

# CHOICE OF NEW YORK BUSINESS ENTITIES

By Cari Rincker, Esq.

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	SOLE PROPRIETORSHIP	PARTNERSHIPS		LIMITED LIABILITY COMPANIES	CORPORATIONS	COOPERATIVES
		General Partnerships (GP)	Limited Partnerships (LP)			
<b>Governing Law</b>	N/A	New York Consolidated Laws, Partnership Law	New York State Revised Limited Partnership Act	New York Consolidated Laws, Limited Liability Company Law	New York Consolidated Laws, Business Corporation Law	New York Consolidated Laws, Cooperative Corporation Law
<b>New York Filing Requirement</b>	None (unless using d/b/a, then file a Certificate of Assumed name with County Clerk)	File a Business Certificate with the County Clerk	File a Certificate of Limited Partnership with the New York Department of State	File Articles of Organization with the New York Department of State	File Certificate of Incorporation with the New York of State	File Certificate of Incorporation with the New York Department of State
<b>Filing Fees</b>	Varies by county	Varies by county	\$200 for Certificate of Limited Partnership \$50 for Certificate of Publication	\$200 for Articles of Organization \$50 for Certificate of Publication	\$125 for Certificate of Incorporation	\$125 for Certificate of Incorporation
<b>Publication Requirement</b>	None	None	Must publish a copy of the Certificate of Limited Partnership in two newspapers designated by the local county clerk within 120 days. Must also file a Certificate of Publication with the NYDOS.	Must publish a copy of the Articles of Organization in two newspapers designated by the local county clerk within 120 days. Must also file a Certificate of Publication with the NYDOS.	None	None

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<b>Internal Document</b>	None	Partnership Agreement	Partnership Agreement	Operating Agreement	Bylaws	Bylaws
<b>Number of Owners</b>	1 <i>owner</i>	2 or more <i>partners</i>	2 or more <i>partners</i> (at least 1 general partner and at least 1 limited partner)	1 or more <i>members</i>	1 or more <i>shareholders</i>	5 or more <i>members</i>
<b>Liability</b>	Unlimited liability	Unlimited personal liability; partners equally liable	<i>Limited liability</i> for the limited partner(s); <i>unlimited liability</i> for the general partner(s)	Liability shield for members	Liability shield for shareholders for C Corporation and S Corporation	Liability shield for members; there is liability protection between the entities
<b>Property Interest/ Transfer of Property Interest</b>	Owner has direct ownership interest in business assets	Partners own <i>partnership interest</i> in the partnership. Partners have an indirect interest in partnership assets.		Members own a <i>membership interest</i> in the LLC and have an indirect interest in the LLC's property.	Shareholders own <i>shares</i> of <i>stock</i> in the corporation and have an indirect interest in the corporation's assets.  The corporation owns the business property.	Members own either <i>shares, stock or membership interest</i> in the cooperative.
<b>Transfer of Property Interest</b>	N/A	A <i>partnership agreement</i> may place restrictions upon the transfer of ownership units.		An <i>operating agreement</i> may place restrictions in the transfer in membership interest.	A <i>shareholder agreement</i> may place transfer restrictions upon shares.	The <i>cooperative's charter</i> may place transfer restrictions of shares, stock or membership interest.
<b>Duration</b>	Until the death of the owner	Until the death, withdrawal or bankruptcy of a partner, judicial decree, or any other event specified in the <i>partnership agreement</i>		Indefinitely, unless (1) the <i>Operating Agreement</i> sets forth a date of dissolution or sets out operating events triggering dissolution, (2) there is consent of a majority of members, (3) 180 days have passed where there have not been any	Indefinitely, unless the Certificate of Incorporation states otherwise, or unless dissolved by a vote of 2/3 of all outstanding shares	Indefinitely, unless dissolved by a vote of 2/3 of all members

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				members, or (4) on application by a member or dissociated member for entry of a judicial decree		
<b>Management</b>	Owner has full control	Equal management control among all partners, unless agreed otherwise	<i>General partners</i> only have decision-making authority for the limited partnership as set forth in the <b>partnership agreement</b> . <i>Limited partners</i> cannot participate in day-to-day management decisions but can vote on limited decisions (e.g., adding a new partner)	LLCs are either <i>member-managed</i> or <i>manager-managed</i> . An LLC may have more than 1 manager. Must be identified in the <b>Operating Agreement</b> .	Management by the Board of Directors (elected by the shareholders). Board elects officers (President, Vice-President, Secretary, Assistant Secretary & Treasurer).	Management by the Board of Directors (elected by the members). Voting is democratic – one member, one vote or proportional voting.  There must be at least 5 Directors.
<b>Earnings Distribution</b>	Owner receives income directly from the business.	Partners receive distributions pursuant to <b>partnership agreement</b> and partnership interest (if no partnership agreement, share profits and losses equally).		Equal shares	Shareholders receive distributions based on <b>Bylaws</b> and <i>shareholder interest</i> .	Members receive distribution under the <b>Cooperative's Charter</b> on a basis of <i>patronage</i> .
<b>Separate Bank Account</b>	Not required; recommended	Not required; recommended	Should keep separate banking account for limited partnership	Must have separate banking account; no commingling of personal assets	Must have separate banking account; no commingling of personal assets	Must have separate banking account; no commingling of personal assets
<b>Federal Employer Identification Number ("FEIN")</b>	Not required if no employees; Likely needed to open up bank account in business name; recommended to keep social security off 1099s (independent	FEIN is required at no cost. Can be applied for online at IRS.gov. Your lawyer, banker, or accountant may assist in getting a FEIN.				

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	contractors) or W-2s (employee) or other required tax documents.					
<b>Taxation</b>	Owner receives all tax consequences. Owner subject to self-employment tax.	<p><b>Schedule C or F</b> is produced based on partnership interest. Owner subject to self-employment tax.</p> <p>Pass through to 1040 at partnership level</p>		<p><b>K1 Form</b> must be completed.</p> <p>Can choose to be taxed as a C-Corp or S-Corp.</p> <p><b>C-Corp:</b> incur double taxation (corporate and shareholder levels).</p> <p><b>S-Corp:</b> pass through taxes for shareholders. Under IRC 1361, Must have 75 or fewer shareholders who are natural persons and residents (limited exceptions) with 1 class of stock</p> <p>Pass through taxation applies</p>	<p><b>Types of Corporation Taxation (under Internal Revenue Code)</b></p> <p><b>C-Corp:</b> incur double taxation (corporate and shareholder levels).</p> <p><b>S-Corp:</b> pass through taxes for shareholders. Under IRC 1361, Must have 75 or fewer shareholders who are natural persons and residents (limited exceptions) with 1 class of stock</p> <p><b>B-Corp:</b> must be for a public benefit</p>	