



SURPRISE | arizona

Doing Business In Surprise
Chapter 5

November 2005

Chapter 5: Choosing a Legal Structure

Within this chapter:

- *Determine which form of business structure is most appropriate for your operations*

Establishing a business in the City of Surprise is a simple process. The first step is to determine which form of business structure is most appropriate for your operations. To do this, an analysis of the various legal and tax-related implications associated with the forms of business structure must be conducted. In Arizona, as in all states, several business structures exist. The four most common are:

- sole proprietorship
- general and limited partnership
- limited liability company
- corporation

The following information provides a brief description of each business structure, including general advantages and disadvantages. In addition, it is recommended that an attorney and/or certified public accountant should be consulted for further information and advice on selecting the appropriate structure for your business. Once you have determined the legal structure of your business, the next step is to complete the necessary registration requirements including those set forth by the City of Surprise.

SOLE PROPRIETORSHIP

The sole proprietorship is the simplest and most common form of business organizations. A sole proprietorship is defined as a business that is owned by one individual. The owner is personally responsible for all debts of the firm. Profits are considered as personal income and taxed accordingly.

Advantages:

- Minimum legal restrictions
- Ease of formation/disposition
- Low start-up costs
- Sole ownership of profits
- Maximum freedom in decision-making

Disadvantages:

- Unlimited liability
- Less available capital than in other types of business organizations
- Relative difficulty in obtaining long-term financing
- Income tax cannot be deferred by retaining profits. All profits subject to self-employment tax.

Choosing a Legal Structure

Additional Resources

H&R Block Small Business Resources article on legal structure for small business:

http://www.hrblock.com/sbr/resources/article_bus_struc.html

If the business is going to be a sole proprietorship operating under a name other than your own, you should register the business name (commonly known as “doing business as” or “DBA”) with the Arizona Secretary of State’s Trademark and Trade Name registration office and the Maricopa County Recorder’s office. (See end of chapter for contact information.)

Obtain a business name registration form from an office local stationery or legal-forms store and remit it with the required fee(s) to the Maricopa County Recorder.

GENERAL PARTNERSHIP

A general partnership is an association of two or more persons joined together to carry on trade or business for profit. As in the sole proprietorship, partners are personally responsible for all debts of the firm. The partnership’s existence is usually formalized through preparation of a partnership agreement. Formal partnership agreements should be prepared by, or at least reviewed by, an attorney. In general, partnership agreements outline each partner’s share of income, gain, loss, deductions, credits, and methods to dissolve the partnership under various situations including death of one or more partners.

Advantages:

- Ease of formation
- Direct rewards
- Broader management base

Disadvantages:

- Unlimited liability of general partners
- Divided authority in decision-making
- Difficulty in disposing of partnership interest
- General partners are liable for actions of other partners
- Fringe benefits to partners not tax free

General partnerships transacting business in Arizona under a fictitious name, or a designation not showing the names of the partners, should register the business name “doing business as” or “DBA” with the Arizona Secretary of State’s Trademark and Trade Name registration office and the Maricopa County Recorders office.

Choosing a Legal Structure

Additional Resources

Arizona Secretary of State's Trademark and Trade Name Office

Phoenix Customer Service Center

14 N. 18th Ave just across street from the Capitol Executive Tower

Mailing Address

1700 West Washington, 7th Floor

Phoenix, AZ 85007-2888

Phone (602) 542-6187 or 800.458.5842

Web site www.azsos.gov/business_services/trademarksandtradenames.htm

Email trades@azsos.gov

LIMITED PARTNERSHIP

This is similar to the general partnership with several major differences. Some of these differences include:

At least one person must be identified as a general partner and be responsible for the operation and liability of the organization

Limited partners are not active managers of the business and are not liable for the organization's debts, etc.

