



I. Select the appropriate legal entity

Characteristics	C Corporations	S Corporations	Sole Proprietorship	General Partnership	Limited Partnership	LLC
Ownership Rules	Unlimited number of shareholders allowed; no limit on stock classes	Up to 75 shareholders allowed; only one basic class of stock allowed	One owner	Unlimited number of general partners allowed	Unlimited number of general and limited partners allowed	Unlimited number of "members" allowed
Personal Liability of Owner	Generally no personal liability of the shareholders for the obligations of the corporation	Generally no personal liability of the shareholders for the obligations of the corporation	Unlimited personal liability for the obligations of the business	Unlimited personal liability of the general partners for the obligations of the business	Unlimited personal liability of the general partners for the obligations of the business; limited partners generally have no personal liability	Generally no personal liability of the members for obligations of the business
Tax Treatment	Corporation taxed on its earnings at the corporate level and the shareholders have a further tax on any dividends distributed (subject to some exclusions) ("double taxation")	Entity generally not taxed as the profits and losses are passed through to the shareholders ("pass-through" taxation)	Entity not taxed, as the profits and losses are passed through to the sole proprietor	Entity not taxed as the profits and losses are passed through to the general partners	Entity not taxed, as the profits and losses are passed through to the general and limited partners	Entity not taxed (unless chosen to be taxed), as the profits and losses are passed through to the members
Key Documents Needed for Formation	<input type="checkbox"/> Articles of Incorporation <input type="checkbox"/> Bylaws <input type="checkbox"/> Organizational Board Resolutions <input type="checkbox"/> Articles of Incorporation <input type="checkbox"/> Stock Certificates <input type="checkbox"/> Stock Ledger	<input type="checkbox"/> Articles of Incorporation <input type="checkbox"/> Bylaws <input type="checkbox"/> Organizational Board Resolutions <input type="checkbox"/> Articles of Incorporation <input type="checkbox"/> Stock Certificates <input type="checkbox"/> Stock Ledger	<input type="checkbox"/> DBA filing	<input type="checkbox"/> General Partnership Agreement <input type="checkbox"/> Local filings if partnership holds real estate	<input type="checkbox"/> Limited Partnership Certificate <input type="checkbox"/> Limited Partnership Agreement	<input type="checkbox"/> Articles of Organization <input type="checkbox"/> Operating Agreement

		<input type="checkbox"/> IRS & State S Corporation election				
Management of the Business	Board of Directors has overall management responsibility and officers have day-to-day responsibility	Board of Directors has overall management responsibility and officers have day-to-day responsibility	Sole proprietor manages the business	The general partners have equal management rights, unless they agree otherwise	The general partner manages the business, subject to any limitations of the Limited Partnership Agreement	The Operating Agreement sets forth how the business is to be managed - a Manager can be designated to manage the business
Capital Contributions	Shareholders typically purchase stock in the corporation, either common or preferred	Shareholders typically purchase stock in the corporation, but only one class of stock is allowed	Sole proprietor contributes whatever capital needed	The general partners typically contribute money or services to the partnership, and receive an interest in profits and losses	The general and limited partners typically contribute money or services to the limited partnership, and receive an interest in profits and losses	The members typically contribute money or services to the LLC, and receive an interest in profits and losses

II. Protecting Against Piercing the Corporate Veil

(1) Piercing the Corporate Veil

General Rule: Shareholders are not personally liable for the debts/obligations of the corporation. However, there are instances when your creditors may come after you and ask that you be personally liable for the debts of the corporation. Test in Ohio—Piercing the Veil: *Dombroski v. Wellpoint, Inc.* 119 Ohio St. 3d 506 (2008)

(2) 3 part test:

Corporation is completely controlled and dominated by its shareholders (corporation has no separate mind, will or existence of its own)

The corporation was used to commit fraud or an illegal act. The Court in *Dombroski* interpreted “fraud or illegal act” to mean actual fraud, illegal act, or egregious wrong (or similarly unlawful act). Court will look for “extreme shareholder misconduct”

The fraud or illegal act resulted in an injury or unjust loss

(3) Prevention

Keep business assets from personal assets at all times, including accounting records and books, bank accounts, lines of credit and tangible assets

Abide by corporate formalities (Hold director and shareholder meetings; Issue stock;

Actions should be in the best interest of the corporation)

Authorize loans, purchases of property, leases of real estate etc. by written action

Keep the corporate record book up to date and record all corporate actions by the shareholders and directors

DO NOT commingle assets of shareholders or affiliated entities

DO NOT mislead creditors as to the financial condition of the corporation

Use formal corporate name on all purchase orders, invoices, and communications with customers and 3rd parties

Corporate bank account should be set up in the name of the corporation and with the name of the corporation on all checks.

