

# FILING AND REGISTERING

## Business Structures and Registration

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*As a sole proprietor or partnership, you can register your business name with the Secretary of State. The Secretary of State offices are open Monday - Friday, 8 a.m. - 5 p.m., excluding state holidays.*



# BUSINESS STRUCTURES AND REGISTRATION

*When organizing a new business, one of the first and most important decisions is identifying the structure of the business.*

In Arizona, several business structures exist:

- Sole Proprietorship
- General Partnership
- Limited Partnership (LP)
- Limited Liability Partnership (LLP)
- Limited Liability Limited Partnership (LLLLP)
- Limited Liability Company (LLC)
- Corporation
- S Corporation
- Non-Profit Corporation

*See page 40 to review Comparison Grid of Business Structures.*

No one choice suits every business. You have to pick the structure that best meets your needs. Also, your initial choice of a business structure may change. You may start out as a sole proprietorship or partnership and later, if your business grows or the risk of personal liability increases, convert your business to an LLC or a corporation. If you are uncertain which business structure is right for you, you may want to discuss your options with an accountant and/or attorney prior to starting your business.

The following resources provide referrals/listing of, and/or verify, licensed professionals:

**Accountant:**

Arizona Society of Certified Public Accountants (ASCPA)

602-252-4144; 888-237-0700

[www.ascpa.com](http://www.ascpa.com)

**Attorney:**

State Bar of Arizona

602-252-4804; 520-623-9944; 866-482-9227

[www.azbar.org](http://www.azbar.org)

## SOLE PROPRIETORSHIP

A sole proprietorship is the simplest and most common form of business organization. It is defined as a business that is owned by one individual. The creation of a business as a sole proprietorship requires no formal Arizona filing. Profits and losses are reported on a separate schedule within your personal tax return.

**Advantages:**

- A sole proprietor has complete control and decision-making power over the business.
- There is usually very little reporting required with the sole proprietorship.
- Sale or transfer can take place at the discretion of the sole proprietor.

**Disadvantages:**

- All responsibilities and business decisions fall on the shoulders of the sole proprietor.
- It is relatively difficult to obtain long-term financing. Investors generally do not invest in sole proprietorships.
- The sole proprietor of the business may be held personally liable for the debts and obligations of the business.



## GENERAL PARTNERSHIP

A general partnership is an association of two or more persons joined together to carry on trade or business for profit. Each partner may contribute skills, money and/or time, and each shares in the company's profits and losses. Earnings are reported at the end of the year with personal tax returns.

The partnership's existence is usually formalized through preparation of a written agreement. In general, agreements outline each partner's share of income, gain, loss, deductions, credits and methods to dissolve the partnership under various situations. It is not required to file your agreement with the state.

### Advantages:

- Creating a general partnership is simpler, cheaper, and requires less paperwork than forming a corporation.
- Partnerships do not pay income tax. Instead, all profits and losses are passed through to the individual partners.
- Most partnerships allow any partner to make decisions on behalf of the company.

### Disadvantages:

- All partners are personally liable for business debts and liabilities.
- Having all partners equal in power and responsibility may create challenges.
- The buying out of a partner may be difficult unless specifically arranged for in a written agreement.

## TRADE NAME SELECTION AND REGISTRATION

The process of selecting a trade name begins with a search for existing names registered by other companies. Selecting a trade name used by another business can make a company liable for trade name infringement. Therefore, a business needs to check multiple sources for existing trade names before making a final decision on a business name. Begin your search with the Secretary of State's searchable database of trade names registered in the state.

### *Additional searches for specific business activity:*

- *Construction companies need to check name availability first with the Arizona Registrar of Contractors by calling 602-542-1525.*
- *Mortgage companies need to check name availability first with the Arizona Department of Financial Institutions by calling 602-771-2800.*

The registration of a trade name (*business name, DBA*) is not legally required in Arizona, but is an accepted business practice. In addition, the registration of the trade name may be required to open business bank accounts and help obtain additional licenses.

