

The background of the slide features a low-angle, upward-looking perspective of classical architectural columns and a modern building facade with a grid pattern. The Mayer Brown logo is positioned in the top left corner, consisting of the words "MAYER" and "BROWN" in white, uppercase, sans-serif font, separated by a vertical orange bar.

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# Choosing the Right Legal Entity: a Small Business Entity Workshop

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## Our Goals

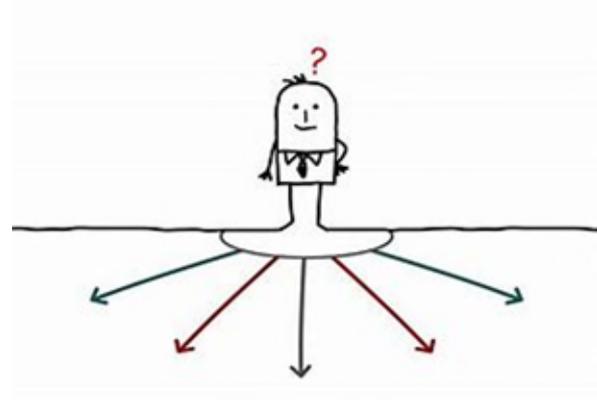
- Discuss basic forms of business structures
- Learn the importance of the legal structure

A low-angle photograph of a classical building with large columns and a modern skyscraper against a blue sky. The image is split into two contrasting architectural styles: the left side shows classical columns, and the right side shows a modern skyscraper. The text "Types of Legal Entities" is overlaid in the center.

# Types of Legal Entities

# Entity Selection and Formation

- Sole Proprietorship
- Partnership (General and Limited)
- Limited Liability Partnership (LLP)
- Limited Liability Company (LLC)
- Corporations
- Social Enterprises – L3Cs or Benefit Corporations



# Key Considerations in Selecting a Form of Entity

- Liability
  - Limited liability vs. general liability
- Ownership
  - Voting and economic control/flexibility
  - Raising capital
  - Transferability
- Governance
  - Decision making
  - Internal controls and compliance
- Taxes
  - Entity level tax or “pass – through” treatment
- Initial Formation / Ongoing Administration Requirements
  - Choice of State of Incorporation/Organization
  - Cost
  - Recordkeeping
- Life-Span of Entity
  - Perpetual vs. limited duration

# Sole Proprietorship

- Individual doing business under their own name or a “trade name”
  - Lemonade Stand
- Exposed to unlimited personal liability, even if liability arises from business
- No filing / reporting requirements
  - Doing Business As (DBA) filing
- Personal Taxation
- Not advisable for most businesses



# General Partnerships

- Involves two or more persons doing business together
- No formal agreements required – Everything is equal
- Unlimited liability for partners' acts
- Joint and several liability for all partners
- ALWAYS have a "Partnership Agreement"
  - Governs internal relations
  - Minimal filing requirements ("Default Presumption")
- Personal Taxation (pass-through)



# General Partnerships (cont'd)

- Choose a Partnership Name
- File an Assumed Business Name Certificate
- Draft and Sign a Partnership Agreement
- Obtain Licenses, Permits, and Zoning Clearance
- Obtain an Employer Identification Number



# Assumed Business Name

- <https://www.cookcountyil.gov/service/assumed-business-name-registration>
- The Clerk's office registers business names known as "assumed names" (or DBA) for new businesses in accordance with Illinois law.
- An assumed name is issued to any business entity that uses a name other than the name(s) of the individual(s) who own or operate the business. For example, a business called "John Jones, P.C." (i.e. owner's full name and title) does not have to file an assumed name, but "Jones Wrecking" does.
- Required Business Registrations
- Under state law, three classes of businesses are required to register assumed names with the local county clerk's office. The business classifications listed below are defined fully in the Illinois Compiled Statutes.

# Assumed Business Name (cont'd)

- Businesses required to register:
  - Sole proprietorships
  - General partnerships
  - Professional services corporations
- Businesses not required to register:
  - Limited partnerships
  - Limited liability partnerships
  - Limited liability companies



# Limited Partnerships

- Limited partners' liability limited to their investment
- One or more partners not involved in day-to-day business management
- At least one general partner
- Limited partners' liability limited to their investment
- Personal Taxation (pass through)



## Limited Partnerships (cont'd)

- Certificate of Limited Partnership (IL fee - \$150 / DE fee - \$90)
- Choose a Registered Agent within the State (\$0-\$350)
- Draft and Sign a Partnership Agreement
- Obtain Licenses, Permits, and Zoning Clearance
- Obtain an Employer Identification Number (EIN)

# Limited Liability Partnerships (LLPs)

- Hybrid between a company and a partnership
- Similar to LPs but all partners are limited partners (no GP)
- Separate legal entity, liable to the full extent of its assets
- No liability for independent or un-authorized actions of other partners
- Taxed as an LP (pass through)
- Filing requirements
  - Same as LPs *plus* Statement of Qualification (\$100 per partner)

# Limited Liability Company (LLC)

*Flexibility of a Partnership + Protection of a Corporation*

- Liability
  - Strong liability protections
- Ownership (by members)
  - Highly flexible, multiple classes of interests allowed
  - Transferable, subject to securities laws
- Governance
  - Highly flexible, set forth in the LLC operating agreement
  - Can be member-managed or manager-managed
- Business Taxes
  - Pass through taxation or corporate tax structure
  - Flexible allocation of income, loss and other tax items