If the business is a limited partnership, domestic or foreign, you are required to register with the Arizona Secretary of State's Trademark and Trade Name registration office and the Maricopa County Recorders office

To qualify for S Corporation status, a corporation must meet the following requirements:

- Must be a domestic corporation, shareholders must be citizens or residents of the United States
- It must have only one class of stock
- It must have no more than 75 shareholders
- Only individuals, estates, certain trusts, and certain charities may be shareholders
- All shareholders consent to the corporation's election of S Corporation status
- The corporation has a permitted tax year

IRS Form 2553, Election by a Small Business Corporation, is filed to indicate the choice of S Corporation status. The corporation must qualify as an S Corporation at the time it files Form 2553.

Due to the complexities involved with meeting and maintaining S Corporation status, please consult an attorney or your Certified Public Accountant.

Advantages:

- Limited liability
- Avoids double taxation of profits
- Profits passed through are not subject to SE tax as in a partnership

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Arizona Corporation Commission

1300 W. Washington Street

Phoenix, AZ 85007

(602) 542-3230

www.cc.state.az.us

<http://www.cc.state.az.us/corp/filings/forms/packets.htm>

Maricopa County Recorder's Office:

Main Office (Downtown)
111 S. Third Ave., Phoenix
AZ 85003

Phone: 602-506-3535

Southeast Office (Mesa)
222 E. Javelina, Mesa AZ
85210

Phone: 602-506-3535

<http://recorder.maricopa.gov>

Disadvantages:

- Less flexibility in choosing a tax year
- Less flexibility in who can be shareholder
- Contribution limits to a qualified retirement plan are based on employee/shareholder wages, not overall profits such as a sole proprietor
- Fringe benefits not tax free to employee shareholders who own more than 2% of the corporation

For more information on S Corporations, obtain IRS Publication 589 Tax Information on S Corporations from the:

IRS Forms Distribution Center

Rancho Cordova, CA 95743-0001

(800) 829-3676

To incorporate your business, contact the Arizona Corporation Commission.

LIMITED LIABILITY COMPANY (LLC)

LLC's are created and regulated under laws of each individual state. An LLC is allowed to possess the limited liability characteristics of a corporation, but is treated as a partnership for federal tax purposes.

Advantages:

- Same pass through features of an S Corporation which avoids double taxation of profits.
- Flexibility of a Partnership without the restrictions of an S Corporation
- Can have more than one class of stock
- Number of members not limited
- Any entity can be a member
- Flexibility in profit/loss allocation
- Limited liability protection for all members.
- Any LLC member can participate in management without being exposed to personal liability.

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Advantages, continued:

- Contribution of property to an LLC is tax free regardless of how much control the contributing partner has.
- Liquidation of an LLC as a partnership is generally a tax-free event.
- Not required to file annual reports with Corporation Commission

Disadvantages:

- LLC must have 2 members to file as a partnership for federal tax purposes. A single-member LLC files a Schedule C as a sole proprietor.
- Earnings are generally subject to self-employment tax.
- State law may limit the life of an LLC.
- Lack of uniformity in LLC statutes. Businesses that operate in more than one state may not receive consistent treatment.
- Conversion of an existing business to LLC status could result in tax recognition on appreciated assets.
- Fringe benefits to partners not tax-free

To register a Limited Liability Company, domestic or foreign contact the Arizona Corporation Commission. (See end of chapter for contact information.)

NON-PROFIT CORPORATIONS

There are over a dozen different types of corporations approved by the Internal Revenue Service (*IRS*) as Non-Profits. These organizations are usually 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 must be a corporation, community chest fund or foundation. A sole proprietorship or partnership will not qualify.

Other organizations that may qualify include: civic leagues, social welfare organizations, labor, agriculture and horticultural organizations, business leagues, social and recreation clubs, fraternal beneficiary societies, etc.

For a free IRS booklet on this subject, call (800) 829-3676 and request publication 557. To register a non-profit corporation, contact the Arizona Corporation Commission.

