

A GUIDE TO UTAH'S
5 MOST COMMONLY USED

BUSINESS ORGANIZATIONS

*SOLE PROPRIETORSHIPS
GENERAL PARTNERSHIPS
LIMITED PARTNERSHIPS
CORPORATIONS
LIMITED LIABILITY COMPANIES*

“A brief overview of their features, benefits, obligations and how they are created.”



Prepared by the Utah Division of Corporations and Commercial Code

WHICH TYPE OF ORGANIZATION TO CHOOSE?

Points To Consider When Selecting A Business Organization

One of the primary considerations in selecting a business organization is protection of a business owner from liability. Also to consider is the transferability of ownership rights, the ability to continue as a business in the event of the death or withdrawal of one or more of the owners, the capital needs of the business, and tax liabilities.

The purpose of this booklet is to provide a brief overview of these considerations as they apply to the most commonly used types of business organizations in Utah.

This booklet is not a substitute for competent legal advice. It is merely informational to assist prospective entrepreneurs in the earliest stages of business plan development. Persons contemplating a new business are always strongly urged to consult competent legal, finance and tax advisors.

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GENERAL COMPARISON OF UTAH'S MOST COMMONLY USED
TYPES OF BUSINESS ORGANIZATION

	Proprietorships	General Partnerships	Limited Partnerships	Corporations	Limited Liability Companies
Method of Creation	Owner commences business activity.	Created by agreement of the parties.	Created by registration with the state under statutory authority.	Charter issued by the state under statutory authority.	Charter issued by the state under statutory authority.
Entity Status	Not separate from owner.	In some cases, can be separate from owners.	Separate from limited partners, not usually separate from the general partners.	Legal entity, separate and distinct from owners.	Legal entity separate and distinct from the member/owners.
Liability of Owners	Owner is 100% liable for all debts.	Unlimited liability for all partners.	Limited liability for limited partners only.	Shareholders liable only to extent of paid-in capital.	Members enjoy complete limited liability similar to that of limited partners.
Duration	Same as owner	Terminated by agreement of partners, or by a partner's death or withdrawal or bankruptcy.	May be perpetual.	May be perpetual.	IRS requires organizers to specify term of years. Not to exceed 99 years.
Transferability of Interest	May be sold at any time. New proprietorship is formed.	Generally, sale of partnership interest terminates the partnership. May create new partnership.	Limited partner may sell interests. General partners may not sell interests without consent of the others, depending on the by-laws or charter.	Shareholders may sell or transfer shares of stock.	Operating agreement defines restrictions, if any, to transferability of a member's interests.
Control	By owner	General partners each have a direct and equal voice in management unless expressly agreed to otherwise.	Limited partners have no management rights or controls.	Shareholders elect the Board of Directors which sets policy and appoints officers.	The company is owned by its members and is managed by its members or by elected managers. An operating agreement governs policy.
Capital	Limited to what the owner raises himself.	What the general partners can raise themselves.	What the limited partners and general partners can raise collectively.	Based on issuance and sales of shares of stock.	Raised by the members themselves.
Taxation	Profits are taxed to owner as an individual.	Profits are usually taxed to each owner as agreed in contract, or all share equally whether or not distributed.	Profits are usually taxed to each general partner and each limited partner as agreed in contract.	Double taxation. Corporate profits are taxed to the Corporation. Shareholder profits in form of dividends are taxed as they receive them.	Profits are taxed to each member similar to a partnership.

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I.

Forming a Sole Proprietorship.

Sole proprietorships are the most common and simple form of business organization. They are formed by persons who own all or most of the business property and assets. They are 100% responsible for all of the control, liabilities and management of a business. A sole proprietorship, as its name states, has only one owner. The sole proprietorship is merely an extension of its owner: a *sole proprietor* owns his own business, and no one else owns any part of it.

As the only owner, the sole proprietor has the right to make all the management decisions of the business. In addition, all the profits of the business are his. In return for his complete managerial control and sole ownership of profits, he assumes great liability: he is *personally liable* for all the obligations of the business. All the debts of the business, including debts on contracts signed only in the name of the business, are his debts. If the assets of the business are insufficient to pay the claims of its creditors, the creditors may require the sole proprietor to pay the claims using his individual non business assets, such as money from his bank account and the proceeds from the sale of his house. A sole proprietor may lose everything if his business becomes insolvent. Hence, the sole proprietorship is a risky form of business for its owner.

