

GARDEN STATE CLE LESSON PLAN

A 1.0 credit course

**FREE DOWNLOAD
LESSON PLAN AND EVALUATION**

SELECTING A BUSINESS ORGANIZATION

With

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And featuring

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Senior Instructor**

Program description

One of the most important discussions a fledgling entrepreneur must make is the form of business organization under which he will operate. This 1 credit CLE will teach you how to advise your client about the advantages features and benefits of a wide variety of business organization recognized under NJ Law.

I. Introduction

- **Robert Del Sordo, Esq.**
- **Professor – Camden County College**

II. Deciding What Type of Business to Start

- **Sole proprietorship**
 - **Bad idea for a sole proprietorship**
 - **People are scared of starting corporation**
 - **Depending on the type of business – look to what insurance you should have to protect yourself against customer claims**
 - **Would not recommend a sole proprietorship**
 - **Recommend getting a TIN – no cost**
 - **No separate tax return to be filed**
 - **Employee – worker’s compensation insurance, tax returns (941s), payroll with holding, social security, state taxes**
 - **Insurances – liability insurance for commercial purposes for driving, personal car insurance policy would be increased by 50% because you want to use for commercial purposes, errors and omissions policy, \$1M recommended policy – also look to what type of business you are running – high liability?**
 - **Bonded employees**
 - **Trade name – registration through county clerk’s office, complete short form and pay minimal recording fee and get document with county seal – can take this document to bank to get business checking account**
 - **Review personal assets – divest personal assets to protect against future claims against personal property – “judgment proof”**
 - **Caution against expanding business too much too soon and then being left with more expenses than income/assets for the company – give it time, build up capital reserves**
 - **Recommend accountant for a new business – people need tax advice**
 - **Attorneys cannot tell people what to do with their money – rely on the accountant**
 - **Independent contractors vs. employees – 20 hours a week = employee; control that amount of time as in required to be working for that period of time; compare to piece meal or**

giving a particular project and giving them a deadline as opposed to telling when and for how long they can work; the moment you have control over someone that person is an employee

- **LLC (Limited Liability Company)**
 - **Business treated as a partnership with the benefit of the protection of a corporation**
 - **An LLC can just be 1 person**
 - **LLC becomes the entity**
 - **No independent tax return – passed down through individual tax return**
 - **Shelters liability and no separate return**
 - **Assets should be clearly noted as to which are LLC assets and which are personal assets – accountant should have a schedule of LLC's assets**
 - **Should sign for things in the capacity as part of the LLC, i.e. President of LLC; use LLC name – people understand that LLC is the entity, not a personal matter**
 - **Every transaction should be through the LLC, checks, letters, purchases, etc. – recommend client get rubber stamp for including LLC with signature**
 - **Filing document with Secretary of State, receive a “corp code”; agencies will file documents for you on a rapid basis – at your request they will get you the book and seal and within 48 hours you will have this information**
 - **“corp code” is not same as TIN- should have both: tax ID number and corp code**
 - **LLC – don't have to disclose who the members are**
 - **Trade name: apply for 3 different name clearings – go to Sec of State to clear these names to make sure they are good (not too close to something else); if you record your LLC in the trade name then you don't need a trade name; if not, then the trade name can be filed and it is good for 5 years**
 - **Always use both trade name and company name; “dba”**
 - **For liability purposes, LLCs are the same as corporations**
 - **If equal investors, then recommend corporation, as opposed to LLC**
- **Partnerships**
 - **Most don't last more than 2-3 years and most end bitterly because did not know what was involved in the business**

- **Usually breaks up because ancillary people involved, not necessarily from interaction of partners**
- **Recommend against partnerships**
- **File trade name at county clerk's office**
- **Easy to form but a great deal of liability – partner with \$\$ can be held liable for the partnership– any one partner can bind the partnership – joint and severally liable**
- **Unless otherwise stated the profits and losses will be split among the partners**
- **Taxes: partnership return – an informational return; partnership return is attached to individual returns of partnership**
- **Partnership agreement – not necessary but recommended; work out differences early on before differences arise; should be a moving document – set up vacations, how to divide profits, who will contribute what for labor, etc., but every month or so may want to return to and amend partnership agreement**
- **It is vitally important to put everything in writing**
- **Partnership meetings are important so that there is a flow of information between partners and address issues, changes**
- **Should not be in partnership with your friends – can deal with people differently when you are at arms length**
- **Insurances, bonding employees, tax returns, etc – all other requirements as addressed for sole proprietorships**
- **Sub S Corporation**
 - **No more than 100 shareholders allowed (26 USC 1361(b)(1)(A))**
 - **Sub S came before LLCs did – Sub S was vehicle before LLCs – allows for infant corporations to be treated for tax purposes as personal taxation for a few years until it is able to file its own returns**
 - **Retirement investment options available when Sub S corporation; 401K available under Sub S corporation**
 - **Tax consequences should be the same – Sub S return is an information return as opposed to the corporation being a tax paying entity itself – some tax shelters that are not available to LLC and some healthcare benefits**

- **Decision to be Sub S or LLC should be made by an accountant**
- **Corporations**
 - **File certificate of incorporation with Secretary of State; Chapter 14 is a for profit corporation, Chapter 15 is a not for profit corporation; filing costs the same, receive a book and a seal**
 - **Have a realistic meeting of shareholders**
 - **Corporation can be limited or unlimited existence – may be a reason for limited existence corporation**
 - **Registered agent – recommend the attorney for service of process and attorney can give qualified statement as to whether to respond; same recommendation for other forms of businesses – attorney can get immediately involved and know what to do with the information; need registered agent for LLC as well as corporation**
 - **Book is completed by attorney, including issuance of stock, and client is presented with the book and seal and review with them; when it leaves attorney office it is complete**
 - **Must have annual meeting – put it in the book**
 - **Articles of incorporation – general purpose clause should be used as to what the corporation could do**
 - **Should lay out what a non profit corporation is doing; but not necessarily for for profit corporation**
 - **Protections of corporations – separate business vs. LLCs**
 - **Corporation is separate entities and cannot mix personal assets**
 - **Corporation is a legal person; and corporate veil will protect personal assets**
 - **Bi-laws will recite what are powers of officers and directors, what rights they have, how to sign checks, salaries of directors, etc.**
 - **Pre-printed bi-laws – given to client to review and make changes or need advice (from attorney or accountant)**
 - **NJ favorable to corporations and protects of corporations are monumental**
 - **Just because you have a corporation does not wholly protect you against future claims – so get proper insurance**
 - **Best to file a sub S to protect from additional taxes being paid**

- **Stability for laws of corporations in NJ**

III. Final words of advice

- **Make sure that you have a relationship with that client because they will be your client for years to come – be fair, you will make a friend and client for many years**