomes incompetent, the partnership must dissolve and be reformed unless the partnership agreement provides otherwise.
- Limited financing - may only borrow money or use partners' savings. Must be dissolved and reformed to admit additional partners wishing to invest.
- Deadlock - partners may become deadlocked when ownerships' decision making is split equally.

## **General Partnership, Cont.:**

### Tax Implications

- Partnership files IRS Form 1065.
- Individual partners pay tax - each partner receives a K-1 showing the distributive share of partnership items to be declared on partner's 1040.
- Estimated tax payments - partners may be subject to quarterly tax payments. See IRS Publication 505 and Form 1040 ES.
- Social Security - partners may be subject to self employment tax. See IRS Publication 533.
- Read IRS Publication 541 on partnerships.
- A partnership must file on Form SS4 for a "Federal Tax Identification Number."
- If the partnership hires employees, it will be liable for applicable employment taxes. See Publications 15 and 15A, "Federal Employment Taxes".
- See Publication 510, "Excise Taxes" to determine any excise tax liabilities.

*IRS tax forms and publications may be obtained from the IRS Website at:*

*<http://www.irs.ustreas.gov>*

## Limited Partnership

“Not just for tax shelters”

Limited partnerships are formed by filing a certificate of limited partnership with the Secretary of State. The general partner provides management and is liable for debts of the partnership. Limited partners take no part in management but supply capital and have their liability limited to their investment. Limited partnerships are handy for owning expensive assets, owning property, or raising capital. Limited partnerships may have to register the limited partnership interests as securities with the Secretary of State. Activities like aircraft leasing, tractor trailer leasing, real estate investment, cattle feeding programs, and medical technology investments have all used limited partnerships as entities to operate their businesses.

### General Characteristics

- Formation - every limited partnership must be formed in writing and be filed with the Secretary of State.
- Legal basis - Wyoming Uniform Limited Partnership Act (state statute 17-14-201 et seq.).
- General partners - manage the enterprise and have unlimited liability for all partnership debts.
- Limited partners - must not manage in any capacity and have liability limited to their individual investments.
- Tax benefit - the limited partnership files a return, but its general and limited partners pay the taxes individually.
- Specific time period - the certificate of limited partnership must state the latest date upon which the limited partnership is to dissolve.

## **Limited Partnership, Cont.:**

### Advantages

- Limited liability - investors' liability is limited to their respective investments in the partnership.
- Separate entity - may sue and be sued, own property, protect its limited partners from unlimited liability, may raise capital by selling interests in the partnership, borrow money and exist independently of its partners' mortality.
- Not mortal - does not have to be dissolved and reformed every time a general partner or limited partner dies.
- Capital generation - may borrow money, general partner savings, funds from operations, plus sales of limited partner interests.
- Management authority - managed by the general partner and not subject to decision making by limited partners.
- Tax advantage - partnership does not pay tax; profits and losses pass through the entity to the partners.

### Disadvantages

- Complicated accounting - a limited partnership requires advanced accounting procedures.
- Limited life - does not live in perpetuity, but lives for a stipulated period usually for the economic life of the assets it owns.
- Lack of control - limited partners have no voice in management once the investment is made in the partnership.
- Securities laws - if more than 15 partners are involved in Wyoming or if sales commissions are given for selling interests, the limited partnership must register its securities before they are sold.
- Non-liquid investment - interests may not be freely traded; therefore, a limited partner must hold the investment indefinitely.
- Expensive to form and operate - a written agreement must be filed with the Secretary of State, annual financial reporting to limited partners, and accounting for all moneys received and disbursed.

## **Limited Partnership, Cont.:**

### Tax Implications

- Personal taxation - the partnership files an IRS Form 1065 but individual partners pay taxes on their share of profits shown on K-1s via Form 1040.
- Tax identification number - the partnership must apply for and receive a tax identification number by filing Form SS4.
- Partnership taxation - IRS Publication 541 explains taxation and forms.
- Estimated Tax - IRS Publication 505 and Form 1040 ES explains the need for partners estimating and prepaying taxes.
- Self employment tax - IRS Publication 533 addresses the liability for partner self-employment tax.
- If the partnership hires employees, it will be subject to applicable employment taxes. See Publications 15 and 15A, "Federal Employment Taxes".
- Read Publication 510, "Excise Taxes", to determine any excise tax liabilities.