# Limited Liability Company (LLC) (cont'd)

- Initial Formation
  - Formation expenses include registered agent appointment charges (about \$380), state formation document certification charges (about \$100) and service company fees (approximately \$250)
- Articles of Organization / Certificate of Formation (IL fee - \$150 / DE fee - \$90)
  - Operating Agreement and (if necessary) organizational consents
  - Ongoing Administrative Requirements
  - Less onerous than for a corporation, but recordkeeping requirements are important
- “Life”
  - May be for a designated period or perpetual

# Corporations

- A separate entity – Like a living breathing person
  - Made up of shares owned by individuals
  - Shareholders' Personal Assets Insulated from Business Liability
- Formation requirements:
  - File Articles of Incorporation with the Secretary of State
  - By-laws
  - Organizational meeting
  - Stock certificates to initial owners
- Formal reporting requirements
- Corporation pays its own tax - "Double Taxation"



# Corporations (cont'd)

- Very formal reporting requirements
  - Annual Report filed with the Secretary of State
  - Annual Meetings
  - Only Board of Directors and Officers can act on behalf of the company
- Corporation pays its own tax (“Double Taxation”)
  - Can elect to be taxed as an “S-Corporation” to have pass through taxation, provided certain requirements are met
  - Difference between a “C-Corporation” and “S-Corporation” is for tax purposes only
  - Also, “S-Corporations” have limitations on the types of shares that may be issued



# Benefit Corporation

- Corporation with purpose of creating general public benefit
- Benefit corporation status provides legal protection to balance financial and non-financial interests when making decisions
- Same corporate formalities as C or S Corp
- Must consider company's ability to accomplish purpose and the environment in addition to being profitable
- Can be taxed as S or C Corp



# S-Corp v. LLC

- LLC can elect S-Corporation Taxation
- Tax Consideration
  - Difference in Taxation principle (Owner vs. Owner/Employee)
- Owner Identity Consideration
  - Foreign Shareholders?
  - Number of Shareholders?
  - Crowdfunding?
- Distribution of Profits and Losses
  - Desire for flexibility?

# L3Cs

- An L3C is a variation of a limited liability company (LLC), which is a private organization where the owners actively participate in management and don't face personal liability for the organization's debts and obligations.
- Low-profit limited liability company
- Bridges the gap between non-profit and for-profit
  - Mission focused for-profit
  - Purpose must be for a charitable or educational purpose and not solely profit



# State Formation: Delaware versus other States

## Advantages of Forming in Delaware

- Delaware Court of Chancery / established case law
- Delaware statutes are business-friendly
- Delaware LLCs can reserve certain fiduciary duties
- Limited disclosure requirements – (Delaware Certificate of Formation discloses only the name of the LLC, the name and address of the commercial registered agent and the name of the “authorized person”)
- Outside investors (investment banks, venture capital) prefer companies formed in Delaware

## Disadvantages of Forming in Delaware

- If business is not physically located in Delaware, additional costs and obligations will apply, such as:
  - Foreign qualification fees in home state
  - Cost associated with hiring a commercial registered agent in Delaware (about \$380 annually)
  - Additional LLC taxes (DE annual LLC tax - \$300 / IL annual tax - \$75)
  - Additional reporting requirements

# Thinking of Changing Your Entity

- Know what you are first!
- How much corporate requirements can you handle?
- Consider both your business and personal tax liabilities
- Do you want to be or are you an employee of your company?
- Are you considering bringing on investors or other owners?
  - Some entity structures are more desirable for investors than others
- What is your succession plan?
  - Is your business prepared to keep going if something happens to you or a partner?



# To recap

	<b>Corporations</b>	<b>LLCs</b>	<b>LPs</b>	<b>LLPs</b>
<b>Management</b>	Board of Directors	Members/ Managers	General Partner(s)	Designated Partners
<b>Liability</b>	No personal liability	No personal liability	GP personally liable	No personal liability
<b>Formation and Gov. Documents</b>	Articles of incorporation + Bylaws + Consents	Certificate of formation + Operating Agreement	LP Certificate + LP Agreement	Same as LP + Statement of Qualification
<b>Taxation</b>	Double/Pass through	Double/Pass through	Pass through	Pass through

# Illinois Laws

## Business Organizations

- **City of Chicago Small Business Resources**

- Business Affairs/Consumer Protection
- Small Business Center Hours: 312-74-GOBIZ M-F 8-5pm
- Helps with startups, licenses, zoning, city business resources and guidance

- **Illinois State Bar Association**

- A Guide for Organizing Domestic Corporations
- A Guide for Organizing Domestic Limited Liability Companies
- Filing Forms and Fees

- **Chicago Lawyers' Committee for Civil Rights** – pro bono legal clinic; transactional assistance

- **CARPLS** – pro bono legal aid hotline (Cook County)

- **Justice Entrepreneur Project** (private attorneys with flexible rates)

- **Illinois Legal Aid Online**

A low-angle photograph showing classical columns on the left and a modern skyscraper on the right, both reaching towards a clear blue sky. The columns are fluted and have papyrus capitals. The skyscraper has a grid-like facade of windows. The word "Questions" is overlaid in white text on the left side of the image.

# Questions

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