As a sole proprietor or partnership, you may register your business name with the Secretary of State. The trade name application may be downloaded from the website and can be either mailed or applied for in person. Offices are open Monday - Friday, 8 a.m. - 5 p.m., excluding state holidays.

*Please note that applications for registration of a trade name that are mailed to the Secretary of State's Office must be notarized and include a photocopy of a valid identification card issued by a U.S. state or the federal government. However, notarizations are not required for those bringing their applications in person. Instead, walk-in applicants must provide an identification card issued by a U.S. state or the federal government.*

### Arizona Secretary of State Business Services, Trade Name Division

State Capitol Executive Tower  
1700 W. Washington Street  
1st Floor, Room 103  
Phoenix, AZ 85007  
602-542-4285; 800-458-5842  
[www.azsos.gov](http://www.azsos.gov), select "Business Filings"

### Arizona State Complex Building

400 W. Congress Street  
2nd Floor, Room 252  
Tucson, AZ 85701  
520-628-6583

If you are filing as an LLC or corporation with the Arizona Corporation Commission, it is not necessary to register your corporate name as a trade name with the Secretary of State's office, as names are cross-referenced with the Commission.

*A certificate of fictitious name, primarily for "Doing Business As" (DBA) title, can be issued by filling out a form that states the name of the business owner and business location at any County Recorder's Office.*

## LIMITED PARTNERSHIP (LP)

The limited partnership (LP) has become an increasingly popular choice for business owners, especially those involved in real estate or other investment ventures. Unlike general partnerships, LPs can limit the liability

and the involvement of certain partners. This is useful for attracting investment partners who would like to participate in the profits of the business but not necessarily in its risks or daily operations.

The profits and losses in a limited partnership flow through the business to the partners, all of whom are taxed on their personal income tax returns. LPs are required to register with the Arizona Secretary of State.

**Advantages:**

- It is easier to attract investors since the only liability for limited partners is the capital they invest in the business.
- LPs allow general partners to focus their efforts on running the business.
- Limited partners may leave or be replaced without dissolving the LP.

**Disadvantages:**

- Each general partner assumes full personal liability for the debts and obligations of the partnership.
- The limited partners are limited in the role they can play in the running of the company.
- If the general partner wants to transfer his role in the company, or add a new partner, the limited partner has the ability to veto his choice.

**Foreign Limited Partnership (LP), Foreign Limited Liability Partnership (LLP) and Foreign Limited Liability Limited Partnership (LLLLP)**

If the business is a foreign entity - an entity organized under the laws of another state or country - it must register with the Arizona Secretary of State. You may download the form [www.azsos.gov/business\\_services/partnerships/PartnershipForms.htm](http://www.azsos.gov/business_services/partnerships/PartnershipForms.htm).

**LIMITED LIABILITY PARTNERSHIP (LLP) AND LIMITED LIABILITY LIMITED PARTNERSHIP (LLLLP)**

Arizona’s limited liability partnership statutes (A.R.S. § 29-1101, et seq.) govern both limited liability partnerships (LLPs) and limited liability limited partnerships (LLLLPs) and permit both general partnerships and limited partnerships to elect limited liability for their general partner(s). The owners report company profits and losses on their personal income tax forms. The business itself is not subject to a federal income tax, as corporations are.

To ensure that all legal requirements are satisfied, it is a good idea to consult an attorney to organize these types of partnerships. LLPs and LLLPs are required to register with the Arizona Secretary of State.

**Advantages:**

- There are no restrictions as to maximum number of partners.
- There is a limit to the amount that may be recovered in a lawsuit to partnership assets alone.
- LLPs and LLLPs always treated as a partnership entity for tax purposes.

**Disadvantages:**

- The individual acting as general partner assumes personal liability.
- The limited partners are limited in the role they can play in the running of the company.
- A few states do not recognize these business structures.

