
LEGAL CONSIDERATIONS FOR STARTING A SMALL BUSINESS

PRESENTATION FOR MIAMI OPEN FOR BUSINESS

MAY 23, 2024



FLORIDA
COMMUNITY
DEVELOPMENT
LEGAL PROJECT



DISCLAIMER

- ❑ THIS PRESENTATION AND ITS CONTENTS ARE INTENDED TO CONVEY GENERAL INFORMATION ONLY AND NOT TO PROVIDE LEGAL ADVICE OR OPINIONS
- ❑ THE INFORMATION IN THIS PRESENTATION IS NOT INTENDED TO BE AN EXHAUSTIVE LIST OF ALL LEGAL CONSIDERATIONS FOR SMALL BUSINESSES IN FLORIDA
- ❑ PLEASE CONSULT WITH OR RETAIN QUALIFIED LEGAL COUNSEL AND/OR A TAX PROFESSIONAL ON ALL MATTERS CONTAINED IN THIS PRESENTATION AS THEY RELATE TO YOUR SPECIFIC SITUATION
- ❑ THIS PRESENTATION DOES NOT ESTABLISH AN ATTORNEY-CLIENT RELATIONSHIP BETWEEN THE PRESENTERS AND THE ATTENDEES OF THIS PRESENTATION

AGENDA

- ❖ Introduction
- ❖ Initial Start-up Considerations
- ❖ Choosing a Business Structure
- ❖ **NEW FOR 2024 – Corporate Transparency Act**
- ❖ Common Business Filings
- ❖ Business Contracts

DETERMINING THE BUSINESS STRUCTURE: COMMON BUSINESS ENTITIES

Sole Proprietor

- * Does not require incorporation (no registration with the State)
- * Owned by a single individual (as such, no distinction between individual owner and business); personal liability for the business's debts
- * Individual and business name are the same; if a sole proprietor wants to operate under a different name, it must first register a fictitious name with the State (this is also referred to as "doing business as" or "d/b/a")

Limited Liability Company

- * Separate legal entity from owners, who are called members; this affords more liability protections
- * Can be single-member or multiple-member, and can be member-managed or manager-managed
- * LLCs exist based on state law (Chapter 605, Fla. Stat., called the Revised Florida Limited Liability Company Act)
- * Register with the Fla. Dept. of State by filing Articles of Organization; thereafter, file an annual report every year to remain active

Partnership

- * Legal relationship when 2 or more people carry on a business as co-owners, sharing in the profits and losses
- * This type of arrangement and the details of the partnership should be memorialized in a Partnership Agreement
- * In the absence of a Partnership Agreement, the provisions of the Florida Statutes determine the terms of the partnership (Chapter 620, Fla. Stat.); this may not be what the partners intended

Corporation

- * Owners are referred to as shareholders
- * Has certain formalities (such as meeting at least once annually, recording corporate minutes of major decisions, has a board of directors that makes corporate decisions)
- * Register with the Fla. Dept. of State by filing Articles of Incorporation; thereafter, file an annual report every year to remain active

NEW FOR 2024 – CORPORATE TRANSPARENCY ACT FILING!!!

FEDERAL LAW PASSED BY CONGRESS TO COMBAT MONEY LAUNDERING BECAME EFFECTIVE ON JANUARY 1, 2024.

REQUIRES A FILING WITH FINANCIAL CRIMES ENFORCEMENT NETWORK (FinCEN):

- By January 1, 2025 – for companies that existed PRIOR to Effective Date (January 1, 2024)
- Within 90 days of filing – for all new entities registered AFTER January 1, 2024

- Exemptions for large publicly traded corporations, nonprofits and financial institutions, etc. which already have reporting requirements.
- 23 Exemption categories

No annual filing required BUT an updated filing is required anytime there is a change in the reported information

Updated report due within 30 days of the change

SMALL ENTITY COMPLIANCE UNDER CTA (CON'T)

Can apply for a FinCEN identifier which is a unique identifying number used for reporting purposes.

Use identifying information such a DL# or other acceptable ID

NOT required but alleviates the need to provide all of the identifying information in additional reports.

MUST Report BENEFICIAL OWNERS

Anyone who owns more than 25% of entity (stock for corporations or membership interests for LLC's)

Anyone who controls the entity, even if they don't have ownership interest (i.e., managers, President, etc.)

If Company Filed AFTER 1/1/24, also have to report "Company Applicants"
Person who directed the filing (i.e., supervisor)

Person who actually made the filing ("Direct filer")

Required information about each beneficial owner

Name; Date of Birth; Address and

Identifying number and issuer from U.S. DL or passport, or ID issued by a State, local government, or Indian tribe.

Must be non-expired.

Can use a non-expired foreign passport (if none of above)

An image of the document must also be submitted.

