

Choice of entity — a few basic considerations

From a legal perspective, business owners have several options for organizing and operating their business. Selecting the best option usually depends on three concerns — allocating management of the business among multiple owners, limiting liability and promoting tax efficiency. I generally try to avoid sounding like an ad for a law firm in this column, but I believe that getting legal and tax counsel when forming a business is a good investment, especially the more people, property and money are involved. In any event, business owners will need

to at some point decide whether to proceed with running their business informally or to organize a business entity. And if they organize, which form is best?

When the proverbial widget maker hangs out a shingle, and does nothing more to organize her business, she is a sole proprietor. A sole proprietorship can be registered with the state, which may be beneficial for trademark, licensing or other administrative purposes. But in terms of liability protection or taxes, a sole proprietorship is indistinguishable from the owner. They are one and the same. A single-owner business can enjoy certain benefits from operating under another form of business, which I will address below, but for some, a sole proprietorship is a simple and effective manner in which to operate.

A general partnership is the default form of business when multiple business owners team up informally. Like a common law marriage, it's possible for the "partners" to unintentionally enter into a general partnership, simply by holding themselves out as co-owners of a business for profit, and to proceed in business together without a full understanding of the consequences. The consequences can be significant.



Matthew Trinidad
Pro Bono Publico

In a general partnership, each partner can independently operate the business on behalf of the partnership. This is efficient, but there are no checks-and-balances. All general partners are jointly, severally and personally liable for the acts of the other partners, and the knowledge of one partner is imputed to the others. This means that when one partner creates a liability of some kind, say, committing the partnership to a large and unnecessary purchase order, the other partners can be caught holding the bag, even though they didn't cause the liability in question and even if they knew nothing about their partner's actions.

As a result, it's often best for a multi-owner business to organize and operate under a formal business entity to potentially limit their liability and to create a mechanism for allocating the responsibilities, authorities, benefits and obligations of teaming up to run a business. Tax

considerations are also very important, because the various forms of business are taxed differently, and the differences can be significant. There are many options available, including corporations, LLCs, limited partnerships, limited liability partnerships and limited liability limited partnerships.

Most business owners form a corporation or another limited liability entity, such as an LLC or a LLP, to avail themselves to liability protection. In theory, the owner(s) of a limited liability entity won't be held personally liable for the liabilities of the company. However, running a business through a limited liability entity isn't an absolute protection against personal liability. If the business is a shell company with no assets or if the owners disregard the business entity by comingling personal and business assets or by disregarding business formalities, then it's possible for creditors of the business to reach the assets of the owners. As a result, it is important for business owners to adequately capitalize, insure and manage their corporation or LLC, especially if liability protection is an issue.

LLCs are by far the most popular and flexible business entity, in part because the members of an LLC have broad discretion under law in crafting, by contract, how the business will be run. Control of an LLC can be consolidated in one or more managers or officers, or an LLC can operate more like a general partnership where each member is authorized to steer the ship. Majority rule is also a common mode of operation

for an LLC.

Corporations on the other hand, are somewhat rigid in the manner in which they're managed, and certain formalities are required under law. That being said, corporations can still be an excellent, if not ideal platform to structure the management and operation of a business, depending on the circumstances.

Finally, from a tax perspective, a single-member LLC will generally be ignored by the taxing authorities, simplifying tax reporting for the owner. The registered partnership forms of organization and most multi-member LLCs are taxed as a partnership. A corporation and an LLC can elect to be taxed as a C or S corporation. Partnerships and corporations involve an additional level of tax reporting, and each type is taxed differently. Taxes are a central consideration when choosing a form of business, but the subject is way too broad and consequential to discuss here. Suffice it to say that the issues pertaining to a corporation from a tax perspective are particularly technical. Many hard-to-fix pitfalls exist in the corporate context, so I would strongly advise that business owners who determine that a corporation is for them work with a CPA and a qualified business lawyer.