In light of this risk, some people ask why any person would organize a business as a sole proprietorship. There are two reasons. First, the sole proprietorship is formed very easily and inexpensively. A person need merely set up his business to establish a sole proprietorship. No formalities are necessary. He may have a sole proprietorship even though he does not intend to create one. Second, few people consider the business-form decision. They merely begin their businesses. By default then, a person going into business by himself automatically creates a sole proprietorship when he fails to choose another business form. These two reasons explain why the sole proprietorship is the most common form of business in the United States.

Because the sole proprietorship is merely an extension of its owner, it has no life apart from its owner. It is not a legal entity. It cannot sue or be sued. Instead, creditors must sue the owner. The sole proprietor, in his own name, must sue those who harm the business.

A sole proprietor may hire employees for the business, but they are employees of the sole proprietor.

Transferability of a Sole Proprietorship

A sole proprietorship is highly transferable. "Transferability of ownership" refers to the ability of an owner of a business to sell or convey that ownership interest to another. Transferability also refers to the impact such a transfer will have on an existing business venture. Transferability varies greatly among business organizations.

The sole proprietor is, essentially, the business. If a proprietor sells his business the proprietorship ends for that person, while a new one is formed by the buyer.

Duration of a Sole Proprietorship

The "duration of a business" is the measure of the business' ability to operate even upon the death, retirement, or other incapacity of the owner. The business' duration depends heavily on the form of business organization selected.

A sole proprietorship usually terminates automatically upon the death or incapacitation of the owner/proprietor.

Capital Requirements of a Sole Proprietorship

The ability to raise capital for a business is limited by the nature of the business organization. The immediate and long-term financial needs of a business are very important factors in selecting a business organization.

Sole proprietorships are the most limiting form of business organization in terms of raising capital. The principal source of capital is the proprietor's personal wealth or personal credit-worthiness for borrowing purposes.

Taxation Considerations of a Sole Proprietorship

Federal and state taxation have influence on the type of business organization to form. Tax treatment varies widely.

Typically, the income of a sole proprietorship is taxed as the personal income of a proprietor. The business itself does not pay taxes on its profits.

Registration and Licensor of a Sole Proprietorship

When a sole proprietor conducts business under an assumed name, that name must be registered with the Utah Division of Corporations and Commercial Code.

Also, be certain to obtain all required local and municipal business licenses before commencing business.

II.

Consideration in Forming a General Partnership

General partnerships are made up of the two or more persons, called general partners, who enter an agreement to conduct business for a profit. General partners have a fiduciary duty of loyalty and trust to the other partners and must subordinate their personal interests to those of the partnership.

Basic Characteristics

For most of its basic characteristics, a partnership is similar to a sole proprietorship; yet in other respects it is similar to a corporation. Under state and federal tax law, a partnership has the following characteristics:

1. A partnership may be created without *formalities*, much like a sole proprietorship. Two people merely need to agree to own and conduct a business together to create a partnership.
2. Partners each have *unlimited liability* for the obligations of the business. If the business becomes insolvent, business creditors may require a partner to pay a partnership liability from his individual assets, such as his house and his bank accounts. However, a partner's personal creditors have first priority to that partner's assets, while partnership creditors have first priority to partnership assets.
3. Each partner, merely by being an owner of the business, has a *right* to manage the business of the partnership. He is an agent of the partnership and may make the partnership liable for contracts, torts, and crimes. Because partners are liable for all obligations of the partnership, in effect, each partner is an agent of the other partners.

Each partner may hire agents, and every partner is liable for the agents' authorized contracts and for the liabilities that the agents incur in the course of their employments.