More information from the ASU Center for Nonprofit Leadership and Management:

http://www.asu.edu/copp/nonprofit/asst/asst_ask_faq_how.htm

APPENDIX A: Useful Contacts and Websites

Office of Economic Development—City of Surprise

12425 W. Bell Rd., Bldg. D-100
Surprise, AZ 85374
Phone: (623) 875-4273
Fax: (623)875-5049
Web site: www.surpriseaz.com
E-mail: econdev@surpriseaz.com

Determining where to start is not always easy. If you aren't sure who to contact or what steps to take, Surprise's Economic Development Department is a great place to begin.

The Economic Development staff will be happy to assist you in determining a path to start your business, expand an existing business, or find a new location. The Economic Development Department offers business firms an ombudsmen service to assist with the City's development process, increase understanding of regulations and assess project needs. Staff can also provide introductions to other departments or additional resources.

The Economic Development Department has services designed for both new and existing businesses—from small entrepreneurial operations to Fortune 500 firms. Services include confidential consultations, assistance with site selection, introduction to private and public sector development and real estate representatives and providing demographic information to assist potential new business owners.

Surprise's Office of Economic Development actively promotes and preserves the economic strength of the city to ensure that Surprise is the preferred location for new, existing and expanding organizations.

Northwest Valley Chamber of Commerce

12801 W. Bell Rd., Suite 14
Surprise, AZ 85374
Phone: (623) 583-0692
Fax: (623) 583-0694
Web Site: www.northwestvalley.com
E-mail: chamber@northwestvalley.com

The Northwest Valley Chamber of Commerce is a private, not-for-profit business organization providing a wealth of information for any size business. For more than 42 years, the Northwest Valley Chamber of Commerce has been a leading advocate for businesses. The Chamber also acts as an ombudsman for resolution of public policy issues that affect the business community at a local, county or state level.

As one of the largest Chambers in metropolitan Phoenix, members are given many opportunities to market their businesses and to enhance their business skills through individual counseling, group workshops and networking activities. The chamber also hosts monthly seminars and events to assist our members.

APPENDIX A: Useful Contacts and Websites

Maricopa County Regional Library - Surprise

16089 N. Bullard Ave.
Surprise, AZ 85374
Phone: 623-544-6371

Web Site: maricopa.gov/library

The Surprise Library is a great business resource and contains various business materials, government and legal documents and “how to” publications on such topics as how to start a business, how to get a loan and how to write a business plan. The Northwest Regional Library is located in the Surprise Recreation Complex in the City of Surprise. This 23,000 sq. ft. facility is the District’s newest “state of the art” Regional Library with a collection of over 40,000 items in all formats and offers over 60 Internet-accessible computers throughout the building. It is a model of the latest technology in the library and information field in terms of customer service with self-checkout, self-check in and Smart Library Cards.

Arizona Department of Commerce

1700 W. Washington St., Suite 600 Phoenix, AZ 85007
Phone: (602) 771-1100 Toll free: (800) 528-8421 Fax: (602) 771-1209
Web site: www.azcommerce.com E-mail: webmaster@azcommerce.com

The Arizona Business Assistance Center, a division of the Arizona Department of Commerce, provides a variety of resources to assist anyone interested in starting, expanding or relocating a business in the state. The Arizona Business Assistance Center has three components and are located at the Arizona Department of Commerce.

Arizona Business Connection

Web site: <http://www.commerce.state.az.us> “Small Business Services” page; then go to “Arizona Business Connection - [Walks you through what you need to know to start or expand your business](#)”.