**Registration of a state trademark/service mark:**  
**Arizona Secretary of State**  
[www.azsos.gov](http://www.azsos.gov) select “Business Filings.”

**Filing a federal patent and/or trademark/service mark:**  
**U.S. Patent and Trademark Office**  
[www.uspto.gov](http://www.uspto.gov)

**Obtaining a federal copyright:**  
**U.S. Copyright Office**  
[www.copyright.gov](http://www.copyright.gov)

**LIMITED LIABILITY COMPANY (LLC) AND CORPORATIONS**

Should you decide to create a limited liability company (LLC) or corporation, you must then file with the Corporations Division of the Arizona Corporation Commission.

**Arizona Corporation Commission, Corporations Division**  
 1300 W. Washington Street, Phoenix, AZ 85007  
 602-542-3026; 800-345-5819  
[www.azcc.gov/divisions/corporations](http://www.azcc.gov/divisions/corporations)

400 W. Congress Street, Suite 221, Tucson, AZ 85701  
 520-628-6560

**Reserving of the LLC or Corporation Name**

Electronically filing your business name reservation for \$45 immediately reserves your name so no other person can take it. However, if you do not need to expedite your name filing, you may reserve your name by downloading the application from the Arizona Corporation Commission website, and it can be either mailed or applied for in person for \$10.

## LIMITED LIABILITY COMPANY (LLC)

A limited liability company (LLC) is a flexible form of enterprise that blends elements of the partnership and corporate structures. LLCs are popular because, similar to a corporation, owners have limited personal liability for the debts and actions of the LLC. Other features of LLCs are more like a partnership, providing management flexibility and the benefit of pass-through taxation.

Owners of an LLC are called members. There is no maximum number of members. LLCs are required to file with the Arizona Corporation Commission.

### Advantages:

- Owners have limited personal liability for business debts even if they participate in management.
- Profit and loss can be allocated differently than ownership interests.

### Disadvantages:

- LLCs are more expensive to create than partnership or sole proprietorship.
- A large number of owners complicates status.
- Death, bankruptcy or withdrawal of owner may cause problems.

## CORPORATION

A corporation is the most complex type of business organization. It is formed by law as a separate entity, completely distinct from those who own it, and has its own rights and responsibilities.

The primary advantage of incorporating lies in the area of liability. A corporation has its own legal identity, completely separate from its owners. The corporation safeguards the business owner's personal assets, and its protection alone justifies the additional expense and paperwork.

In forming a corporation, potential shareholders usually offer money and/or property in exchange for capital stock. The shareholders are the owners of the corporation, and the directors and officers of the corporation may or may not be shareholders. Corporations are required to file with the Arizona Corporation Commission.

### Advantages:

- A corporation is a separate legal entity with unlimited life of the business.
- There is limited liability for shareholders and transfer of ownership through stock sale.
- It is relatively easy to raise capital.





### Disadvantages:

- Corporations are complex and expensive to organize with extensive regulation and record-keeping requirements.
- Activities are limited by the corporate charter.
- Corporations are subject to double taxation – once on corporation profits and again on dividends.

### Employer Identification Number (EIN)

An Employer Identification Number (EIN) is also known as a Federal Tax Identification Number, and is used to identify a business entity. You may apply for an EIN at [www.irs.gov/Businesses](http://www.irs.gov/Businesses) or call 800-829-4933.

## S CORPORATION

An S corporation sometimes referred to as a “Subchapter S corporation,” allows you the protection of a corporation with some of the financial flexibility of a partnership and elects not to be subject to federal corporate income tax.

The shareholders, however, include their shares of the corporation’s items of income, deduction, loss and credit, or their shares of non-separately computed income or loss, as part of their personal income.

To qualify as an S corporation, a corporation must meet the following:

- It must be based in the United States,
- It must have only one class of stock,
- It must have no more than 75 shareholders, and
- It cannot have any nonresident alien as a shareholder.