4. A partnership is not an employer of the partners, for most purposes. As a result, for example, a partner who leaves a partnership is not entitled to unemployment benefits.
5. Partners are fiduciaries of the partnership. They must act in the best interests of the partnership, not in their individual interests.
6. *The profits or losses* of the business are shared by the partners who report their shares of the profits or losses on their individual income tax returns, because the partnership does not pay income taxes. Nonetheless, a partnership does keep its own financial records and must file an information return with the Internal Revenue Service.
(The federal income tax return filed by a partnership is merely an information return, in which the partnership indicates its gross income and deductions and the names and addresses of its partners. I.R.C. § 6031. The information return allows the Internal Revenue Service to determine whether the partners accurately report partnership income on their individual returns.)
7. A partnership *may own property in its own name*.
8. A partnership usually may not sue or be sued in its own name. The partners must sue or be sued.
9. A partner *may not sue his partners*. His sole remedy is to seek an accounting between the partners.
10. A Partner's ownership interest in a partnership is not freely transferable. The purchaser of a partner's interest does not become a partner, but is entitled to receive the partner's share of the partnership's profits.
11. Generally, a partnership has *no life apart from its owner*. If a partner dies, the partnership dissolves and may be terminated. Under certain circumstances, however, the partnership may continue after the death of a partner.

Creating a Partnership

No formalities are necessary to create a partnership. Two persons may become partners in accordance with a written partnership contract or partnership agreement. They may agree orally to be partners, or they may become partners merely by arranging their affairs as if they were partners. If partners conduct business under an assumed name, they must file the name with the Utah Division of Corporations and Commercial Code in compliance with Utah statute requiring the registration of fictitious business name (UCA 42-2-1 et. seq.).

When people decide to become partners, they should employ a lawyer to prepare a written partnership agreement. Although such an agreement is not required to form a partnership, it is highly desirable for the same reasons that written contract are generally preferred. In addition, the Statute of Frauds requires a writing for a partnership having a term exceeding one year.

When there is no written partnership agreement, a dispute may arise over whether persons who are associated in some enterprise are partners. For example, someone may assert that he is a partner and therefore, claim a share of a successful business. More frequently, an unpaid creditor may seek to hold a person liable for a debt incurred by another person in the same enterprise. To determine whether there is a partnership in the absence of an express agreement, the courts in Utah use the definition of partnership in Utah statute (48-1-3 UCA).

III

Considerations in Forming a Limited Partnership

A limited partnership is a specialized form of general partnership. While it is very similar to a general partnership in most aspects, the limited partnership is made up of at least one or more general partners and at least one or more limited partners. The general partners bear 100% of the risk of liability for the debts of the business, the limited partners risk only their capital contributions, and nothing more. Limited partners may not take a role in the management of the business. If they do, they could be found to be general partners and therefore assume unlimited liability for business debts as a general partner.

Limited partnerships are attractive organizations for purposes of raising capital. The Limited partners are usually investors who have no particular expertise in the business operations. They are usually investors seeking investment opportunities with the hope of earning a meaningful return on their investment in a successful venture.

The Principal Characteristics of Limited Partnerships

Many characteristics of a limited partnership are similar to those of a partnership, yet some of its features are similar to a corporation. Under Utah law and federal tax law (U.C.A. Section 48-2a-201), a limited partnership has the following characteristics:

1. A limited partnership may be created only in accordance with a statute. If the statute is not followed, unlimited liability may be imposed on all the partners.
2. A limited partnership has two types of partners: *general partners* and limited partners. It must have one or more of each type.
3. All partners, limited and general, share the profits of the business.
4. Each general partner has unlimited liability for the obligations of the business. Each limited partner has liability limited to his capital contribution to the business.
5. Each general partner has a *right to manage* the business, and he is an agent of the limited partnership. A limited partner has *no right to manage* the business or to act as its agent, but he does have the right to vote on several important matters, such as admitting new partners. If a limited partner does manage the business, he may incur unlimited liability for partnership obligations.
6. General partners, as agents, *are fiduciaries* of the business. Limited partners *are not fiduciaries*.
7. A partner's interest in a limited partnership is *not freely transferable*. An assignee of a general or limited partnership interest is not necessarily a partner, but is entitled only to the assigning partner's share of capital and profits, absent a contrary agreement.
8. Withdrawal of a general partner may *dissolve* a limited partnership, absent a contrary agreement of the partners. The withdrawal of a limited partner *does not automatically dissolve* a limited partnership.
9. A limited partnership *pays no federal income taxes*. Its partners report their share of the profits and losses on their individual federal income tax returns. A limited partnership files an *information return* with the Internal Revenue Service, notifying the IRS of each partner's share of the year's profit or loss.

