

Business organizations for Engineers

Organizing a
Company to Meet
Your Business
Needs and Protect
Your Investment



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Presenter

Housekeeping Rules

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- Type your questions(s) in the “Chat Pod” and the presenter will answer them at the end of the presentation.
- This webinar is being recorded.
- You will receive a copy of the slides within a few days.

About the Speaker

Thanks for participating in the "Business Organizations for Engineers" webinar authored by David M. Ostfeld, and sponsored by the Intellectual Property Committee of IEEE-USA. The IPC Committee of IEEE-USA objective is to foster better understanding and protection of our members Intellectual Property rights whether in the form of Patents, Trademarks, Copyrights, or Trade Secrets.

David is an attorney with Strasburger & Price, LLP in Houston, and has represented clients for more than 30 years. His areas of speciality include: intellectual property, international transactions, domestic transactions, antitrust and anti-competition issues, customs, export regulation, contract transactions, technology agreements and franchise law matters.

David has been a member of the Intellectual Property Committee for over 30 years as a Chair, Vice Chair and Member. He has given testimony and advice to the U.S. Trade Representative, various committees of the U.S. Senate and House of Representatives, the White House, the U.S. Patent Office and the U. S. Departments of Commerce, State, Energy and Justice concerning competitiveness, technology and intellectual property issues for the United States.

He is an arbitrator with the American Arbitration Association and the International Chamber of Commerce.

David holds a Juris Doctorate from South Texas School of Law, as well as Bachelor and master degrees in Physics, Electrical Engineering, and Control Systems Engineering from Washington University in St. Louis.

He was a practicing engineer in industry for over 10 years and a member of IEEE for over 40 years.



Types of Business Organizations in Texas

Sole Proprietorship	Partnerships	Corporation
	General Partnership	
	Limited Liability Partnership (LLP)	
	Limited Liability Limited Partnership (LLLLP)	
	Limited Partnership (LP)	
	Limited Liability Company (LLC)	

The Type of Organization Affects Your Bottom Line

- Personal liability for the organization's debts
- Liability for others' actions
- Tax liability

Types of Business Organizations in Texas



**Sole
Proprietorship**

Sole Proprietorship

- No requirements—one person simply starts doing business.
- Assumed Name Certificate permissible
- Disadvantages:
 - Personal liability for all debts and torts
 - No tax benefits

Types of Business Organizations in Texas

	Partnerships	
	General Partnership	

General Partnerships

- Easiest partnership to create.
- Exposes you to the most liability.
- And you may already be operating as one . . .

Formation of General Partnerships

- No filing with Secretary of State required.
- May arise when co-owners operate a business for profit—even if they do not intend a partnership.
- Factors: right to control operations, capital contributions (property or services), profit sharing.

Financial Risks of General Partnerships

- All partners personally liable for partnership debts.
- All partners personally liable for torts of other partners if the partnership's resources are depleted.

Poll Question 1

Have you ever had to your knowledge your own business organization?

Basic Rule of Business Organizations

NEVER enter into a general partnership!

Choose the form of your business organization with care.

Types of Business Organizations in Texas

	Partnerships	
	General Partnership	
	Limited Liability Partnership (LLP)	
	Limited Liability Limited Partnership (LLLLP)	

Limited Liability Partnerships (LLPs)

- No personal liability for partnership's contracts.
- No personal liability for other partners' or employees' torts—unless they knew of the misdeeds, directly participated in them, or were supervising the person who committed them.
- Flexibility in management—all partners can participate in control without risking liability.
- Tax benefits.

Registration as an LLP

- “GP with benefits”
- Register with Secretary of State and pay a partner fee (\$200/partner, renewed annually).
- Firm name must include “LLP” or “Limited Liability Partnership.”
- Full shield

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	Limited Partnership (LP)	

Limited Partnerships (LPs)

- One or more general partners plus limited partners.
- General partners personally liable for all partnership debts.
- Limited partners generally liable only up to the amount of their investment.

Formation of an LP

- Requires at least one general partner and one limited partner.
- Complete a written limited partnership agreement.
- File a Certificate of Formation with Secretary of State & pay fees (\$750+).
- Firm name must include "Limited Partnership," "Limited," or abbreviation.

Advantages of Limited Partnerships

- Limited liability
- Can elect to be treated as a corporation for tax purposes.

Disadvantages of Limited Partnerships

- General partners personally liable for firm's obligations.
- Limited partners may be found personally liable beyond their initial investment if they exert control over the organization.

Tax Benefits of GPs, LLPs, LCs, and LLCs Over Corporations

- Corporations are taxed twice:
 1. Corporation itself pays taxes.
 2. Owners pay taxes on dividends.
- LLPs and LLCs allow for “pass-through taxation,” i.e., partners are taxed on their income but the partnership itself is not taxed.

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Limited Liability Companies

- Members generally have no personal liability for the firm's or other members' obligations.
- Like LLPs, all members may exercise control without incurring liability (except agency torts).
- Pass-through taxation allowed.

Poll Question 2

Have you ever been sued?



A Caution About Malpractice

However the firm is organized, one is always liable for his or her own malpractice.

Formation of an LLC

- File a Certificate of Formation with Secretary of State (\$300).
- Firm name must include "Limited Company," "Limited Liability Company," or abbreviation.

Poll Question 3

Have you ever done tax planning for a business organization?

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Corporations

- More complex structure and more formal legal requirements.
- Limited liability.
- Corporation is legally a separate legal “person”—can enter into contracts, sue or be sued.
- Owners = shareholders who own stock in corporation.

Formation of Corporations

- Certificate of formation filed with Secretary of State.
- Directors elected by shareholders (owners) to manage the company.
- Bylaws typically adopted.
- Legal requirements for annual meetings and voting.
- Must pay margin tax.
- Stock issued to initial owners or to raise capital.

Issuance of Stock

- Certificate must include the number of shares of authorized stock.
- Must state stock's voting rights.
- "Subscriptions" = offers to buy stock. Buyer becomes a shareholder.
- Certificate may include stock's "par value" – minimum value per share.
 - Never sell shares for less than par value!

Close Corporations

- Certain corporate formalities may not be required, e.g., owners rather than directors may run the corporation.
- Shareholders may enter into voting agreements and agree to restrict transfer of shares to outsiders.

A Caution About Close Corporations

- Shareholder agreements need to be drafted carefully.
- Shareholders must treat the corporation as a separate entity and not as their “alter ego.”
- Majority shareholders may incur higher duties toward other shareholders.

Corporations vs. LLPs, LPs, and LLCs

- Corporations have a more formal structure.
- Corporations are taxed twice (unless elect "S" Corp status).
- Formation of a corporation requires less complex agreements among partners or members.
- Corporations often provide a better structure upon which to build the organization.
- Corporations, LPs, and LLCs allow sale of stock to raise capital.

Questions About Business Organizations for Engineers?

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