A corporation that meets all of the above criteria can become an S corporation if:

- All shareholders consent to the corporation’s election of S corporation,
- The corporation has a permitted tax year, and
- It is filed with the Arizona Corporation Commission as a corporation.

To elect to be an S corporation, a corporation must file Form 2553 with IRS. The election permits the income to be taxed to the shareholders of the corporation rather than to the corporation itself, except as noted in the IRS general information booklet entitled “Instructions for Form 2553, Election by a Small Business Corporation.” For instructions and Form 2553, visit the IRS website at [www.irs.gov/pub/irs-pdf/i2553.pdf](http://www.irs.gov/pub/irs-pdf/i2553.pdf) and [www.irs.gov/pub/irs-pdf/f2553.pdf](http://www.irs.gov/pub/irs-pdf/f2553.pdf).

## NON-PROFIT CORPORATION

Arizona allows the formation of a non-profit corporation, but if the corporation intends to be tax-exempt, it must apply for that status through the Internal Revenue Service (IRS). There are more than a dozen different types of corporations approved by the Internal Revenue Service as “tax-exempt non-profit.” These organizations usually are developed and operated exclusively for one or more of the following purposes: charitable, religious, educational, scientific, literary, testing for public safety, fostering amateur sports competition (*under certain restrictions*), or the prevention of cruelty to children or animals. The organization may be a corporation, community chest fund or foundation. A sole proprietorship or partnership may not qualify. Non-profit corporations are required to file with the Arizona Corporation Commission.

IRS Tax Information for Charities and Other Non-Profits, [www.irs.gov/charities/index.html](http://www.irs.gov/charities/index.html), discusses the rules and procedures for organizations seeking to obtain recognition of exemption from federal income tax.

The Arizona Department of Revenue publishes “Non-Profit Organizations” brochure. To view, visit their website at [www.azdor.gov/Portals/0/Brochure/501.pdf](http://www.azdor.gov/Portals/0/Brochure/501.pdf).

For a listing of organizations supporting non-profits, visit the Arizona Commerce Authority’s website at [www.azcommerce.com/smallbiz](http://www.azcommerce.com/smallbiz), under “Click on a Step or Topic of Interest” select “Business Structure (Entity)/Employer Identification Number (EIN)” for “Non-profit Corporation.”

### Foreign Limited Liability Company (LLC), Foreign Corporation and Foreign Non-Profit Corporation

If your business is organized under the laws of another state or country and you want to conduct business within Arizona, you will need to register as a foreign limited liability company (LLC), foreign profit corporation, or foreign non-profit corporation with the Arizona Corporation Commission. Visit the Arizona Corporation Commission’s website for filing instructions and to download the proper forms.

# COMPARISON CHART OF BUSINESS STRUCTURES\*

*Business owners have to pick the business structure that best meets their needs. No one choice suits every business! We recommend in addition to the information on this page to consult with an accountant and/or attorney to help you select the form of ownership that is right for you.*