Creating a Limited Partnership

A limited partnership can be created only by complying with the Utah Revised Uniform Limited partnership Act, Chapter 2a of Title 48 the Utah Code. Under Utah law, the general partners must file a "Certificate of Limited Partnership" with the Utah Division of Corporations and Commercial Code.

While the Division does not furnish forms for this purpose the Certificate must be signed by all of the general partners and must include:

- A. The name of the limited partnership, (must contain the words "Limited Partnership", "Limited", "L.P." or "LTD".)
- B. The term of the partnership's existence.
- C. The street address of the principal place of business.
- D. For Non-Commercial Registered Agents: The Utah street address of the business entity's initial registered office and the name and signature of its initial registered agent at such address. For Commercial Registered Agents: The name of the commercial registered agent and the registration number.
- E. The name and street address of each **general partner**. (Each general partner, if a business entity, must be registered with the Division of Corporations.)
- F. The signature of each **general partner** and the **registered agent** acknowledging acceptance as such.

Optional

- G. The specific purpose, but not limited to, for which the partnership is formed.

When filing a Certificate of Limited Partnership, the General Partners must include the following:

- Two (2) copies, originally signed, of the Certificate of Limited Partnership and:
- One (1) copy of the original containing all of the information listed above, and:
- The filing fee of \$70.00, payable to the State of Utah.

IV

Considerations in Forming a Corporation

The modern **corporation** is the most important form of business in the history of the world. It has facilitated the rapid economic development of the last 150 years by permitting businesses to attain economies of scale. Businesses organized as corporations can attain such economies because they usually have a greater capacity to raise **capital**, a capacity created by corporation law. Corporation law allows people to invest their money in a corporation and become owners without imposing unlimited liability or management responsibilities on themselves. Many people are willing to invest their savings in a large, risky business if they have limited liability and no management responsibilities. Far fewer people are willing to invest in a partnership or other business form in which owners have unlimited liability and management duties.

Corporations are the form of business organization most often associated with the term business. Most large businesses are corporations. Corporations are creations of the state, with methods of creation dictated by state statute. Businesses are generally required to file their articles of incorporation with the **Utah Division of Corporations and Commercial Code**. Upon approval, the incorporators designate the board of directors and issue stock. The directors are subsequently elected by the shareholders and are responsible for establishing

corporate policy. They have a fiduciary duty to preserve the corporation. The board is empowered to hire managers to operate the business and conduct its affairs. The shareholders are the owners of the corporation. They enjoy limited liability, but do not participate in the day-to-day management of the business.

In the words of Chief Justice Marshall in *Dartmouth v Woodward* (1819):

“A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creation of law, it possesses only those properties which the charter of its creation confers upon it... These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality and if the expression may be allowed, individuality; properties by which a perpetual succession of many persons are considered as the same, so that they may act as a single individual. A corporation manages its own affairs, and holds property without the hazardous and endless necessity of perpetual conveyance for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in succession, with these qualities and capacities, that corporations were invented, and are in use. By these means, a perpetual succession of individuals are capable of acting for the promotion of the particular object, like one immortal being.”

The Principal Characteristics of Corporations

1. A corporation may be *created only by permission of the State Government*.
2. A corporation is a *legal person* and a *legal entity* independent of its owners (called **shareholders**) and its managers (called **officers** and the **board of directors**). Its life is unaffected by the retirement or death of its shareholders, officers and directors. A corporation is a person under the Constitution of the United States. Like natural persons, it is protected from unreasonable searches and seizures and is guaranteed due process and equal protection under the law. It also has free speech rights. It has its *own domicile* and its own place of *residence*, whose locations determine in part whether a state may constitutionally impose its laws on the corporation.
3. A corporation *may acquire, hold and convey property* in its own name. A corporation *may sue and be sued* in its own name. Harm to a corporation *is not* harm to the shareholders; therefore, with few exceptions a shareholder may not sue to enforce a claim of the corporation.
4. A shareholder has *no right or duty to manage*, the business of the corporation. The directors and officers need not be shareholders.
5. The shareholders have *limited liability*. With few exceptions, they are not liable for the debts of a corporation beyond their capital contributions to the corporation.