Contracts, agreements, notes, checks should be signed in an individual's corporate capacity. i.e "Smith Corporation, by John Smith, President."

III. Yearly Compliance

a. We generally always recommend Corporation or LLC.

b. Ohio Yearly Corporation Requirements

i. **Corporate records** - Ohio corporations must keep the following items with their corporate records:

1. Accounts of record
2. Minutes of the proceedings of the incorporators, shareholders, directors and committees of the directors.
3. A record of the shareholders, including their names and addresses and listing the number and class of shares issued or transferred to them

ii. **Corporate taxes and fees** - The following are taxation requirements and ongoing fees for Ohio corporations:

1. **Annual report.** Ohio does not require corporations to file an annual report.
2. **Federal tax identification number (EIN).** An [EIN](#) is required for corporations that will have employees. Additionally, most banks require an EIN in order to open a business bank account.
3. **State tax identification number.** Ohio does not require a state tax identification number.
4. **Taxes.** Speak to an accountant

iii. **S corporation election**

1. Ohio does not recognize the federal S corporation election. It requires a state-level S corporation election.

c. Ohio LLC Yearly Requirements

- i. **LLCs.** While it's not required for an LLC, it's recommended that you maintain an updated operating agreement, issue membership shares, record all membership interest transfers and hold annual meetings of members and also of managers, if the LLC is manager-managed.

d. Things we recommend

- i. holding annual meetings of directors and shareholders or members
- ii. keeping accurate, detailed records (called "minutes") of important decisions that are made at the meetings
- iii. adopting company bylaws, and
- iv. making sure that officers and agents abide by those bylaws.
- v. Comply with formal rules for forming and maintaining a corporation or LLC.
- vi. Maintain a separate bank account for the corporation or LLC.
- vii. Don't commingle personal assets with those of the corporation or LLC.
- viii. Don't divert corporate or LLC assets for personal use.
- ix. Make a reasonable initial investment in the corporation or LLC so that it is adequately capitalized.
- x. Don't tell a creditor that you will personally guarantee payment of the corporation or LLC's debts.
- xi. Don't use the corporation or LLC to engage in illegal, fraudulent, or reckless acts.
- xii. Make sure the world knows it is dealing with a corporation or LLC by conspicuously identifying the company status (that is, "Inc." or "LLC") on all business cards, letters, quotes, invoices, statements, directory listings, advertisements, and all other forms of company communication. When signing company documents, clearly state your representative capacity (such as, "Jane Doe, President, Acme LLC.")

IV. Planning for Surprises

a. Employee Fraud (advice)

- i. Keep business assets from personal assets at all times, including accounting records and books, bank accounts, lines of credit and tangible assets
- ii. Abide by corporate formalities
 - 1. See Previous list
- iii. **ALWAYS make sure to have insurance coverage that covers employee theft and fraud**

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- i. Make sure the insurance coverage is ADEQUATE to cover your interest
 - ii. Many employers do not have this coverage at all or buy coverage with limits that are way too low and do not adequately protect their interests
- iv. Most experts recommend separate job duties associated with the financials of your business.
- v. Use online banking to monitor your accounts.
- vi. Have strong company policies
- vii. Develop an anonymous way for employees to report suspected fraud and work practices that lead to fraud.
- viii. Internal audits/surprise audits
- ix. External audits
- x. Use background checks when hiring employees, use credit checks on employees who will handle cash or inventory
- xi. Regularly review accounts payable invoices, purchase orders, and payments

b. What happens if a member of an LLC leaves?

- i. Issues
 - 1. Death
 - 2. Injury
 - 3. Divorce
 - 4. Relationship between members sours
- ii. These can happen quickly and come as a surprise
- iii. Do you have appropriate documents drafted to ensure the safety of your business and your assets, in the event of any of the above?

V. Maintaining Healthy Relationships Amongst Partners

- a.** The importance of maintaining healthy relationships amongst partners.