	SOLE PROPRIETORSHIP	GENERAL PARTNERSHIP	LIMITED LIABILITY COMPANY (LLC)	"C" CORPORATION	"S" CORPORATION
<b>Definition</b>	A business owned and operated by one person for profit.	Two or more people who jointly own and operate a business.	Blends the elements of the partnership and corporate structures.	Formed by law as a separate entity, completely distinct from those who own it, and has its own rights and responsibilities.	Allows the protection of a corporation with some of the financial flexibility of a partnership and elects not to be subject to federal corporate income tax.
<b>Number of Owners Allowed</b>	Only one owner.	At least 2; no upper limits. Owners are called partners.	At least 1; no upper limits. Owners are called members.	At least 1; no upper limits. Shareholders are owners.	At least 1; upper limit is 75. Shareholders are owners.
<b>Arizona Filing Requirements</b>	None. Recommended trade name registration.	None. Recommended written agreement and trade name registration.	File articles of organization with the Arizona Corporation Commission includes business name.	File articles of incorporation with the Arizona Corporation Commission includes business name.	File articles of incorporation with the Arizona Corporation Commission includes business name. Must file Form 2553 with IRS.
<b>Management</b>	Owner has absolute control.	In absence of agreement, all partners have equal voice.	Governed by the operating agreement.	Shareholders elect directors who set policy; officers manage day to day operations.	Same as a corporation.
<b>Subject to Income Tax</b>	No, sole proprietor pays all taxes.	No, income/loss is passed through to all partners.	No, income/loss is passed through to members.	Yes, shareholders also report income from distributions and bonuses. Officers and directors report salary income.	No, income/loss is passed through to the shareholders.
<b>Liability</b>	The owner of the business can be held personally liable for the debts and obligations of the business.	All partners are personally liable for business debts and liabilities.	Members have limited personal liability for business debts even if they participate in management.	The corporation safeguards the shareholder's personal assets except personally guaranteed business debt, or personal negligence or fault.	Same as a corporation.
<b>Dissolution</b>	Easiest to dissolve. Owner to pay debt, taxes and claims against the business.	Partners pay debt, taxes and claims against the business. Settle partnership account.	File articles of dissolution with the Arizona Corporation Commission. Pay debt, taxes and claims against the LLC. Distribute assets to members.	Shareholders must vote to approve dissolution. File articles of dissolution with the Arizona Corporation Commission. Pay debt, taxes and claims against the corporation. Distribute corporate assets to shareholders.	Same as a corporation.

\* Limited Partnership (LP), Limited Liability Partnership (LLP) and Limited Liability Limited Partnership (LLLLP) are not included in this chart.

## B U S I N E S S C O N S I D E R A T I O N S

### BUSINESS LOCATIONS

Finding the correct business location is one of the most important decisions you will make. The ideal location for your business depends on a number of factors. The most important consideration is the type of business. Before you decide on a location, consider a few of the factors that can help you select the best location for your business.

- If you conduct much of your business online, establishing a home-based business might be more desirable and economical than leasing commercial office space.

- If you manufacture products for distribution, an ideal location might be an industrial park near major transportation ports.
- If your type of business depends heavily on pedestrian or drive-by traffic, such as a florist, gift shop or clothing boutique, you'll want to seek a popular retail location.

### HOME-BASED BUSINESSES

Home-based businesses, including those that operate online, must comply with the same license and permit requirements as a business located at a commercial site.



In addition, home-based business activities must be in compliance with city/county residential zoning rules and homeowners' association rules or the deed restrictions on property.

To access referrals/listing of, and/or to verify licensed professionals, contact:

**Commercial Real Estate Broker:**

Arizona Department of Real Estate  
602-771-7799; 520-628-6940

[www.re.state.az.us](http://www.re.state.az.us)

## LEASING A COMMERCIAL OFFICE SPACE

Leasing a commercial office space is one of the most costly expenses made by new and expanding businesses. Commercial leases are often negotiated, and there is no standard for commercial leases. It's recommended that you obtain an attorney to help make sure you receive the best deal.

## BUYING A COMMERCIAL BUILDING

When buying a commercial building, you may benefit from working with a real estate professional. If you decide to work with a realtor, choose one familiar with the area you are shopping and one who is experienced in commercial sales.

In Arizona, each incorporated city/town in which you do business may have its own license, permit and/or tax requirements, as well as zoning rules. Contact the city/town in which your business will be based, as well as any city/town in which you will conduct business to learn about local requirements and/or restrictions that may affect your business.

If your business will be based and/or operate in an unincorporated region of the county, check with the county Planning and Zoning and/or Development Services departments regarding zoning laws. Check also with the Fire department and county Sheriff's office for any regulations/restrictions that might impact your business.

For a listing of all county/city/town licensing offices, visit the Arizona Commerce Authority's website at [www.azcommerce.com/smallbiz](http://www.azcommerce.com/smallbiz), select "Quick Links to Licensing Offices."