*IRS tax forms and publications may be obtained from the IRS Website at:*

*<http://www.irs.ustreas.gov>*

# Corporation

“For profit, ‘C’ corporation”

The corporation is the stalwart business entity most commonly formed for raising capital and limiting individual liability. The corporation is a super “person” which may live forever or be empowered to protect the shareholder from economic harm. It may own assets, sue or be sued, transfer its ownership easily, borrow money, mortgage its assets, and file bankruptcy. The corporation’s profits are taxed and dividends paid by the corporation to its owners are also taxed leading to the undesirable element of “double taxation.” A board of directors and corporate officers remove day to day management from the hands of the owners (shareholders). Shareholders may elect the board at shareholder meetings. Corporations may also be held criminally responsible for egregious activities.

## General Characteristics

- Separate entity - a corporation is a separate legal entity formed to be a super person. Easy transfer of ownership.
- Legal basis - Wyoming Business Corporation Act (state statute 17-16-101 et seq.).
- Limited liability - owners (shareholders) are insulated from debts and liabilities of the corporation by state law. Certain provisions must be met.
- Corporate articles - must be filed with the Secretary of State to form the entity.
- Double taxation - corporate profits are taxed at the entity level. Money returned to owners as dividends, etc. is taxed again as personal income.
- Capital generation - may borrow money, issue bonds, sell common and preferred stock, enter into investment contracts.
- Continuity of life - the entity may live forever without interruption by death of shareholders, directors, or officers.

## **Corporation, Cont.:**

### Advantages

- Limited liability - no shareholder, officer or director may be held liable for debts of the corporation unless corporate law was breached.
- Capital generation - may sell common or preferred stock, issue bonds, borrow money, mortgage assets, or contract for many types of financing.
- Continuity of life - the entity exists forever so long as corporate regulations are met. No need to wind up operations if an owner or manager dies.
- Ease of ownership transfer - the assets may be sold, transferred, pledged, or mortgaged simply by using stock.
- Centralized management - practical control of business is performed by officers at the direction of the board of directors. Control is vested in majority ownership.

### Disadvantages

- Expensive to start and operate - corporate articles and amendments may be costly for attorneys to draft and file with the Secretary of State. Much accounting work required.
- Double taxation - corporate profits are taxed at the entity level and are returned to investors as dividends to be taxed again as individual income.
- Securities regulation - sales of bonds, notes, stock, investment contracts, etc. to raise money requires securities registration with the Secretary of State if more than 15 shareholders are approached or if sales commissions are paid.
- Required meetings and reporting - statutes require meetings and shareholder reports.
- Share ownership sales - ownership of the company is divested by selling shares of stock.
- Inflexible management - typically requires board action to make decisions with a generous time lag.
- Deadlock - shareholder and board of director disputes may disrupt decision making process sufficiently, especially in family owned corporations, to force court action.

## **Corporation, Cont.:**

### Disadvantages, Cont.:

- Since a corporation is a separate legal entity, any shareholders who also work for the corporation are employees for whom unemployment insurance taxes must be paid. Please see the “Directory” in the back of this pamphlet for the appropriate names and numbers for unemployment insurance information.

### Tax Implications

- Read IRS Publication 542 on corporate taxation.
- Corporations file on IRS Form 1120 and report earnings and taxable profit.
- A corporation may be subject to estimated tax payments (quarterly). Read IRS Publication 542 and Form 1120W.
- Will be liable for employment taxes. See Publications 15 and 15A.
- Read Publication 510, “Excise Taxes”, to determine any excise tax liabilities.
- Must file for a “Federal Tax Identification Number” using Form SS4.

