

Langdon T. Owen
Cohne Kinghorn, p.c.
(801) 363-4300
lowen@cohnekinghorn.com

A Menagerie of Business Entities

Any entity must be reviewed for both state law and federal tax law status and requirements. The following are typical in most states.

Corporation - requires state charter (i.e., Articles of Incorporation) and offers limited liability to all shareholders; management is by a board elected by the shareholders, with officers elected by the board (or as may otherwise agreed by a shareholders' agreement). It has perpetual duration.

- C-corporation - normal state law corporation - a separate taxpayer
- S-corporation - normal state law corporation with special tax small business corporation election and which meets the restrictive tests for such election - a pass through entity
- Q-Sub - a C-corporation or an S-corporation, which is owned by an S-corporation and which is subject to a special tax election and meets the tests for such election - a tax-disregarded entity

Limited Liability Company - requires state filing (i.e., Certificate of Organization) and offers limited liability to all members; management may be by the members directly or may be by managers who may be elected by members (or otherwise determined by the Operating Agreement). It has perpetual duration.

- Multimember LLC - normal state law LLC with more than one member - generally taxed as partnership unless elect otherwise (for corporate tax treatment, which can include S-corp treatment)
- Single-member LLC - normal state law LLC with one member - a tax-disregarded entity (unless elect corporate tax treatment, which can include S-corp treatment)
- Series LLC - separate divisions under one LLC agreement treated as separate companies

Partnerships – there are two basic types under state law (general or limited) each of which has two sub-types (for a total of four sub types), with differing filing requirements, liability protections, duration, and management structure.

- General Partnership (or just “Partnership”) - two or more persons (including entities) engaged in business enterprise - no state charter needed or available and

only files on assumed name - no limited liability for any partner - a tax pass-through entity; managed by the partners; exists at will, for a definite term, or for a specific undertaking.

- Limited Liability Partnership - a normal state law general partnership with special state filing (i.e., a statement of qualification) to obtain limited liability for partners - a tax pass-through entity.
- Limited Partnership - two or more persons or entities of which at least one has general liability and at least one has limited liability - requires state filing (i.e., Certificate of Limited Partnership) - a tax pass-through entity; managed by the general (not the limited) partners; has perpetual duration.
- Limited Liability Limited Partnership – like a limited partnership but with a provision on its certificate of organization providing limited liability for the general partner, too – a tax pass-through entity.