



P R E - L A U N C H  
S T A R T U P  
K I T

# What is this kit about?

Hello and welcome to the Pre-launch Startup Kit! We are very happy that you are choosing us to give you a guiding hand through this difficult and amazing time.

This Startup Kit is created especially for entrepreneurs who want to get all of their ducks in a row so that they can ensure not only a successful launch but also a successful business. This kit will help you protect your dream and yourself by explaining the legalities involved in picking a business name, choosing the right legal entity, what documentation you will need to support your legal entity and run your business smoothly, how to obtain an EIN and providing you with guidance on hiring employees or independent contractors. We will also provide you with a great resource- the Startup Legal Needs and Documentation Checklist, as well as will answer the top 5 legal FAQ's

LEGAL  
LEGAL  
DEPARTMENT

# What is LegalDepartment.co?

LegalDepartment.co is a monthly subscription service that provides startups and small businesses with the legal help that they need to succeed and protect the owner and the business.

Our owner is Donata Kalnenaite, Esq. and she is an attorney for small businesses and startups, often writing contracts ranging from employment contracts to contracts that allow the sale of a business. She is a big fan of the collaboration approach, meaning that she explains every contract to her clients, ensuring that they understand everything that they sign. Finally, she loves sharing her knowledge with others, and that's what this kit is all about.

Your  
in-house  
counsel  
without  
the  
in-house  
cost.



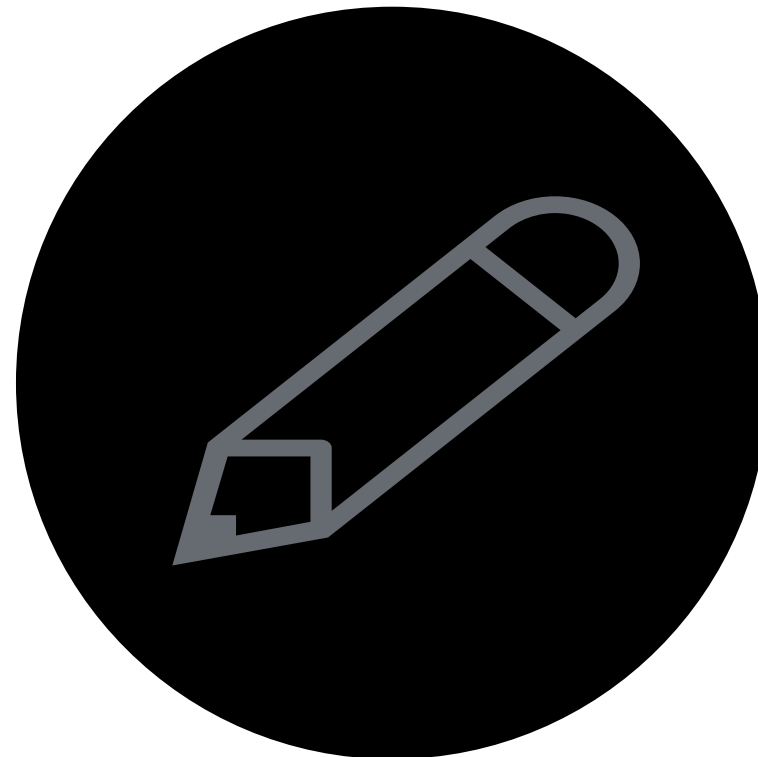
A landscape background featuring a range of mountains under a clear sky. The foreground shows dark, forested hills, while the middle ground and background consist of numerous layers of blue-tinted mountain ranges, creating a sense of depth. A large, black-outlined diamond shape is centered in the upper half of the image, containing the word "WELCOME" in a white, sans-serif font.