*IRS tax forms and publications may be obtained from the IRS Website at:*

*<http://www.irs.ustreas.gov>*

## Close Corporation

“Typical private or family run corporation”

The Close Corporation was created by an act of legislature especially for small corporations which have a small number of stock holders usually having ties to one another through family relationships or friends and business partners. Close corporations are special cases of regular business corporations electing to operate in a more informal manner likened to partnerships. Regular business corporations must conduct shareholder and director meetings, elect a board of directors, and provide shareholders with written proposals for any major corporate action to be voted on in the annual meetings. Family corporations usually do not hold annual meetings because the family regularly makes decisions around the breakfast table or wherever. The Close Corporation Law allows small corporations to forego some traditional corporate formalities.

### General Characteristics

- Limited shareholders - corporations may not have more than 35 shareholders and still be a Close Corporation.
- Legal basis - Wyoming Statutory Close Corporation Supplement to the Wyoming Business Corporation Act, W.S. 17-17-101 et seq.
- Special action necessary - the Close Corporation law became effective on January 1, 1990. If you were incorporated before that date and you wish to transform your corporation to a close corporation, all shareholders must agree. You become a close corporation by stating in your Articles of Incorporation or in an amendment to the Articles, that the corporation is a close corporation.
- Special action necessary - if you were incorporated after January 1, 1990, and you wish to transform your corporation to a close corporation, then only 2/3 of the shareholders must agree.
- Abbreviated governance - shareholders may agree in writing to treat the corporation as a partnership, operate without a board of directors, dispense with annual meetings, and make a shareholder agreement.

## **Close Corporation, Cont.:**

### Advantages

- Limited liability - the law says shareholders don't have personal liability even though they relax corporate formalities in operations.
- Ease of operation - operates without pomp and circumstance required in regular corporations where hundreds of shareholders must receive information and vote.
- Cost of operation - relaxed corporate governance means lower legal, accounting and administrative fees for lower total costs of operation.
- Deadlock prevention - provides access to court when shareholders are deadlocked and harm could befall the corporation through lack of action.
- Buy-out provisions - shareholders may buy out a deceased shareholder's interest according to shareholder agreements.

### Disadvantages

- Limited ownership transfer - share transfer is prohibited except in stated circumstances.
- Fewer capital sources - only 35 shareholders may comprise a close corporation.
- Expensive to form - forming the corporation and drafting a shareholder agreement may be expensive and complicated.
- Filings - every year a close corporation must file an annual report and pay annual report fees like any other corporation.
- Double taxation - unless a close corporation qualifies with the IRS as an "S" corporation, the corporation may have to pay income tax on corporate earnings and shareholders may have to pay income taxes on the same money received as dividends from the corporation.

### Tax Implications

- Same - close corporations are taxed the same as regular business corporations unless it opts for "S" tax treatment. See IRS Form 542 and Form 1120 Instructions.
- Read all Forms and Publications listed under "C" Corporation.

## Wyoming Limited Liability Company

“Hybrid between a corporation and a limited partnership”

In 1977 a piece of special legislation was passed creating a unique entity called the Wyoming Limited Liability Company. It provides protection from personal liability like a corporation and receives the tax treatment of a limited partnership without limitation on citizenship of members or numbers of members. No general partner is liable for all debts of the enterprise. Each member of a limited liability company enjoys liability limited to the extent of their investment in the program and pays tax individually in proportion to ownership thus avoiding the corporate malady of double taxation.

### General Characteristics

- Limited liability - each member enjoys liability limited to the amount invested in the program like a corporate shareholder.
- Legal basis - Wyoming Limited Liability Company Act (state statute 17-15-101 et seq.)
- Tax advantage - avoids double taxation because its members pay taxes like partners in a partnership.
- A company may designate any period of duration instead of the former set duration of 30 years.
- Non-transferable interest - a member may not transfer his voting interest without concurrence of all remaining members.
- Name requirement - Allows a limited liability company to have different abbreviations in its name (e.g., LLC, L.L.C., LC, L.C., Ltd. Liability Co., Limited Liability Co.)
- Formation - must be formed by written articles filed with the Secretary of State. Any person may form a limited liability company which must have two or more members.
- Allows for flexible limited liability companies.
- Allow professionals to organize as a limited liability company unless the applicable licensure statute or rules prohibit it. Makes clear that a professional operating as a member of a LLC nonetheless remains personally liable for professional misconduct.