The corporation is a legal entity separate from its shareholders, even if there is only one shareholder. Corporation law erects an imaginary wall between a corporation and its shareholders that protects shareholders from liability for a corporation's actions. Therefore, obligations of a corporation are not obligations of its shareholders, and acts of a corporation are not acts of its shareholders. Consequently, the shareholders' liability is limited to their capital contributions to the corporation.

Nevertheless, courts will sometimes ignore the separateness of a corporation and its shareholders by **piercing the corporate veil**. The primary consequence of piercing the corporate veil is that a corporation's shareholders may lose their limited liability.

6. Generally, the ownership interest in a corporation is *freely transferable*. A shareholder may sell his shares to whomever he wants whenever he wants. The purchaser becomes a shareholder with the same rights that the seller had.
7. Generally, *shareholders owe no fiduciary duties* to the corporation. A shareholder who is not an officer or a director may deal with the corporation as may any other person. A shareholder may be a creditor of the corporation.
8. A corporation *pays state and federal income taxes* on its income. Shareholders have personal income from the corporation only when the corporation makes a distribution of its assets to them, as when the corporation pays dividends to its shareholders.

Creating a Corporation

A corporation is formed in the state of Utah by filing Articles of Incorporation in duplicate with the Division of Corporation and Commercial Code, together with the appropriate fee. While there are no standard forms furnished for this purpose, the following information may be of assistance to you. We encourage you to consult an attorney to ensure your fullest legal protection and benefit.

1. ***The Articles of Incorporation must include the following information (U.C.A. Section 16-10a-202:)***
 - A. The corporate name (must contain the word or abbreviation of the word "Corporation," "Company," or "Incorporated.")
 - B. The purpose or purposes for which the corporation is formed.
 - C. The number of shares the corporation is authorized to issue. If more than one class of shares is authorized, each class must be designated along with a description of the preferences, limitations and relative rights of each class. For addition information, see 16-10a-601 of the Utah Code.
 - D. The name and address of each of the incorporators (one or more persons may act as incorporators.)
 - E. For Non-Commercial Registered Agents: The Utah street address of the business entity's initial registered office and the name and signature of its initial registered agent at such address. For Commercial Registered Agents: The name of the commercial registered agent and the registration number.

- F. The signature of each of the incorporators.
 - G. A statement in the Articles of Incorporation or an attachment signed by the Registered Agent acknowledging acceptance as such.
2. *When filing Articles of Incorporation, you **must** include the following:*
- A. One (1) copy, originally signed, of Articles of Incorporation and one (1) copy of the original containing all of the information listed above.
 - B. The non-refundable processing fee of \$70.00. (An expedited fee of \$75.00 is available.)
3. Where to file:

Mail In: PO Box 146705
Salt Lake City, UT 84114-6705
Walk In: 160 East 300 South, Main Floor
Information Center: (801) 530-4849
Toll Free: (877) 526-3994 (within Utah)
Fax: (801) 530-6438

SPECIAL NOTE: The Utah Division of Corporations and Commercial Code provides a step-by-step guide to preparing articles of incorporation. You may inquire by phoning (801) 530-4849 or going to the Division's web site.

Corporation Bylaws

Under Utah law, corporations are not required to adopt bylaws. However, they can be very helpful and are viewed by some as necessary. The function of the bylaws is to supplement the articles of incorporation by defining more precisely the powers, rights and responsibilities of the corporation, its managers, and its shareholders and by stating other rules under which the corporation and its activities will be governed.

The bylaws usually state the authority of the officers and the directors, specifying what they may do and may not do; the time and place at which the annual shareholder's meetings will be held; the procedure for calling special meetings of shareholders; and the procedures for shareholders' and directors' meetings. the bylaws may make provisions for special committees of the board, defining their membership and the scope of their activities. They set up the machinery for the transfer of shares, the maintenance of share records, and for the declaration and payment of dividends.

Financing the Corporation/Corporate Securities:

Any business needs money to operate and to grow. One advantage of incorporation is the large number of sources of funds that are available to businesses that incorporate. One such source is the sale of corporate **securities**, including shares, debentures, bonds, and long-term notes payable.

Besides obtaining funds from the sale of securities, a corporation may be financed by other sources. A bank may lend money to the corporation in exchange for the corporation's short-term promissory notes, called *commercial paper*. Retained earnings provide a source of funds once the corporation is operating profitably. In addition, the corporation may use normal short-term financing, such as accounts receivable financing and inventory financing.