Phone: (602) 771-1196 Toll free: (800) 542-5684

The Arizona Business Connection’s Web site provides regulation and licensing information for starting a business. At this Web site, you may also create a customized information package to print at your convenience. This office also produces the free publications, Guide to Establishing and Operating a Business, Small Business Book and Entrepreneur’s Encyclopedia, available at the Chamber of Commerce and Regional Library. To obtain copies of these publications, visit the Library or call (623) 544-6371 or drop by the Northwest Valley Chamber of Commerce at 12801 West Bell Rd., Ste. 14, Surprise, AZ 85374. Phone (623) 583-0692

Fax (623) 583-0694. Web page chamber@northwestvalley.com

APPENDIX A: Useful Contacts and Websites

Office of Minority/Women-Owned Business Enterprise Services

Phone: 602-262-6790

<http://www.azcommerce.com/mwbedir/>

The Office of Minority/Women-Owned Business Enterprise Services acts as a resource and advocate for women and minorities who own businesses by helping them market their products and services to state agencies and other companies. The office publishes a directory of women and minority-owned businesses that is distributed to state agencies, local corporations and financial institutions.

Small Business Advocate—Governor's Council on Small Business

1700 West Washington, Suite 220 Phoenix, AZ 85007

Email: gcsb@azcommerce.com

Telephone: 602-771-1173

Fax: 602-771-1209

The Small Business Advocate maintains ongoing communication between the Governor's Office and small business. The advocacy office works with chambers of commerce and other groups to develop policies and programs relevant to small business, supports state legislation that benefits the business community, and interacts with state agencies to improve relationships between state departments and the small business community.

Arizona Secretary of State's Trademark and Trade Name Office

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Maricopa County Recorder

Main Office (Downtown) 111 S. Third Ave., Phoenix AZ 85003

Phone: 602-506-3535

Southeast Office (Mesa) 222 E. Javelina, Mesa AZ 85210

Phone: 602-506-3535

<http://recorder.maricopa.gov>

Arizona Department of Revenue (ADOR)

2902 W. Agua Fria Freeway

Phoenix, AZ 85027

Phone: (602) 255-2060 Forms by Phone: (602) 542-4260

Web site: www.revenue.state.az.us Forms by Fax: (602) 542-3756

"Business Basics: A Guide to Taxes for Arizona Businesses," is found online at <http://www.revenue.state.az.us/brochure/622.pdf>



SURPRISE
ARIZONA

Beyond Expectations

**City of Surprise
Economic Development
Department**

12425 West Bell Road
Building B

Phone: 623.875.4273

Fax: 623.875.5049

E-mail: econdev@surpriseaz.com

City of Surprise

Small Business Assistance Program (SBAP)

Interested in starting your own business? We'll help you get your business started and serve as an on-going resource. We'll work with you as long as you need help.

Through the SBAP, Surprise offers one-on-one coaching and counseling to existing and would-be entrepreneurs, helping them establish business plans and access private and public resources. Our Economic Development staff is complemented by a network of volunteers with business expertise. Go to www.surpriseaz.com—Economic Development Department—or call 623.875.4273 for more information.



12801 West Bell Rd., Ste. 14,
Surprise, AZ 85374

Phone: 623.583-0692

Fax: 623.583-0694

Email: chamber@northwestvalley.com

Welcome Business Partners!

The Northwest Valley Chamber of Commerce encourages you to become a business partner with the Chamber and become active in one of the most vibrant business organizations in metropolitan Phoenix.

The Chamber is adept at providing assistance with marketing your product or service, finance options for your business, leads, seminars and workshops, several networking options as well as events to showcase your products.

Chamber members are at the very heart of the region's success. Through their commitment to the community, they create a partnership between local businesses and residents. Chamber members provide more than membership dues. They are volunteers, leaders and advocates for optimum quality of life in the Northwest Valley.

Long before there were thousands of rooftops in the area, there was the Chamber of Commerce. Early business owners recognized the potential of the Northwest Valley and banded together to create a thriving economy and a great place to live. We thank the early pioneers in the region. They created the strong base for the growth and accomplishment that was to follow years later.

Join us; won't you? We're always looking for people who share our values and goals: pursuing all of the good things in life, right here in the Northwest Valley. Stop by the Chamber office any weekday and learn a lot about local life.