## ENVIRONMENTAL COMPLIANCES

**U.S. Environmental Protection Agency (EPA)** offers a variety of compliance assistance resources such as workshops, training sessions, hotlines, websites and guides to assist you in complying with federal and state environmental laws. To learn more, visit [www.epa.gov](http://www.epa.gov).



## ENVIRONMENTAL COMPLIANCES *(continued)*

The **Arizona Department of Environmental Quality (ADEQ)** issues permits, approvals and certifications to ensure facilities are legally constructed and operated and that discharges to the air, water and soil are within healthful standards established by law.

Many industries are subject to environmental compliance including: asphalt, auto repair, car wash, construction, dry cleaner/laundry, food processing, pest control, pharmaceutical, photographer, portland cement plant, print shop, rv/mobile home park, school, solid waste hauler, spray painting booth, water company, woodworking shop, etc. For a more comprehensive list, visit the ADEQ website.

### **Arizona Department of Environmental Quality**

#### **Main Office**

1110 W. Washington Street, Phoenix, AZ 85007  
602-771-2300; 800-234-5677

[www.azdeq.gov](http://www.azdeq.gov)

Serves: State and Maricopa, Pinal and Gila counties

#### **Southern Regional Office**

400 W. Congress Street, Suite 433, Tucson, AZ 85701  
520-628-6733; 888-271-9302

Serves: Cochise, Graham, Greenlee, La Paz, Pima, Santa Cruz and Yuma counties

In addition to federal and state compliances, contact your county's Environmental Services Department regarding environment licensing, permits and requirements. For a listing of all county licensing offices, visit the Arizona Commerce Authority's website at [www.azcommerce.com/smallbiz](http://www.azcommerce.com/smallbiz), select "Quick Links to Licensing Offices."

### **Occupational Safety and Health Administration (OSHA)**

Occupational Safety and Health Administration (OSHA) is charged with setting and enforcing workplace safety and health standards. Small businesses, particularly those in high-hazard industries or involved in hazardous operations, can use the free On-Site Consultation Service to help improve their safety performance. Safety and health consultants work with employers to identify workplace hazards, provide advice on compliance with OSHA standards, and assist in establishing safety and health programs. For more information, [www.osha.gov](http://www.osha.gov).

### **Arizona Division of Occupational Safety and Health (ADOSH)**

Arizona Division of Occupational Safety and Health (ADOSH) operates under an approved plan with the U.S. Department of Labor to retain jurisdiction over occupational safety and health issues within Arizona, excluding mining operations, Indian Reservations and federal employees.

ADOSH has seven major areas of responsibility: boilers, elevators, safety and health compliance, consultation and training, policies, voluntary protection program, and research & statistics (*Bureau of Labor Statistics*).

They provide a number of publications and other materials to assist its businesses. For more information, visit their website at [www.ica.state.az.us/ADOSH/ADOSH\\_main.aspx](http://www.ica.state.az.us/ADOSH/ADOSH_main.aspx) or contact the Phoenix office at 602-542-5795, the Tucson office at 520-628-5478 or 855-268-5251.

## MUSIC IN THE WORK PLACE

If you plan to play or incorporate copyrighted music in your business (*i.e., on the Internet, over the phone, in the office/building, restaurants, etc.*), you will need to obtain advanced permission from the copyright owner, or their representative.

The following performing rights organizations license performance rights for most of the music copyright holders in the United States:

#### **American Society of Composers, Authors and Publishers (ASCAP)**

[www.ascap.com](http://www.ascap.com)

#### **Broadcast Music, Inc. (BMI)**

[www.bmi.com](http://www.bmi.com)

#### **SESAC, Inc.**

[www.sesac.com](http://www.sesac.com)

The Better Business Bureau's online publication, *Music in the Marketplace*, at [www.bbb.org/us/article/3072](http://www.bbb.org/us/article/3072) provides a general explanation of the nature and functions of music performing rights organizations.