

ready for business

At some point, everyone dreams of starting his or her own business. Involving your attorney helps you determine the best structure and business type for you. Typically, four organizational models are considered: Sole Proprietorship, Partnership, Corporation and Limited Liability Company. In this article, we will focus on the last three entities.

Partnership

A Partnership is an association of two or more persons acting as co-owners, working a business for a profit. Each can be either a general partner or a limited partner.

In a General Partnership, all partners share management duties and profits according to their partnership interest and the terms of their partnership agreement. All partners are personally liable for the debts of the partnership. If a partnership agreement is not signed, Wisconsin statutes control the operation of the entity.

A Limited Partnership usually has one general partner and several limited partners. Unlike a General Partnership, you cannot have a legally recognized Limited Partnership without filing a Certificate of Limited Partnership with the State of Wisconsin. The general partner manages the business; limited partners are investors in the business, but have no voice in management and control of the business. The general partner is personally liable for all debts of the Partnership; a limited partner's liability is capped by his or her investment.

A Partnership, whether General or Limited, is essentially ignored for income tax purposes. While a Partnership return must be filed, all of the income, losses, expenses and depreciation of the partnership "flow through" to partners. There is no entity level tax.

Limited Liability Company

Limited Liability Companies ("LLC"), the newest business entity, became recognized under Wisconsin statutes in 1994. An LLC marries the best that a Corporation has to offer—insulating its members from personal liability for business obligations—with the Partnership advantage of the flow-through entity, with one level of tax for the owners. Owners, known as "members," receive a membership interest in the LLC in exchange for property, money or services.

Forming an LLC requires filing Articles of Organization with the State of Wisconsin and paying appropriate filing fees. Every LLC should have an operating agreement, which has the same purpose as a partnership agreement. The LLC is more "user friendly" than a Corporation as there are fewer procedural requirements, both at inception and during the life of the LLC.

Corporation

The legal existence of a Corporation is granted upon filing Articles of Incorporation with the Wisconsin Department of Financial Institutions. The Corporation maintains complete legal separation between the stockholders and the business of the Corporation. Stockholders may come and go, but the Corporation continues on. After filing Articles of Incorporation, by-laws and corporate minutes are drafted. Stockholders elect a board of directors, who then appoint officers. Directors set the Corporation's policies, and officers put policies into action and operate the corporation.

One of the primary benefits of the Corporation is that stockholders (owners), except in rare instances, are not personally



liable for debts and obligations of the Corporation. The Corporation must file its own state and federal income tax returns. Only after corporate revenues are taxed, are remaining revenues distributed to the stockholders, which can trigger another tax at the stockholder level. This is often referred to as "double taxation."

It is possible to elect to have a Corporation taxed under Subchapter S of the Internal Revenue Code. The purpose of this election is to remove, to a certain extent, the double taxation that occurs in a regular Corporation.

Arm yourself with knowledge

The above analysis represents a broad overview of some legal and tax implications involved when deciding how to organize your business. There are certainly many other issues to consider in addition to the models discussed here. If you're thinking of starting a business, or are a business owner now, legal advice from a qualified attorney is a wise investment in your business' future and long-term success.

Information provided by: Attorneys from Moen Sheehan Meyer, Ltd. For more information, call (608) 784-8310.



Owning a business can be a dream come true. But along with the prosperity and freedom that owners long for comes risk. Consider the 1896 case of two partners in a Wisconsin logging business. They became caught up in a legal dispute over a large supply of timber that someone else falsely took into possession. Although the court found in favor of the partners, they learned a valuable lesson about protecting their livelihood.

La Crosse's oldest law firm, Moen Sheehan Meyer, has been providing legal services to businesses throughout the La Crosse area for 150 years. Much has changed over the decades, but their dedication to meeting the needs of business owners remains the same.

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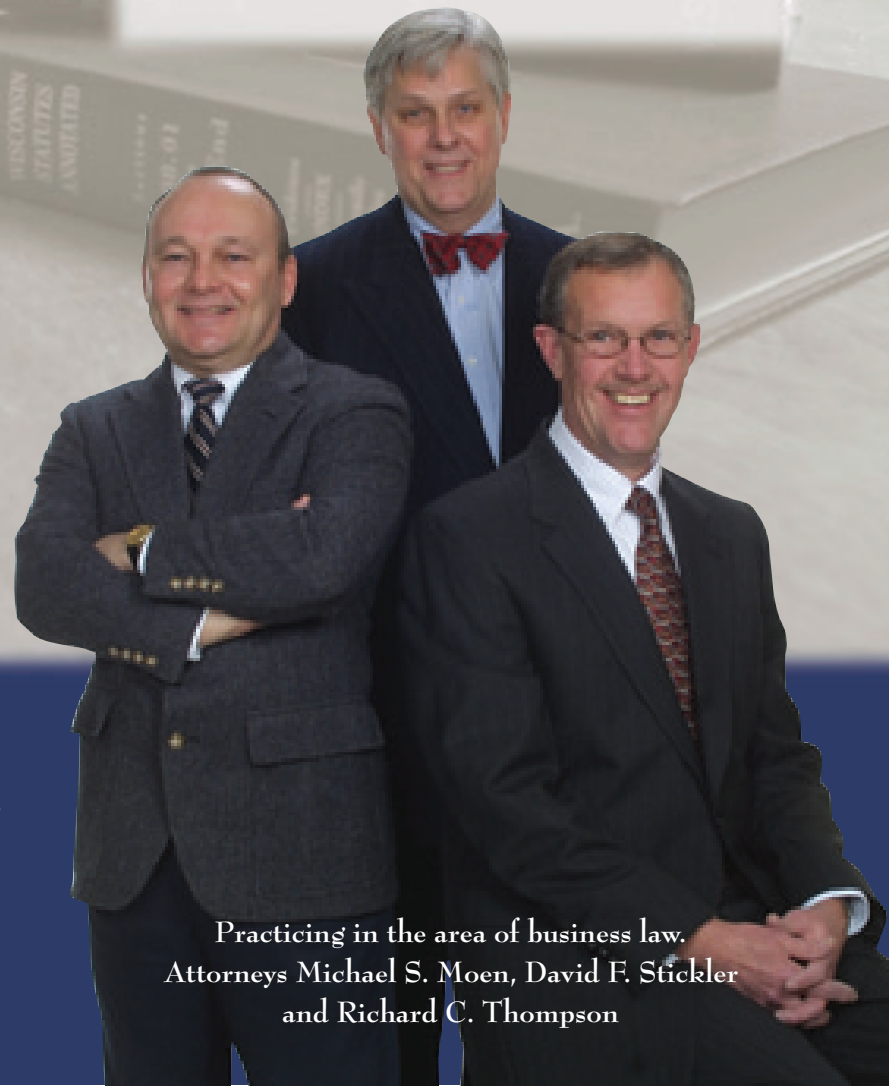


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Practicing in the area of business law.
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