A corporate **security** may be either:

- (1) a share in the corporation or
- (2) an obligation of the corporation.

These two kinds of securities are called *equity securities* and debt securities.

Every business corporation issues equity securities, which are commonly called stock or **shares**. The issuance of shares creates an ownership relationship: the holders of the shares-called stockholders or **shareholders**-are the owners of the corporation.

Utah statutes permit corporations to issue several classes of shares and to determine the rights of the various classes. Subject to minimum guarantees contained in the state business corporation law, the shareholders' rights are a *matter of contract* and appear in the articles of incorporation and usually appear in the bylaws, in a shareholder agreement, and on the share certificates.

The Board of Directors

Introduction

Traditionally, the **board of directors** has had the power and the duty to manage the corporation. Yet in a large, publicly held corporation, it is impossible for the board to manage the corporation on a day-to-day basis, since many of the directors are high-ranking officers of other corporations and devote most of their time to their other business interests. Therefore, the law permits a corporation to be managed under the direction of the board of directors. Consequently, the board of directors delegate major responsibility for management to committees of the board, such as an executive committee, to individual board members such as the chairman of the board, and to the officers of the corporation, especially the chief executive officer (CEO). In theory, the board supervises the actions of its committees, the chairman, and the officers to ensure that the board's policies are being carried out and that the delegates are managing the corporation prudently.

The Major Functions of Modern Boards of Directors

1. To protect the assets and other interests of the shareholders of the corporation.
2. To ensure the continuity of the corporation by enforcing the articles and bylaws and by seeing that a sound board of directors is maintained.
3. To see that the company is well managed.
4. To make decisions that are not delegable, such as the payment of dividends.

Officers of the Corporation

Appointment of Officers

The board of directors has the authority to *appoint the officers* of the corporation. Corporations are given great flexibility in determining the number of its officers. Under the law, one person may hold several offices, including the offices of president and secretary. If a corporation desires the protection of dual signatures as a safety measure, it must create positions for two officers whose signatures are required on corporate documents.

Authority of Officers

The officers are agents of the corporation. As agents, officers have *express authority* conferred on them by the bylaws or the board of directors. In addition, officers have *authority* to do the things that are reasonably necessary to accomplish their express duties.

Directors and officers must act within their authority and within the powers given to the corporation. They also have the duty to act with due care. Their duty of loyalty requires them to act in the best interests of the corporation as a whole. Most management actions are protected from judicial scrutiny by the business judgement rule: absent bad faith, fraud, or breach of a fiduciary duty, the judgement of the managers of a corporation is conclusive.

V

Considerations in Forming a Limited Liability Company

A limited liability company ("LLC") is a new form of business entity that combines the operational flexibility and tax status of a general partnership with the limited liability protection traditionally associated with limited partnerships and corporations. An LLC has far greater operational flexibility than either a **Subchapter C Corporation**, a **Subchapter S Corporation** or a Limited Partnership.

The Principal Characteristics of Limited Liability Companies

1. The LLC is not required to hold annual meetings or to comply with the many operational restrictions imposed upon corporations.
2. The restrictions on the number and types of shareholders applicable to a subchapter S corporation do not apply to the owners of an LLC (the "members"). The members of an LLC may also participate in management to a greater extent than limited partners.

3. An LLC differs from a general partnership inasmuch as its members are not personally liable for the obligations of the LLC. It also differs from a limited partnership in that no member is jointly and severally liable for obligations of the LLC, unlike the general partner in a limited partnership. An LLC is subject, however, to disclosure, record keeping and reporting requirements that do not apply to a general partnership.
4. An LLC is a business entity consisting of at least one or more "persons" (meaning an individual, general partnership, limited partnership, association, trust, estate or corporation,) conducting business for any lawful purpose. An LLC may be an incorporated, general partner, limited partner, applicant of a DBA, or a manager of any corporation, partnership, limited partnership or limited liability company.
5. LLCs consist of **members, managers,** and **employees.** Management of the company is reserved to the **members** or **managers** as specified in the Articles of Organization. Generally, neither members, managers, nor employees are personally liable for any debt or obligation of the company.
6. LLCs are creatures of statute and become effective once having filed approved Articles with the Division. Like most business types filed with the Division, LLCs are formed by filing Articles (called Articles of Organization.) Foreign LLCs may transact business in the state once having completed an Application for Registration. LLCs may amend their articles, file Articles of dissolution, and must file an Annual Report.

