

Business Associations

Partnerships

- **General:** association of 2+ persons carrying on business for profit as co-owners
 - o Each partner is an agent of the partnership and the other partners
 - Agreements made with actual or apparent authority are binding
 - o All partners are jointly and severally liable for debts of partnership and partners
 - **Liability:** breach of p'ship agreement, violation of duty w/ real harm
 - o Creation: No name or filing formalities required, formed by *intent* (Fact ?)
 - **Default entity:** Any failed attempt to create entity will result in GP**
- **Limited:** partnership with 1+ general partner and 1+ limited partner
 - o **Limited partner liability** arises only through malfeasance or loss of protection
 - Lose protection if they "participate fully in management or control"
 - o Creation: file certificate of formation with SOS, have registered state agent
 - Name formalities: "limited partnership," "LP," or "Ltd."
- **LLP:** partnership with only limited liability partners, no general partners
 - o No partner liability (only partnership) unless malfeasance
 - o NOT created/formed but CONVERTED through filing with SOS
 - Name formalities: "limited liability partnership," "LLP"
- All partnerships enjoy **pass-through taxation** (entity not separate & distinct from owner)
- No partnership can survive beyond the death of its second-to-last member
- **P'ship property** belongs to the entity, **P'ship interests** belong to partners
 - o Partners' interests are redeemable upon withdraw (price = p'ship debt)
- Profits and losses are **divided equally**, unless otherwise agreed
- New partners must have the **consent of all** present partners to join
- Partners owe 1) **Duty of Loyalty** - accounting, no benefiting adverse parties; 2) **Duty of Care** - use care of prudent person in similar circs (breach = more than mere error)

Corporations

- **Formation:** file certificate of formation with SOS, have registered state agent
 - o Name formalities: "corporation," "incorporated," "Corp.," "Co.," "Inc."
 - o *Excluded businesses:* labor unions, raise cattle or own land to, stockyard (canning, curing, packing meat etc.), slaughterhouse, oil production + pipeline
- Shareholders (SH) are owners, directors are managers, bylaws govern corp actions
 - o SH brings **derivative suit** if SH of record at act/omission + SH fairly & adequately represents interests of corp (**Shelter Rule** if shares bought from applicable SH)
 - 90 day notice required; can enjoin director ultra vires acts (beyond scope)
- **Corporation liability only;** no SH personal liability, limited director personal liability
 - o **Business Judgment Rule** (BJR) protects officers acting honestly w/ discretion
 - o Certificate of formation **may limit liability** to only acts, omissions, and negligence

- Liability for bad faith, intentional illegal acts, or self-dealing are **not waivable**
- **Shares** are sold to SH at par value (cert. of formation) or higher
 - **Preemptive rights:** existing SH may purchase new shares for 1 year in proportion to current ownership *if the certificate of formation gives them the ability to do so*
 - Written waivers of preemptive rights are irrevocable
 - **SH rights:** examine books/records, transfer shares, accounting upon reasonable notice, vote if owner as of record date
- Experience **double taxation** – taxation of corporation and of owner SHs
- **Board of dir. meetings** do not require notice unless stated in bylaws or special meeting
 - **Notice:** date, time, place, purpose *via* email, fax, or electronic network
 - **Prima facie proof:** affidavit of secretary or agent unless evidence of fraud
 - **Quorum** (1/10 eligible voting SH, majority of directors) must be present and proxy rules must be established to make binding decisions
 - **Director** dissents: entered in meeting minutes by secretary or via certified mail
- **LLC:** formed like corporations; owners are *members*; member or manager managed
 - Name formalities: “limited liability company,” “LLC,” “LC,” “Ltd. Co.”
 - Flexible taxation options to be taxed as a corp or partnership

Professional Entities

- Association formed for purpose of providing professional service via same profession
- **Types:** Professional Corporation (not doctors), Professional LLC
- All owners must be licensed in same profession, to provide same service, in Texas
- Certificate of formation must state purpose of business, connected to owners’ licenses
- **Entity liability:** omission, negligence, incompetent act or malfeasance of owner or employee who committed the error during the ordinary course of business