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Business Foundations: Session 1/3 – Entity Formation

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This session is part of the Designer Track, Sponsored by The Public Works and Battery621, one of eight programming tracks aimed at supporting the entire entrepreneurial team.

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Entity Formation (Business Foundations: Session 1/3)

Milgrom & Daskam

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ENTITY TYPES

Sole
Proprietorship

Partnership

Limited Liability
Company

Corporation

AWBAT: Explain why it is important to have an entity, be able to make their own LLC, and understand considerations when electing LLC vs corp and tax elections

SOLE PROPRIETORSHIP AND GENERAL PARTNERSHIP

- Very easy to start – no need to file documents
- No legal distinction between business and business owner
- No personal liability protection



<https://unsplash.com/s/photos/lemonade-stand>



Photo by: <https://unsplash.com/en/photos>

LIMITED LIABILITY COMPANY

- Organizational documents required – [Articles of Organization](#), Operating Agreement
- Flexible structure
- Pass-through taxation
- Limited personal liability- must maintain corp formalities
- (will talk about corps later)



The screenshot shows the Colorado Secretary of State website. The header includes the Colorado state seal, the text "Colorado Secretary of State Jena Griswold", and a photo of Jena Griswold. A navigation menu on the left lists: Home, Information resources, Bingo & raffles, Business organizations, Charities & fundraisers, DME suppliers, Elections & voting, Lobbyist, Notary public, Performing rights, Rules and regulations, UCC, and Contact us. The main content area is titled "Business Organizations" and is divided into three sections: "Search & file" (listing search, name availability, filing, reporting, renewals, forms, oaths, facsimiles, and removal), "Services" (listing certificates, notifications, validation, missing records, and mass change), and "Apostilles or authentications" (listing preparation, general info, rejection reasons, verification, and forms). A "Help & resources" section at the bottom right lists alerts, identity theft protection, FAQs, online payments, prepaid accounts, toll roads, checklists, glossaries, and news.

LIMITED LIABILITY COMPANY

Take out your computers and go to www.sos.state.co.us and we'll go through to process of setting up your LLC

- The Colorado Business Fee Relief Act (HB 22-1001) implemented on July 1 of this year means it's currently just \$1 to create your LLC

After this is complete retrieve your EIN from:

<https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-online>



Photo: Arrested Development/ Fox

MAINTAINING LIABILITY PROTECTION

- Keep your personal and business finances separate
- Obtain an EIN
- Keep written records



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OPERATING AGREEMENTS



Photo by: https://unsplash.com/@cytonn_photography

- Critical if you have a multi-member LLC
- Don't rely on handshake agreements
- Covers the important information about governing your business



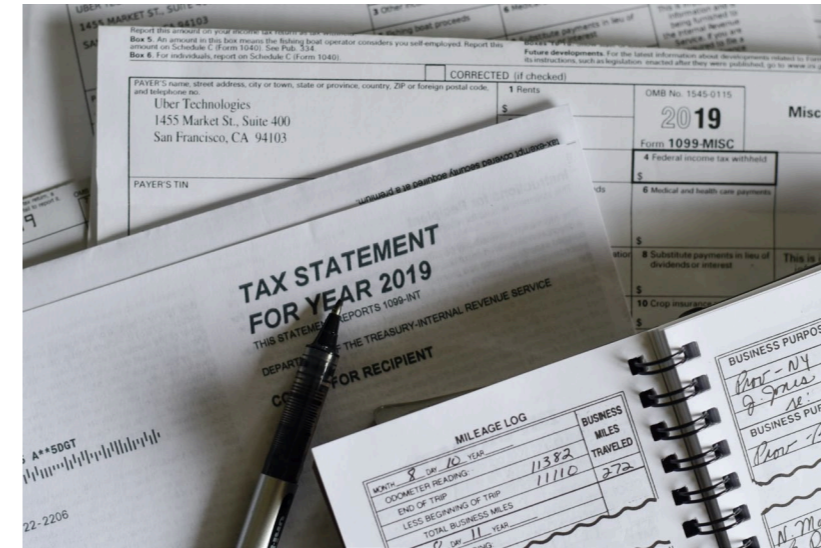


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CORPORATION

- Organizational documents required – Articles of Incorporation, Bylaws, Shareholder Agreement
- Owned by shareholders, typically run by Board of Directors who have the powers granted by the shareholders
- Taxed at both the individual level for shareholders, and the corporate level
- Limited personal liability- must maintain corp formalities

Tax Elections

- Default is c-corp for corps and partnership for LLC
- Can make S-election to be taxed as S-corp- IRS form 2553 IRS (corps & LLC's)
- <https://www.irs.gov/pub/irs-pdf/f2553.pdf> (be sure to file and keep a copy!!)
- Partnership vs. s-corp vs. c-corp

	Partnership	S-Corp	C-Corp
Taxation status	Pass through; income reported on K-1 (Phantom Income)	Pass through; income reported on K-1 (Phantom Income)	Double taxation but no pass through (No Phantom Income)
Employee Equity	Employee's cannot be members (no k-1 and w-2); but can have guaranteed payments that come out before distributions; still on K-1	Employees can be members/SH's (K-1 and w-2); ONE CLASS OF SHARES	Multiple classes of shares, employees can be SH's (1099-DIV and w-2)
Limitations	No employee owners; OFAC SDN list	100sh's, no entity sh's, no foreign sh's, one class of stock	OFAC SDN list
QSBS	No	No	Yes

Qualified Small Business Stock

- C-Corp
- Value of gross assets at original cost do not exceed \$50m at time of issuance
- Eligible: tech, retail, wholesale, & manufacturing
- Ineligible: hospitality, personal services, financial, farming, mining
- If purchased after Sep 27, 2010 from original issuance and held for five years 100% of federal tax can be excluded





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THANK YOU FOR ATTENDING

For more resources, please reach out to:

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Slides will be posted on MilgromLaw.com