

# **BUSINESS ORGANIZATIONS – STATE LAW ATTRIBUTE COMPARISON GRID**

<b><u>Attribute</u></b>	<b><u>Sole Proprietor</u></b>	<b><u>General Partnership</u></b>	<b><u>Limited Partnership</u></b>	<b><u>Limited Liability Company</u></b>	<b><u>Corporation</u></b>
Ease of formation	Easy	Simple, if no written agreement is desired; complex, if written agreement is desired; written agreement is not required by statute; written agreement is preferred, especially for a limited partnership and limited liability company			Less complex if standard forms are used; more complex if owners need a buy-sell and/or a close corporation agreement
When formed	When business starts	When business starts	When the organizing document is filed with the Secretary of State		
Organizing document	None	None – may need to file fictitious name form	Certificate of Limited Partnership	Articles of Organization	Articles of Incorporation
Governing document	None	Partnership Agreement	Partnership Agreement	Operating Agreement	Code of Regulations or Close Corporation Agreement
Ownership interest	None	Partnership Interest	Partnership Interest	Membership Interest	Shares
Owner's Title	Sole Proprietor	General Partner	General Partner and Limited Partner	Member	Shareholder
Limited liability of owners	No	No	General Partner -- No Limited Partner -- Yes	Yes	Yes
Extent of liability of owners	Liable for own wrongful acts and contracts and torts and contracts of employees and partners solely because of being an owner; general partners are jointly and severally liable for torts and jointly liable for contracts		G P – same as any general partner L.P – same as a member and a shareholder	Liable for own wrongful acts; not liable for wrongful acts of employees or other owners solely because of being an owner; not liable for contracts unless owner personally guarantees obligation or executes contract without disclosing principal/agent relationship	

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Free Transferability of all aspects of ownership	Nothing to transfer except assets	No May transfer rights to receive profits from the business but not the right to participate in management unless the owners otherwise agree in the governing document	No	No	Yes Unless owners agree among themselves to restrict free transferability; such restrictions must be reasonable to be enforceable; such agreements are called buy-sell agreements
Continuity of life	No	No Business dissolves upon the death, insanity, bankruptcy, dissolution, withdrawal of a general partner, member (but not a limited partner); remaining owners may reformulate and continue or wind-up. For an LLC formed after 11/21/97, a member cannot voluntarily resign unless the operating agreement provides. For an LLC formed after 12/2/99, a member cannot voluntarily or involuntarily resign unless operating agreement provides. Operating agreements of LLCs formed prior to 11/21/97 or 12/2/99 may expressly adopt the new law.	No	No/Yes	Yes Perpetual -- death, insanity, bankruptcy, dissolution of a Does not cause corporation to dissolve
Centralized Management	N/A Sole Proprietor	No All partners manage unless governing document provides otherwise; management is based on head count unless governing document provides otherwise	Yes Only GP manages LP loses limited liability if she manages	No All members manage unless governing document provides otherwise; persons who manage are called managers; managers may act like directors or officers depending on the governing document; management is based on capital contribution unless the governing document provides otherwise.	Yes Only directors manage; must have at least three directors unless there are less than three shareholders in which case may have directors equal in number to number of shareholders; must have a President, Secretary, and Treasurer; must have annual shareholders meeting to elect directors and should have annual directors meeting to elect officers; directors act by committee officers act individually; shareholders may manage or dispense with formalities with a close corporation agreement.

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Number of owners	One	At least two	At least two; at least one GP and at least one LP	At least one owner	At least one
Type of owners	Natural persons only	Natural persons, corporations, partnerships, trusts, limited liability companies, limited partnerships, custodians etc.			
Voting rights of owners	N/A	All partners vote unless the governing document provides otherwise	GPs vote on all matters unless governing document provides otherwise LPs have limited voting authority	All members vote unless governing document provides otherwise	All shareholders (including preferred shareholders) vote unless the organizing document provides otherwise
Right of owners to approve sale of substantially all of assets, mergers, required consolidations and dissolution	N/A	Unanimous consent of all owners unless governing document provides otherwise; right to approve may be eliminated altogether in the governing document; absent an agreement to the contrary, one general partner or member could cause dissolution.			At least 2/3 consent usually required; may be reduced to 50%+ in the organizing document; consent of surviving corporation's owners is not  unless merger or consolidation will result in dilution or change in organizing document.
Dissenters' Rights  organizing	N/A	N/A	LPs and members have dissenters rights in many states unless governing document provides otherwise; may be eliminated altogether in governing document		Shareholders have dissenters rights to be cashed out; may not be eliminated in the  document.