Matthew Trinidad is a transactional attorney with Karp Neu Hanlon PC. He focuses on business law, lending and estate planning. He can be reached at mlt@mountainlawfirm.com or 970-945-2261.

MEET YOUR MERCHANT: LUMINANCE PHOTOGRAPHY

Luminance Photography snaps up a Basalt location

How did your business start?

Luminance Photography started in 2001 in my home at the time and soon moved to the location on Main Street in Carbondale for 13 years.

What do you sell?

Lifestyle children and family photographic art.

What positive lessons did you learn during the recession?

That community means so much.

What strategy do you use to hire good people?

It's just me.

What is your strategy for growth in the next year?

I plan on reaching more families traveling to our beautiful valley.

What is the best thing about running a business here?

I love the people in this wonderful valley.



CONTRIBUTED PHOTO

Jenni Fautsko

BUSINESS DIRECTORY

Name of business:

Luminance Photography

Description: Luminance Photography specializes in lifestyle children and family photography, capturing the art of love.

Owner: Jenni Fautsko

Address: 355 Gold Rivers Court #4, Basalt

Phone: 970-379-8945

E-mail: jenni@luminancephotography.com

Website: www.luminancephotography.com

Facebook: Luminance Photography

Twitter: Luminance18

Date business opened: 2001

BUSINESS BRIEFS

Massage therapist Dietl joins Midland Fitness and Un-Wind Therapies

Midland Fitness and Un-Wind Therapies would like to welcome massage therapist

Lori Dietl to their team. Lori moved the Roaring Fork Valley in 2008, after completing her massage therapy training at Memorial Hermann Hospital in Houston, Texas. She quickly established a reputation for providing a nurturing experience that resulted in a dedicated clientele. In addition to being certified in Swedish massage, she is also certified in prenatal massage. Call Midland Fitness or New Castle Family Fitness to book with Lori, 945-4440.



Lori Dietl

Alpine Bank among Colorado's Top 50 Greenest Companies

ColoradoBiz magazine recognized Alpine Bank as one of Colorado's Top 50 Greenest Companies at the inaugural Green Colorado Awards on June 26 at RedLine Gallery in downtown Denver. Alpine Bank was the only bank recognized in a group of six organizations whose sustainable initiatives are setting new industry standards in the Financial/Consulting/Professional Services category.

Alpine Bank's environmental practices started as a grassroots effort by employees in 2003 and evolved into a bankwide Environmental Management System. The system has greatly reduced the bank's environmental footprint and has been recognized with ISO 14001 certification — the international EMS standard of excellence. Alpine Bank is the only known financial institution to hold this certification. Additionally, in 2013 alone Alpine Bank contributed more than \$145,000

to local environmental nonprofits through its Environment Loyalty Debit Card initiative.

Vicki Lee Green leaders

Vicki Lee Green Realtors would like to congratulate Sara Doderer for being the sales person of the month for June. Sara is a native of the valley, owned her own financial consulting business and now enjoys helping clients in their real estate needs. Sara is the newest member of our team and is off to a great start.



Sara Doderer

Vicki Lee Green Realtors would also like

to congratulate Michelle James for being the listing agent of the month for June. Michelle has more than 20 years' experience selling real estate in the Roaring Fork Valley. She began selling real estate with Vicki Lee Green Realtors in 1993 and became co-owner of the business in 2004.



Michelle James

Local Edward Jones financial advisor wins award

Edward Jones Financial Advisor Jay McGlade (office located in West Glenwood) recently won the Financial Advisor of the Year award for his region. An area including Western Colorado and Eastern Utah, comprising 52 Edward Jones financial advisors. The award recognizes Edward Jones financial advisors for their work in helping their clients, the firm and their peers.

"I am honored to receive this award," McGlade said. "I enjoy my work helping people plan for their financial futures and motivating my peers towards success, but it gives me an extra boost to receive special recognition for my work."