THE IDEA

Key considerations are:

1. Ownership structure
2. Liability protection
3. Operating your business
4. Tax considerations
There are different legal structures that will protect you in different ways and offer different tax advantages:

- Sole Proprietorship
- General Partnership
- Corporation
- Limited Liability Company (LLC)
WHY FORM AN ENTITY?

- Business owners need to choose the structure that best suits their needs.
- Is my business too small? NO
- Is it worthwhile for my small business? YES
  - Limit personal liability for business losses
  - Formalities (Attorney)
  - Expenses (CPA)
  - Income tax considerations (CPA)
  - Insurance needs (Agent)
SOLE PROPRIETORSHIP

- Starting a Sole Proprietorship is not complicated
  - Decide on a business name
  - The business name must be registered with local County Clerk - if not in owner’s name
  - Business License – Check Department of Consumer Affairs
  - No formation document required

- Advantages
  - Simple and inexpensive to form and operate
  - Benefit of not paying separate business taxes
  - Profits and losses are filed under the owner’s personal income tax return

- Disadvantages
  - No liability protection – full personal liability to owner for business losses
  - Owner cannot raise capital by selling an interest in the business
  - Can’t have co-owners
GENERAL PARTNERSHIP

- Partnership agreement
- Profits, liabilities and management duties are divided as agreed among partners
- Individual liabilities for each partner
- File Certificate of Assumed Name with County Clerk in the county of operation

Advantages
- Generally inexpensive and easily formed business structure
- Shared financial commitment

Disadvantages
- Similar to sole proprietorship, partnerships retain full, shared personal liability among the owners. Liable for their own actions, but also for the business debts and decisions made by other partners
- Personal assets can be used to satisfy partnership debts or losses
- Disagreements among partners
- Since partnerships are jointly owned, the profits and losses are shared
S Corporation is a corporation under the laws of the state where it is organized.

Must file an “election” with IRS.


Generally, S Corporation does not pay any federal income taxes – “flow through taxation” or “single taxation” benefit.

Income or losses are divided among and passed through to its shareholders.

Shareholders then must report income or loss on their own personal income tax returns.

Requires annual meetings, elections of directors and minutes of meetings.

Lower initial costs than a Limited Liability Company- no advertising or operating agreement.

Shareholders agreement if two or more shareholders.
LIMITED LIABILITY COMPANY

- Formed by filing articles of organization in the state where it is organized

- Requires an operating agreement

- New York requires that an LLC advertise formation, proof of which must be filed with the NYS Secretary of State – cost may be an issue

- Pass-through income taxation – like a partnership or Subchapter S Corporation

- More flexible than a corporation and is often well suited for companies needing expansion and financing

- Owners are considered members not shareholders- limited liability

- Fewer formalities than a Corporation
LIABILITY

- General rule is – “Keep business and personal things separate”
- Maintain business formalities – election of directors or members and maintenance of separate business records
- Analogy to Will – review and update annually
- Do not comingle personal and business funds
- Maintain organized financial records
- Check insurance for general liability, auto liability, homeowners coverage for business activities
- Must indicate “LLC” or “INC” on corporate and financial records such as checkbook, contracts and agreements
- Sign documents such as checks and contracts as “President” or “Managing Member”
- Work closely with your attorney, accountant and insurance agent