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Preemptive Rights	N/A	No preemptive rights created by state law; could be created by contracted in the governing document if desired.			Shareholders do not have preemptive rights under Ohio law unless provided for in the organizing document; in some states shareholders have preemptive rights unless they are eliminated in the organizing document; preemptive rights do not apply to treasury shares.
Share of Profits	All	Headcount, unless the partnership agreement provides otherwise	Capital contributions unless the governing document provides otherwise		Shares owned
Owner's` right to receive cash distributions to extent of their share of profits	Unrestricted	Generally considered entitled to receive cash distributions	Only to extent that governing document provides; thus need a minimum distribution agreement to distribute at least enough cash to permit owners to pay income tax on allocable share of income; distributions are permitted unless they render the limited partnership or limited liability company insolvent		Only as declared by directors; thus, if a corporation has made an S-election, need a minimum distribution agreement to distribute at least enough cash to permit owners to pay income tax on allocable income; distributions are permitted to the extent of surplus unless they render the corporation insolvent.

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Deficit restoration obligation	Yes	Yes	G.P. -- yes L.P. -- no	No	No
Can creditors of individual owners force dissolution of the entity	N/A	Yes -- by obtaining and foreclosing on a charging order	No	No	No

**LIMITED LIABILITY PARTNERSHIP:** A limited liability partnership ("LLP") is a general partnership that files a registration with the Secretary of State and by doing so permits the partners to avoid joint and several liability for wrongful acts of partners and employees.

## BUSINESS ORGANIZATIONS – TAX LAW ATTRIBUTE COMPARISON GRID

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Taxation on formation	None	None with three exceptions: (i) if appreciated securities are contributed, gain will be recognized to the extent of the appreciation; (ii) if services are performed, gain will be recognized to the extent of the value of the services; and (iii) if the owner is relieved of any liability, gain will be recognized to the extent the relief of the liability exceeds their basis; if disproportionate contributions are made, immediately gain will be recognized or gift will be inferred. In case of a corporation, the contributors must control the corporation after formation to avoid recognition of gain (control = 80%).				
Owner's basis in their interest	None	Basis of cash or property contributed plus the owner's share of any liabilities for which the owner is liable or no owner is personally liable.			Basis of cash or other property contributed.	Same as C-corp plus any direct loans to the corporation.
Adjustments to owner's basis	None	Add the owner's share of income; Subtract the owner's share of losses; Add additional contributions; Subtract the owner's share of distributions.			Deduct dividends if corporation has no earnings & profits	Like a partnership
How the owner's share of profits is determined	All	Based on governing document if it has substantial economic effect; special allocations allowed.			Percentage ownership of shares; no special allocations allowed	
Double taxation	No	No, if it does not elect to taxed as a corporation.			Yes – if the corporation has any income left after paying salaries and other expenses.	No – except for built-in gains tax and passive investment income tax.

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Tax law restrictions on owners	None	None	None; 500 or more owners could result in corporate treatment	None	None	75 or less (spouses are treated as one) QSSS, no partnership, nonresident aliens; limited types of trusts: QSST, QESBT, grantor trusts, voting trusts.
Deductibility of the entity's losses by the owners	Yes	Yes -- but only to the extent of the owner's basis as limited by the "at risk" rules, and the passive activity rules.			No	Yes – like and subject to same limitations as a partnership.
Determination of tax status	N/A	If two owners - as a partnership if not publicly traded and does not elect to be taxed as a corporation; if there is only one owner, it is taxed as a sole proprietorship if the owner is an individual, or as a division if the owner is an entity, unless it elects to be taxed as a corporation.			Always taxed as a C-corp.	Always taxed as S-corporation if elected

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Gain on liquidation	N/A	Yes -- to the extent that any cash distributed exceeds the owner’s basis; taxed as capital gain except to the extent gain is attributable to (i) unrealized receivables (ii) appreciated inventory, and (iii) recapture of cost recovery property.			Yes – to the corporation to the extent that the fair market value of the property exceeds its basis; then taxed to the shareholder to the extent fair market value of the property distributed exceeds shareholder’s basis.	Yes – but only to the extent that the fair market value of the property distributed exceeds its basis, unless “built-in” gains tax applies.
Tax Year	Typically calendar year unless the taxpayer can prove that the business is entitled to a fiscal end year; year end must be within three months of calendar year.				Any year	Like partnership
Employee benefits available	Owners are restricted in their participation in retirement and other benefits available to employees. In other words, some benefits available to owner/employees of corporations are not available to sole proprietors, partners and members, such as cafeteria and other qualified plan benefits. Owners may, however, participate in a SEP, Keough or IRA. Greater than 10% partners/members and 5% shareholders cannot borrow from a qualified plan. Generally, all income, other than rental income etc., is subject to social security.				No restrictions on availability of benefits to owners	Like partnership, except limitations apply or >2% owners. S-corp. dividends not subject to Social Security