## **Wyoming Limited Liability Company, Cont.:**

### Advantages

- Limited liability - a creditor of the limited liability company may not seek satisfaction of any limited liability company debt against the personal assets of any member of the limited liability company.
- Tax advantage - the members each pay their share of tax on their share of profits avoiding double taxation of limited liability company profits.
- Number of investors - may have any number of investors; not restricted to 35 like an “S” Corporation.
- No general partner - unlike the general partner in a limited partnership, the manager of a Limited Liability Company does not have unlimited personal liability for debts and the manager need not maintain one percent interest in the entity.

### Disadvantages

- Limited transfer of interest - an investment is illiquid since all members must vote to transfer a member’s interest.
- Expensive to form and operate - complicated to form legally and requires substantial accounting work.

### Tax Implications

- See September 2, 1988 Revenue Ruling 88-76, I. R. B. 1988-38; Code Section 7701.
- Obtain legal and accounting information from your attorney or accountant.
- Your legal advisor can determine whether the entity should file Form 1065 or Form 1120.

*IRS tax forms and publications may be obtained from the IRS Website at:*

*<http://www.irs.ustreas.gov>*

## **Close Limited Liability Company Supplement**

Like a close corporation, the close limited liability company is primarily designed for family businesses and will provide LLCs with continuity of life that contains restrictions on transferability of interests and withdrawal of contributions.

This act became effective July 1, 2000.

## **Statutory Trust**

The Wyoming Statutory Trust Act, effective July 1, 1995, creates a “business trust” type of entity. The law, modeled after the Delaware Trust Act, could be used by the securities industry for the formation of Real Estate Investment Trusts and certain types of investment companies.

## **Registered Limited Liability Partnership**

The Wyoming Registered Limited Liability Partnership Act (LLP), effective July 1, 1998, is a new form of partnership which combines favorable flow-through tax liability now enjoyed by general partnerships with limitations on the liability of the partners. A LLP is taxed like a partnership, meaning that tax liability flows directly through to the owners and the entity itself is not taxed.

## Directory

### **Wyoming Business Council**

214 West 15th Street  
Cheyenne, WY 82002  
Ph. (307) 777-2800  
Fax (307) 777-2837  
E-mail: [info@wyomingbusiness.org](mailto:info@wyomingbusiness.org)  
Website: <http://www.wyomingbusiness.org>

### **Department of Employment Workers' Safety & Compensation Division**

Herschler Building, 122 West 25th Street  
Cheyenne, WY 82002-0700  
Ph. (307) 777-7159  
Fax (307) 777-5946  
Website: <http://wydoe.state.wy.us>

### **Internal Revenue Service - Cheyenne**

5353 Yellowstone Road  
2<sup>nd</sup> Floor, Room 200  
Cheyenne, WY 82009  
Ph. (800) 829-1040  
Website: <http://www.irs.ustreas.gov>

### **Internal Revenue Service – Sheridan**

1949 Sugarland Drive  
Suite 292  
Sheridan, WY 82801  
Ph. (800) 829-1040  
Website: <http://www.irs.ustreas.gov>

### **Department of Employment Employment Resources Division**

P.O. Box 2760  
Casper, WY 82602  
Ph. (307) 235-3217  
Fax (307) 235-3278  
Website: <http://wydoe.state.wy.us>

### **U.S. Small Business Administration**

100 East “B” Street  
Casper, WY 82602  
Ph. (307) 261-6500  
Fax (307) 261-6535  
Fax (307) 261-6561  
Website: <http://www.sbaonline.sba.gov>

### **Internal Revenue Service - Casper**

100 East “B” Street  
Room 1136  
Casper, WY 82602  
Ph. (800) 829-1040  
Website: <http://www.irs.ustreas.gov>

### **Wyoming Entrepreneur**

University of Wyoming  
Dept 3922  
100 East University Avenue  
Laramie, WY 82071  
Ph. (800) 348-5194  
Website: [www.wyomingentrepreneur.biz](http://www.wyomingentrepreneur.biz)

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