



ZAYAS LAW OFFICES

## ***Business Law 101 for Ministers***

### **Types of Business Organizations**

#### **Sole Proprietor**

- A sole proprietorship is a business owned and operated by one person (a sole proprietor). This is the simplest and most common form of small business organization.
- Schedule C – Profit & Loss from Business / Sole Proprietors
- Doing Business As (DBA)
- Online Portal Database for DBA Search - <http://www.nyc.gov/portal/site/DBusinessSite>
- Blumberg Forms - <http://www.blumberglegalforms.com/>
- Open Bank Account under assumed name / Business Cards & Stationery
- For information on legal requirements for doing business in New York State and a comprehensive listing of state, local, and federal government agency resources, visit the New York State Web site ([www.nyfirst.ny.gov](http://www.nyfirst.ny.gov)). For federal tax information, visit the Internal Revenue Service (IRS) Web site ([www.irs.gov](http://www.irs.gov)).
- New York Publication 20, New York State Tax Guide for New Businesses, from the Department of State

#### **Partnership**

- A partnership exists when two or more persons join together to carry on a trade or business (e.g. husband and wife / domestic or business partners).
- Each partner may act on behalf of the other partner – both in terms of having authority for making decisions as well as incurring an obligation on behalf of the partnership.
- The profits and losses of a partnership are generally assumed to be 50/50 – or proportional to the number of partners – unless there is an indication to the contrary.



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### **Corporation**

- Limited liability on the parts of its shareholders, officers, or directors.
- The individual members are known as shareholders and the ownership interest is represented by the proportional of total corporate stocks owned by each shareholder.
- It is considered a separate entity – separate and apart from its shareholders.
- Corporate Requirements Include: holding directors and shareholders meetings, keep corporate minutes, and allow shareholders to vote on major corporate decisions.
- It is important that all documents be signed in an official capacity – so as to avoid any confusion as to whether it is the corporation or individual who is obligating itself.
- An additional distinctive feature – corporations are perpetual in existence whether or not the original founders or incorporators remain involved.

### **Certificate of Incorporation**

- Formed by filing a certificate of incorporation with the Secretary of State.
- Requirements – Available Name / Filing COI / Payment of Fees
- Name Availability –
- NYS DOS Name Search - [http://www.dos.ny.gov/corps/bus\\_entity\\_search.html](http://www.dos.ny.gov/corps/bus_entity_search.html)
- Sample Certificate of Incorporation
- Insert Name of Corporation / Purpose / County of Activity / Number of Shares (200 no par value) and Agent for Service of Process
- Par or No Par Value Stock –



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- Agent for Service of Process – Secretary of State and post office address – within or without the state - to which secretary shall mail a copy of any legal process.
- Corporation can operate under name other than its legal corporate name.
- Certificate of Assumed Name

### **S Corporation**

- A corporation can operate as a C corporation or as an S corporation.
- In a C Corporation, taxes are paid for any dividends or payment of profits that are made to the shareholder and the corporation also pays taxes.
- The S corporation is often more attractive to small-business owners because an S corporation has some appealing tax benefits and still provides business owners with the liability protection of a corporation. With an S Corporation, income and losses are passed through to shareholders and included on their individual tax returns. As a result, there's just one level of federal tax to pay.
- Sample S Corporate Election Form.

### **Limited Liability Company – LLC**

- Owners of an LLC are called members.
- With an LLC, the members have the option to have the profits "pass through" to the owners who pay taxes at their individual tax rates.
- Its [profits](#) and [tax benefits](#) are [split](#) any way they choose.
- Tax returns for an LLC are filed with the taxation [authorities](#) only for the purpose of [information](#), and each shareholder [files](#) own tax return separately.



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#### **Differences between LLC and S Corporation –**

- There are restrictions on who can be owners (called "shareholders") of an S corporation. An S corporation can have no more than 75 shareholders. None of the shareholders can be nonresident aliens. And shareholders cannot be other corporations or LLCs.
- The directors or officers of an S corp. manage the company.
- An S corp. has no flexibility in how profits are split up amongst its owners.
- LLCs offer greater flexibility in ownership and ease of operation. There are no restrictions on the ownership of an LLC.
- An LLC can be member-managed, meaning that the owners run the company; or it can be manager-managed, with responsibility delegated to managers who may or may not be owners in the LLC.
- And the owners of an LLC can distribute profits in the manner they see fit.

