

BASIC FORMS FOR DOING BUSINESS



Norman Brown, JD, PhD
Innovations Law Group, PLLC
800 Bellevue Way NE
Bellevue, WA 98004
425.603.1940

Basic Forms for Doing Business

Presentation Format

- ◆ Broad Overview of Key Issues

Basic Forms for Doing Business

Presentation Format

- ◆ Broad Overview of Key Issues
- ◆ Lots of Information: Relax & Absorb

Basic Forms for Doing Business

Presentation Format

- ◆ Broad Overview of Key Issues
- ◆ Lots of Information: Relax & Absorb
- ◆ Materials will be Provided

Basic Forms for Doing Business

Presentation Format

- ◆ Broad Overview of Key Issues
- ◆ Lots of Information: Relax & Absorb
- ◆ Materials will be Provided
- ◆ General Questions Only

OVERVIEW

- ◆ BASIC CONCEPTS
- ◆ LIABILITY ISSUES
- ◆ PROPRIETORSHIP
- ◆ PARTNERSHIP
- ◆ CORPORATION
- ◆ NEWER / HYBRID FORMS
- ◆ ‘PIERCING THE VEIL’

OVERVIEW

◆ BASIC CONCEPTS

BASIC CONCEPTS

- ◆ Organization

BASIC CONCEPTS

- ◆ Organization
- ◆ Allocation of Decision Authority

BASIC CONCEPTS

- ◆ Organization
- ◆ Allocation of Decision Authority
- ◆ Personnel Management

BASIC CONCEPTS

- ◆ Organization
- ◆ Allocation of Decision Authority
- ◆ Personnel Management
- ◆ Relations with Third Parties

BASIC CONCEPTS

- ◆ Organization
- ◆ Allocation of Decision Authority
- ◆ Personnel Management
- ◆ Relations with Third Parties
- ◆ Tax Considerations

OVERVIEW

- ◆ BASIC CONCEPTS
- ◆ LIABILITY ISSUES

LIABILITY ISSUES

- ◆ Bankruptcy
- ◆ Debts & Contracts
- ◆ Injuries
- ◆ Crimes
- ◆ Acts of Partners / Officers / Co-Workers

LIABILITY ISSUES

- ◆ Basic Issue -- Who Must Pay

LIABILITY ISSUES

- ◆ Basic Issue -- Who Must Pay
- ◆ Rise of 'Limited' Business Forms
- ◆ Industrial Revolution

LIABILITY ISSUES

- ◆ Basic Issue -- Who Must Pay
- ◆ Rise of 'Limited' Business Forms
- ◆ Industrial Revolution
- ◆ Basic Principle -- Liability limited to \$\$
Invested

LIABILITY ISSUES

- ◆ Basic Issue -- Who Must Pay
- ◆ Rise of 'Limited' Business Forms
- ◆ Industrial Revolution
- ◆ Basic Principle -- Liability limited to \$\$
Invested
- ◆ Investors Protected by 'Corporate Veil'

OVERVIEW

- ◆ BASIC CONCEPTS
- ◆ LIABILITY ISSUES
- ◆ PROPRIETORSHIP

PROPRIETORSHIP

Single Individual Doing Business

◆ Limited Formalities

- Registration & Business License
- DBA (Doing Business As) Requirements
- Taxed as Individual
- Trademarks & Trade Names

PROPRIETORSHIP

Single Individual Doing Business

- ◆ Limited Formalities

- Registration & Business License
- DBA (Doing Business As) Requirements
- Taxed as Individual

- ◆ Unlimited Liability !!

- Personal Assets as well as Business Assets

PROPRIETORSHIP

Single Individual Doing Business

- ◆ Limited Formalities

- Registration & Business License
- DBA (Doing Business As) Requirements
- Taxed as Individual

- ◆ Unlimited Liability !!

- Personal Assets as well as Business Assets

- ◆ Most Popular / Least Favorable

OVERVIEW

- ◆ BASIC CONCEPTS
- ◆ LIABILITY ISSUES
- ◆ PROPRIETORSHIP
- ◆ PARTNERSHIP

PARTNERSHIP

2+ People Jointly Doing Business

- ◆ Moderate Formalities
 - Express (or Implied) Agreement to Share
 - Allocation of Interests & Management
 - All Proprietorship Formalities

PARTNERSHIP

2+ People Jointly Doing Business

◆ Moderate Formalities

- Express (or Implied) Agreement to Share
- Allocation of Interests & Management
- All Proprietorship Formalities

◆ Joint & Several Liability

- Acts of Any Partner Bind All
- Any Partner's Assets may Satisfy any Debt
- Partnership Assets belong to Partnership

PARTNERSHIP

2+ People Jointly Doing Business

◆ Moderate Formalities

- Express (or Implied) Agreement to Share
- Allocation of Interests & Management
- All Proprietorship Formalities

