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BRINKLEY-WALSER, PLLC PRESENTS **YOU AND THE LAW** WEARING THE RIGHT CORPORATE HAT

Today more than ever, individuals are starting their own businesses, usually and unfortunately without a great deal of thought as to what type of legal or tax protection they need. Almost everyone believes that if you are a corporation no one can sue you individually. First, that is not necessarily true and second, there are numerous business structures you can select which may be more advantageous to you. Most new business owners wait until they are into the business before they recognize both the legal and tax implications involved.

A good business owner will form a team that provides for good solid advice when the business is formed, or at least in the early stages while the business is growing. This easily includes trusted legal, tax and financial advisors. Lack of advice can be far more costly than the cost of the advice. An attorney will understand you are starting out and will be willing to grow with you while recommending other professionals who may be able to help, as well.

Generally speaking you can form a corporation (and elect either to be an S corporation or a C corporation for tax purposes) or you can be a partnership; either a general partnership or a limited partnership. You may choose to form a limited liability company or "LLC," which has its advantages, particularly in business ventures involving real estate, or a professional limited liability company if qualified as a profession eligible under law to exist as an LLC. All have pros and cons and all have time sensitive deadlines and have tax consequences. What is important is that you get legal and tax advice on these issues and the rights and responsibilities of the partners, directors, members, or officers of the corporation.

Nothing is more dangerous than deciding to go the sole proprietorship route without advice or adhering to form over substance in the formation of a corporation without adhering to the required formalities of operating on the corporate, rather than individual, level. And don't fall prey to "do it yourself legal forms". Though forms are readily available online, many have made their personal assets subject to collection by creditors or victims of personal injury because they failed to set up and properly maintain a suitable form of corporate structure, or failed to properly "wind down" a business which was closing.

Running a business is more than just starting out on your dream of independence. Success means proper planning and a minimal investment which can provide maximum protection in times of financial or business crisis.

The author is a lawyer with Brinkley Walser, PLLC, who has over 45 years experience in general practice. His practice includes Banking, Estate Planning, Wills and Trusts, Business, Condemnations and Real Estate.

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