#### **Limited Liability Partnership**

- The Limited Liability Partnership (LLP) is essentially a general partnership in form, with one important difference. Unlike a general partnership, in which individual partners are liable for the partnership's debts and obligations, an LLP provides each of its individual partners protection against personal liability for certain partnership liabilities.





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### **RELIGIOUS CORPORATION**

- Churches and religious organizations generally eligible to receive tax-deductible contributions.
- Churches that meet the requirements of IRC section 501(c)(3) are automatically considered tax-exempt.
- Unlike churches, religious organizations that wish to be tax exempt generally must apply to the IRS for tax-exempt status.
- Faith Based Organizations without an IRS determination of [501\(c\)\(3\)](#) status may also be **ineligible** to receive grants because of the possibility that they do not actually qualify as a 501(c)(3) entity.
- Faith Based Organizations cannot be excluded from the competition for federal funds simply because they are religious.
- Generally, federal grant funds may not be used for inherently religious activities such as worship, prayer, proselytizing, or devotional Bible study.

### **Ministers & Taxes**

- Ministers not exempt from paying federal Income taxes.
- Ministers are exempt from social security and Medicare taxes collected under FICA (Federal Insurance Contributions Act), but may / may not be exempt from paying such social security taxes under SECA (self-employment contributions act).
- Ministers may be able to exclude some or all of their designated housing allowance from income taxes.
- Churches may reimburse ministers for business & ministry-related expenses through accountable reimbursement plans.



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#### **NON-PROFIT CORPORATION**

- Purposes are charitable, educational, religious, scientific or cultural purposes.
- No shareholders.
- No private inurement
- Board of directors govern and have power to make corporate decisions.
- Donations are tax deductible.
- Cannot engage in partisan or politics. Limited lobbying activities.
- Retroactive Deductibility.
- Certain approvals may be required from governmental agencies.

#### **NON PROFIT FILING & REGISTRATION REQUIREMENTS**

#### **TAX RETURNS**

- Form 990s.
- Most small tax-exempt organizations whose annual gross receipts are normally \$50,000 or less are required to electronically submit Form 990-N, also known as the e-Postcard, unless they choose to file a complete Form 990 or Form 990-EZ instead.
- Online link - <http://epostcard.form990.org/>



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### **FUNDRAISING SOLICITATIONS**

- Solicitation of Contributions may require recording with certain government agencies.
  - In NY – State Attorney General's Charities Bureau.
  - IN CT - Public Charities of Dept of Consumer Protection.
  - IN NJ - Charities Registration Section of the NJ Division of Consumer Affairs.

### **STATE TAX FILINGS**

- IRS tax exemption may exempt non-profit from state franchise taxes.

### **SALES TAXES**

- Tax exempt organizations qualify but are required to file for sales tax exemption (NY – Form ST 119-2)

### **BOARD OF DIRECTORS**

- Board manage the overall organization and make major decisions
- Board owes a fiduciary duty of care, a duty of loyalty and a duty of obedience.
- Job description for each board member



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### **FISCAL SPONSORSHIPS**

- An arrangement in which a 501c3 tax-exempt entity agrees to accept donations on behalf of another entity that is not tax-exempt.
- The Sponsor will issue letters to donors.
- Written agreement.
- Administrative fee.

### **Employer Identification Number**

- Form SS-4
- Online Filing at [www.irs.gov](http://www.irs.gov)

### **Employees & Independent Contractors**

- Form I-9, Employment Eligibility Verification.
- Often corporations (business or non-profit) will get into difficulties related to the issue of employees and independent contractors.

### **Factors in Determining Status of Employee / Independent Contractor**

- Control.
- Written agreements.
- Nature of any “employee” type benefits.





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### **Insurance & Risk Management**

- Property Coverage
- Workers Compensation
- General Liability Insurance
- Directors & Officers Coverage
- Errors & Omission
- Indemnifications

### **Bylaws**

- Sample

### **Shareholder Agreement –**

### **TRADEMARKS & SERVICE MARKS**

- Refer to words, designs or logos that are used to indicate the origin or source of goods and service.
- When used to identify a tangible product (e.g. jewelry ) the word, design or logo is considered a trademark. When used to identify services, known as a service mark.