Creating a Limited Liability Company or LLC

1. The articles of organization of a limited liability company shall set forth (U.C.A. Sect. 48-2c-403):

- a. The name of the Limited Liability Company (must contain the words "Limited Liability Company," "Limited Company," "L.C." or "L.L.C.").
- b. The business purpose or purposes for which the Limited Liability Company is organized.
- c. The street address of its registered office in the State of Utah.
- d. For Non-Commercial Registered Agents: The Utah street address of the business entity's initial registered office and the name and signature of its initial registered agent at such address.
For Commercial Registered Agents: The name of the commercial registered agent and the registration number.
- e. The street address of the company's designated office or a statement that the company's registered office shall be its designated office.
- g. The name and street address of each organizer who is not a member or manager.
- h. If the Limited Liability Company is to be manager-managed, a statement that the company is to be managed by a manager or managers and the names and street addresses of the managers whom are to serve.
- i. If the Limited Liability Company is to be member-managed, a statement that the company is to be managed by its members and the names and street addresses of the members who are to serve. The Limited Liability Company shall at all times have at least one (1) member.
- j. Any other provision, not inconsistent with law, that the members choose to include the Articles of Organization (U.C.A. Section 48-2c-302(4)).

- k. The articles of organization shall be signed by at least **one (1)** organizer or one manager or, if the Limited Liability Company is member-managed, by at least **one (1)** member (**U.C.A. Section 48-2c-204**).

Additional filing requirements:

- a. **One (1)** original or true copy of the Articles of Organization. If the filer requests a copy of the Articles of Organization an additional exact copy of the filed document along with a return-addressed envelope with adequate first-class postage must also be submitted.
- b. The non-refundable processing fee of \$70.00 payable to the State of Utah. (An expedited fee of \$75.00 is available.)
- c. You may file in person, by mail, or fax. Means of payment are, cash, check, or money order made payable to the "State of Utah".

Mail In: PO Box 146705
Salt Lake City, UT 84114-6705
Walk In: 160 East 300 South, Main Floor
Information Center: (801) 530-4849
Toll Free: (877) 526-3994 (within Utah)
Fax: (801) 530-6438

Historical Review of Limited Liability Company's

The first limited liability company legislation was enacted in Wyoming in 1977. Florida enacted similar legislation in 1982. Neither act was widely used prior to 1988, however, because of uncertainty regarding the federal tax treatment of LLC's. From 1977 to 1987, the IRS refused to issue letter rulings on LLC's. This meant that during this period no LLC could be certain whether it would be treated as a corporation or as a partnership for federal income tax purposes.

In 1988, the IRS indicated that it would issue rulings on the tax treatment of LLC's. In Revenue Ruling 88-76, 1988-2 C.B. 360, the IRS ruled that a Wyoming LLC would be treated as a partnership for federal tax purposes. The 1988 ruling was based on a finding that a Wyoming LLC did not have a majority of four specified corporate attributes.

These corporate attributes, as set forth in Treas. Reg. §301.7701-2(1983), are as follows: centralized management; limited liability; free transferability of interest; and continuity of existence. The IRS determined that the Wyoming LLC has the first two corporate attributes, but lacks the latter two. This ruling affirmed the IRS' long-standing position that an entity having two or less of the four specified corporate attributes will be treated as a partnership for federal income tax purposes. In February of 1992, the AIRS issued a favorable ruling regarding the tax treatment of Utah Limited Liability Companies. Utah LLC's will be treated as partnerships for tax purposes.

Partnership tax treatment is advantageous because the earnings of a partnership are treated as the earnings of its partners. No separate tax is imposed on the partnership entity. In contrast, the earnings of a corporation are taxed at the entity level; any dividends which are distributed to the shareholders are also taxable to the shareholders. Thus, the distributed earnings of a corporation are taxed twice, while the earnings of a partnership are only taxed once. Like a partnership the earnings of the LLC are taxed only once.

Under GRAMA {63-2-201}, all registration information maintained by the Division is classified as public record. For confidentiality purposes, the business entity physical address may be provided rather than the residential or private address of any individual affiliated with the entity.