◆ Joint & Several Liability

- Acts of Any Partner Bind All
- Any Partner's Assets may Satisfy any Debt
- Partnership Assets belong to Partnership

◆ Partners Taxed, Not Partnership

PARTNERSHIP

General Partnership

- ◆ All Partners Fully Liable
- ◆ Partnership Agreement Essential

PARTNERSHIP

General Partnership

- ◆ All Partners Fully Liable
- ◆ Partnership Agreement Essential
 - Allocation of Interests & Liabilities
 - Management & Organization
 - Salaries & Draws

PARTNERSHIP

General Partnership

- ◆ All Partners Fully Liable
- ◆ Partnership Agreement Essential
 - Allocation of Interests & Liabilities
 - Management & Organization
 - Salaries & Draws
- ◆ Assumed equal in absence of agreement

PARTNERSHIP

General Partnership

- ◆ All Partners Fully Liable
- ◆ Partnership Agreement Essential
 - Allocation of Interests & Liabilities
 - Management & Organization
 - Salaries & Draws
- ◆ Assumed equal in absence of agreement
- ◆ Can be implied by parties' actions

PARTNERSHIP

General Partnership

- ◆ All Partners Fully Liable
- ◆ Partnership Agreement Essential
 - Allocation of Interests & Liabilities
 - Management & Organization
 - Salaries & Draws
- ◆ Assumed equal in absence of agreement
- ◆ Can be implied by parties' actions
- ◆ Partners Taxed, not Partnership

PARTNERSHIP

Limited Partnership

PARTNERSHIP

Limited Partnership

- ◆ Hybrid -- Attempt to Limit Liability

PARTNERSHIP

Limited Partnership

- ◆ Hybrid -- Attempt to Limit Liability
- ◆ At least one General Partner
 - Managerial Authority
 - Unlimited Liability

PARTNERSHIP

Limited Partnership

- ◆ Hybrid -- Attempt to Limit Liability
- ◆ At least one General Partner
 - Managerial Authority
 - Unlimited Liability
- ◆ Any Number of Limited Partners
 - Liability Limited to Investment

OVERVIEW

- ◆ BASIC CONCEPTS
- ◆ LIABILITY ISSUES
- ◆ PROPRIETORSHIP
- ◆ PARTNERSHIP
- ◆ CORPORATION

CORPORATION

- ◆ Complex Formalities
 - Articles of Incorporation
 - By-Laws
 - Registration
 - Registered Agent

CORPORATION

◆ Complex Formalities

- Articles of Incorporation
- By-Laws
- Registration
- Registered Agent

◆ Organization

- Board of Directors
- Officers
- Employees

CORPORATION

- ◆ Perpetual Life

CORPORATION

- ◆ Perpetual Life
- ◆ Multiple Classes of Ownership
 - Common
 - Preferred
 - Other -- Convertible, Options, Warrants

CORPORATION

- ◆ Perpetual Life
- ◆ Multiple Classes of Ownership
 - Common
 - Preferred
 - Other -- Convertible, Options, Warrants
- ◆ Taxed as Separate Entity
 - Different Rates & Deductions
 - “Double Taxation” on Distributions

CORPORATION

- ◆ Perpetual Life
- ◆ Multiple Classes of Ownership
 - Common
 - Preferred
 - Other -- Convertible, Options, Warrants
- ◆ Taxed as Separate Entity
 - Different Rates & Deductions
 - “Double Taxation” on Distributions
- ◆ Restrictions on Distributions

OVERVIEW

- ◆ BASIC CONCEPTS
- ◆ LIABILITY ISSUES
- ◆ PROPRIETORSHIP
- ◆ PARTNERSHIP
- ◆ CORPORATION
- ◆ NEWER / HYBRID FORMS

NEWER / HYBRID FORMS

- ◆ Subchapter “S” Corporation
- ◆ Limited Liability Partnership (LLP)
- ◆ Limited Liability Company (LLC)

SubChapter 'S' Corporation

- ◆ Fairly complex restrictions/requirements

SubChapter 'S' Corporation

- ◆ Fairly complex restrictions/requirements
 - No more than 70 shareholders (individuals)
 - No non-resident aliens
 - Only 1 class of stock
 - 'Election' filed with IRS

SubChapter 'S' Corporation

- ◆ Fairly complex restrictions/requirements
 - No more than 70 shareholders (individuals)
 - No non-resident aliens
 - Only 1 class of stock
 - 'Election' filed with IRS
- ◆ Generally no corporate tax; shareholders taxed pro-rata

Limited Liability Partnership (LLP)

Limited Liability Partnership (LLP)

- ◆ Extremely minimal formation formalities

Limited Liability Partnership (LLP)