Examples of Changes Which Require Update

Change in name of company or new DBA

Change in management, new 25% ownership; death of a previously reported beneficial owner

Changes in the reported information of a beneficial owner (address, name, DL, etc.)

INTERNAL OPERATING DOCUMENT

Bylaws or Operating Agreement

- Corporations have Bylaws
- LLCs have Operating Agreements

Purpose

- Details the operational and financial management of the business entity, spelling out rights and responsibilities
- This is not filed with the Fla. Dept. of State, Division of Corporations; but this may be requested when opening a business account

Examples of Provisions

- Contributions of capital; distributions of profits and losses; voting rights; how the business is managed; how disputes are handled; succession planning

KEEPING THE BUSINESS SEPARATE AND FOLLOWING OTHER CORPORATE FORMALITIES

The business needs to maintain a separate and distinct identity from that of its owners and other business entities (i.e.: separate bank accounts; separate contracts; separate records; etc.); this is particularly important in order to avail oneself of the liability protections for corporate entities

Business owners (as well as officers and directors) must treat the assets of the business as separate from personal assets; the company's assets cannot be used as if they were individual assets

Determining the capital necessary to cover reasonably anticipated liabilities and the normal operating costs of the business must be accomplished at the outset (this is why a business plan is critical); there can be personal liability for failing to adequately capitalize a business

The internal operating document should be properly updated, meetings of directors/managers (as applicable) should be held, and the entity should maintain its active status; additionally, business activities should be documented and records should be adequately kept and stored

COMMON FILINGS FOR SMALL BUSINESSES

Applying for an Employer Identification Number (EIN)

- * Can be accomplished electronically through the Internal Revenue Service's website
- * A tax professional can assist with this process

Articles and Amendments

- * Filed with the Florida Department of State, Division of Corporations
- * Articles of Incorporation for Corporations and Articles of Organization for LLCs
- * This information is publicly available online (on Sunbiz)

Business Tax Receipt

- * Formerly referred to as an occupational license
- * Generally required for every location where a business operates
- * Need to check with both the county and municipality where the business is located

Annual Report

- * Purpose is to update the State (and consumers) regarding any changes (or lack of changes) to information in the Articles
 - * Currently due by May 1 each year
 - * Fee due with the annual report
- * There is a non-negotiable late fee (currently \$400); failure to file can lead to administrative dissolution

Fictitious Name

- * Also referred to as "doing business as" or "d/b/a"
- * If operating under any name other than the registered business name or individual name (for sole proprietors), a fictitious name must be registered first
 - * Before registering, must advertise in a county newspaper
- * Renew every five years; or cancel and re-register in the event of a change in business ownership

ADDITIONAL FILINGS FOR SMALL BUSINESSES

- Florida Department of Business and Professional Regulation
 - The particular business may require a license
 - Certain persons affiliated with the business may also require licensure
- Florida Department of Revenue
 - Filing and submitting of payroll
 - Registering and remitting sales tax (for retail businesses)
 - Reporting newly hired and re-hired employees, and independent contractors earning more than a certain amount per calendar year
 - Other tax filings for business; consult with a tax professional
- Florida Department of Financial Services, Division of Workers' Compensation
 - Specific employer coverage based on the type of industry, number of employees, and entity organization
 - Workers' compensation insurance required for all Florida businesses with four or more employees (whether full-time or part-time)
 - Construction businesses must have coverage for every employee
- Other information about registrations, permits, and licenses is available on The State of Florida's Official Business Information Portal (<https://openmyfloridabusiness.gov/>)

FINSEC FILINGS

Initial Report

- Due within 90 days (if business formed after 1/1/24)
- Due by 12/31/24 (if business is formed pre-1/1/24)

Updates

- Change in beneficial ownership (more than 25%) or control (President, Manager, CEO, etc.)
- Change in information previously reported for beneficial owner (name, address, ID number, etc.)
- Change in Name or DBA
- Due within 30 days after change

More Info

- Website: <https://boiefiling.fincen.gov/>
- Compliance Guide:
- https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf
- Guides available in many different languages

BUSINESS CONTRACTS

The importance of putting an agreement in writing

- Small errors can have big consequences when things do not go as planned (i.e.: someone leaves a business; the business is involved in litigation; etc.)
- It likely will not matter what you say or how you understand something to be, but the terms of the written agreement will generally govern

Examples of business contracts

- Commercial lease agreements; property and equipment lease agreements
- Real estate acquisition agreements
- Asset purchase agreements
- Contractor/sub-contractor agreements; maintenance agreements
- Vendor agreements
- Employment agreements and/or independent contractor agreements
- Nondisclosure agreements (pertaining to the protection of confidential information that has been disclosed, such as in connection with employment or a business deal)
- Non-compete agreement (agreement wherein an employee promises not to compete with employer's business during employment and for a specified time after the termination of such employment, but can be difficult to enforce)

THANK YOU

Thank you for inviting us!



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