#### LEGAL PLANNING FOR START-UPS CHOICE OF BUSINESS ENTITY

#### LIMITED LIABILITY ENTITIES

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# **Business Entity Options**

What choices are available?

- Sole Proprietorship
- > General Partnership
  - Limited Liability Entity

General Partnership with Limited Liability ("LLP")

Corporation

Limited Liability Company ("LLC")

## Limited Liability Goals

Primary Goal

Protect Owner from Business' Creditors By Limiting Owner's Personal Liability

- Secondary Goal
  - Protect Business from Owner's Creditors

**By Limiting Creditors' Remedies** 

**General Partnership with Limited Liability** Florida Limited Liability Partnership ("LLP")

**Management of Partnership Business** 

Partners manage & act as agents

**Personal Liability for Partnership Obligations** 

Partners not personally liable (contract, tort, or other)

**Transferability of Partnership Interest** 

Partner may transfer right to profits, losses, & distributions

Partner may not transfer management or other rights

#### **Filing Requirements**

**Partnership Registration & Statement of Qualification** 

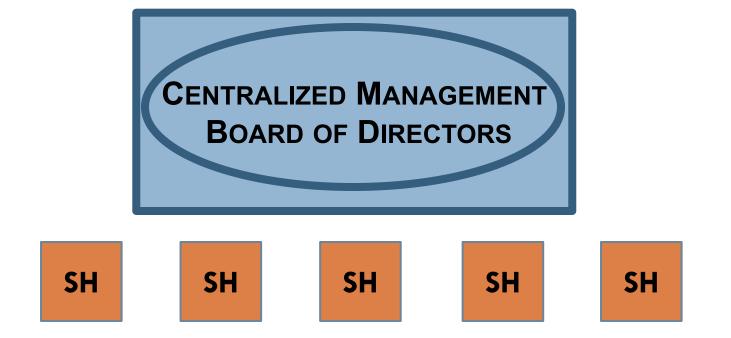
# **Corporations** Attributes & Requirements

#### Important Attributes

- Separate Legal Entity
- Centralized Management
- Continuity of Life
- Limited Liability for Shareholders
- Free Transferability of Interests
- Filing & Other Requirements
  - File Articles of Organization
  - Adopt Bylaws & Hold Meetings

### **Corporations** Management & Ownership

### SEPARATE ENTITY NAME (CORP., CO., INC.)



Corporate Structure with Flexibility

- Familiar Management Structure for Public
  - Directors, Officers, Employees
- Flexibility in Designing Shares & Board
  - Shares: Common, Preferred, Convertible
    Voting Nervoting

Voting, Nonvoting

Board of Directors:

Number, Term, Voting Rights

# **Shareholders' Rights**

### Right to Vote:

elect directors

#### Right to Receive Distributions:

- dividends or corporation dissolution
- Right to Transfer Shares
  - by sale or gift; forced sale

# Limited Liability Company ("LLC") Attributes

#### Important Attributes

- Separate Legal Entity
- May Choose Partnership or Corporate Style of Management
- Continuity of Life
- Limited Liability for Members
- Partial Transferability of Interests

# Choose LLC Management Style # 1 – Partnership Style (Default)





## Choose LLC Management Style # 2 – Corporate Style



**CENTRALIZED MANAGEMENT** 

MANAGERS



# Limited Liability Company ("LLC") Requirements

#### Filing Requirement

- File Articles of Organization
- Formalities
  - Meetings Optional
- Members adopt Operating Agreement
  - Define Rights
    - Flexibility for Sophisticated
- > or Rely on Default Rules

### Florida Limited Liability Company (LLC) Personal Liability & Transferability

- Personal liability of member for LLC obligations Not personally liable (contract, tort, other)
- Transferability of member's interest May transfer right to receive distributions per Op. Ag. May <u>not</u> transfer management or other rights
- **Member's creditors** 
  - If 2 or more members
  - Court's charging order for member's distributions Only 1 member
    - Court may order sale of sole member's interest

### Federal Income Taxation at a Glance for C Corporations

C Corporation – taxed as separate entity corporate income tax rate – 21%

**Dividend (after-tax profits) – taxed to shareholders** 

reduced capital gains rates may apply to qualified dividends

### Federal Income Taxation at a Glance for S Corporations

- S Corporations generally income, deductions, & credits pass-through to shareholders
- **Corporate election with shareholders' consent**
- **Only "Small Business Corporation"** 
  - max: 1 class of stock
    - voting & nonvoting common stock allowed
  - max: 100 shareholders
    - generally individual U.S. taxpayers

### Federal Income Taxation at a Glance for LLCs

#### **Default Rules**

if 2 or more members, taxed as a partnership if only 1 member, entity is disregarded taxed to member (like sole proprietor) By Election

# LLC may elect to be taxed as a corporation C Corporation or elect S Corporation