- ◆ Extremely minimal formation formalities
- ◆ Treated as general partnerships, except:

Limited Liability Partnership (LLP)

- ◆ Extremely minimal formation formalities
- ◆ Treated as general partnerships, except:
 - Ownership proportional to contribution
 - Can have different classes of Partner
 - Partners not liable for injuries caused by others

Limited Liability Partnership (LLP)

- ◆ Extremely minimal formation formalities
- ◆ Treated as general partnerships, except:
 - Ownership proportional to contribution
 - Can have different classes of Partner
 - Partners not liable for injuries caused by others
- ◆ Can transfer ownership interest, but not partnership interest

Limited Liability Partnership (LLP)

- ◆ Extremely minimal formation formalities
- ◆ Treated as general partnerships, except:
 - Ownership proportional to contribution
 - Can have different classes of Partner
 - Partners not liable for injuries caused by others
- ◆ Can transfer ownership interest, but not partnership interest
- ◆ Can be managed by Partnership (equal) or Corporation (stratified) model

Limited Liability Company (LLC)

Limited Liability Company (LLC)

- ◆ Extremely minimal formation formalities

Limited Liability Company (LLC)

- ◆ Extremely minimal formation formalities
- ◆ Members have no management powers, cannot bind others

Limited Liability Company (LLC)

- ◆ Extremely minimal formation formalities
- ◆ Members have no management powers, cannot bind others
- ◆ No broad fiduciary duties

Limited Liability Company (LLC)

- ◆ Extremely minimal formation formalities
- ◆ Members have no management powers, cannot bind others
- ◆ No broad fiduciary duties
- ◆ Members generally not liable for injuries or debts created by other members

Limited Liability Company (LLC)

- ◆ Extremely minimal formation formalities
- ◆ Members have no management powers, cannot bind others
- ◆ No broad fiduciary duties
- ◆ Members generally not liable for injuries or debts created by other members
- ◆ Can transfer ownership interest, but not management interest

OVERVIEW

- ◆ BASIC CONCEPTS
- ◆ LIABILITY ISSUES
- ◆ PROPRIETORSHIP
- ◆ PARTNERSHIP
- ◆ CORPORATION
- ◆ NEWER / HYBRID FORMS
- ◆ ‘PIERCING THE VEIL’

'PIERCING THE VEIL'

'PIERCING THE VEIL'

- ◆ Legal Fiction requiring Specific Acts

'PIERCING THE VEIL'

- ◆ Legal Fiction requiring Specific Acts
- ◆ Entity can be disregarded if:
 - Not *REALLY* separate business (“alter ego”)

'PIERCING THE VEIL'

- ◆ Legal Fiction requiring Specific Acts
- ◆ Entity can be disregarded if:
 - Not *REALLY* separate business (“alter ego”)
 - Significant harm results

'PIERCING THE VEIL'

- ◆ Legal Fiction requiring Specific Acts
- ◆ Entity can be disregarded if:
 - Not *REALLY* separate business (“alter ego”)
 - Significant harm results
- ◆ Alter Ego Tests

'PIERCING THE VEIL'

- ◆ Legal Fiction requiring Specific Acts
- ◆ Entity can be disregarded if:
 - Not *REALLY* separate business (“alter ego”)
 - Significant harm results
- ◆ Alter Ego Tests
 - Corporate formalities

'PIERCING THE VEIL'

- ◆ Legal Fiction requiring Specific Acts
- ◆ Entity can be disregarded if:
 - Not *REALLY* separate business (“alter ego”)
 - Significant harm results
- ◆ Alter Ego Tests
 - Corporate formalities
 - Commingling of funds

'PIERCING THE VEIL'

- ◆ Legal Fiction requiring Specific Acts
- ◆ Entity can be disregarded if:
 - Not *REALLY* separate business (“alter ego”)
 - Significant harm results
- ◆ Alter Ego Tests
 - Corporate formalities
 - Commingling of funds
 - Confused representation

'PIERCING THE VEIL'

- ◆ Legal Fiction requiring Specific Acts
- ◆ Entity can be disregarded if:
 - Not *REALLY* separate business (“alter ego”)
 - Significant harm results
- ◆ Alter Ego Tests
 - Corporate formalities
 - Commingling of funds
 - Confused representation
 - Pattern of deception

‘PIERCING THE VEIL’

Most Important Lesson:

'PIERCING THE VEIL'

Most Important Lesson:

◆ DOT THE I'S

◆ CROSS THE T'S

◆ KEEP IT CLEAN

MATERIALS PROVIDED

- ◆ Copies of Slides
- ◆ Comparison Chart
- ◆ *Fixed-Fee Services*
- ◆ *Protecting & Commercializing*



INNOVATIONS
LAW GROUP PLLC

Thanks for your interest