W E L C O M E



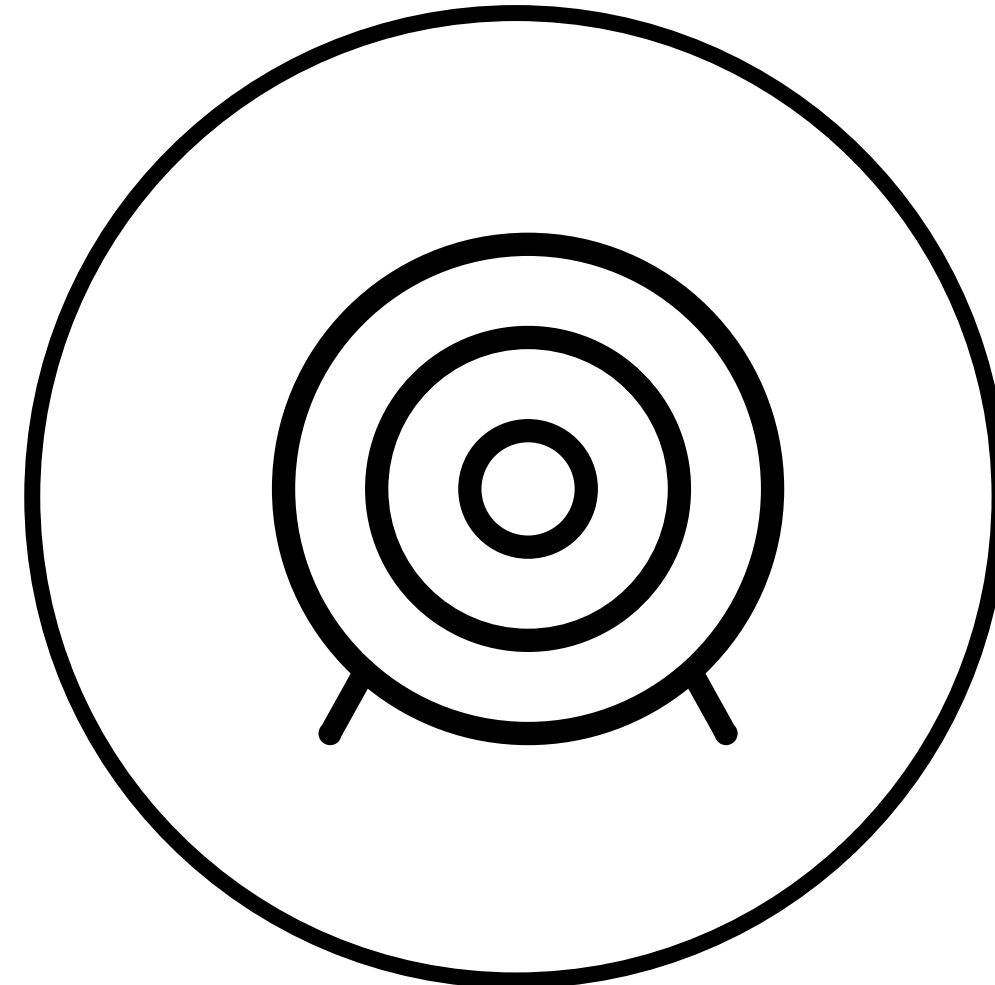
# WHAT YOU WILL LEARN

It is important to us that you have a clear understanding on how you can best protect your business and ensure a bright future for yourself. Here is what you will learn in this Startup Kit:



## PICKING A BUSINESS NAME

In the first section, you will learn where and how to conduct a search to ensure that your potential business name has not been taken yet and why you should conduct this search.



## CHOOSING THE RIGHT BUSINESS STRUCTURE

In the second section, we will explain to you why you should have a legal entity, what the differences are between different entities and where you should form your entity.



## SUPPORTING DOCUMENTATION

In the third section, we will explain why you need a Partnership Agreement, Bylaws, or an Operating Agreement, even if you do not have a business partner.



# WHAT YOU WILL LEARN

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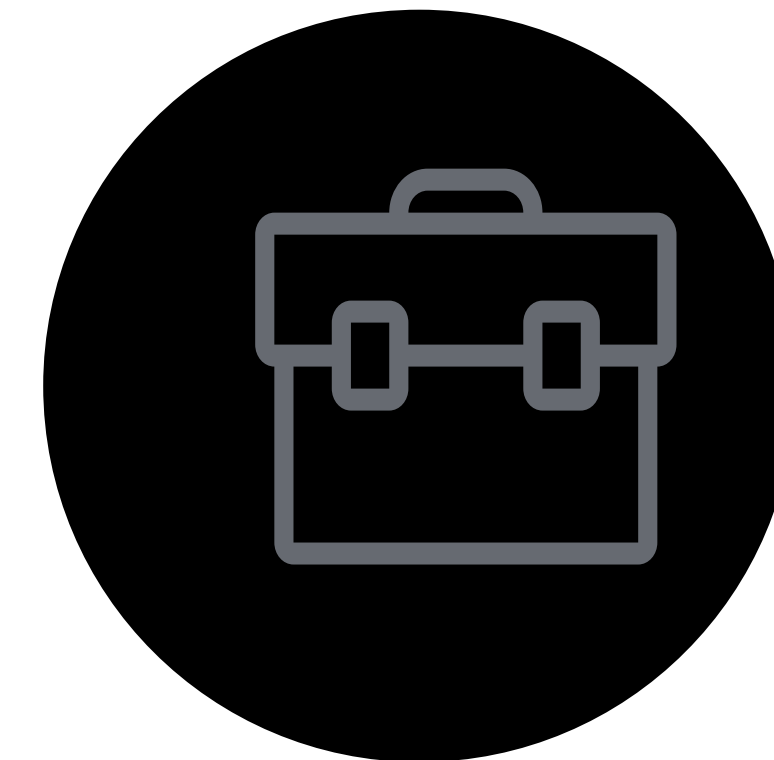
## EIN

In the fourth section, we will explain to you why you need an EIN and how to obtain one.



## HIRING

In the last section, we will explain the differences between independent contractors and employees and will show you the differences between the two.



## ADDITIONAL RESOURCES PROVIDED

We will also provide you with a startup legal needs and documentation checklist and will answer your top 5 legal frequently asked questions.



# HOW TO PICK THE RIGHT BUSINESS NAME

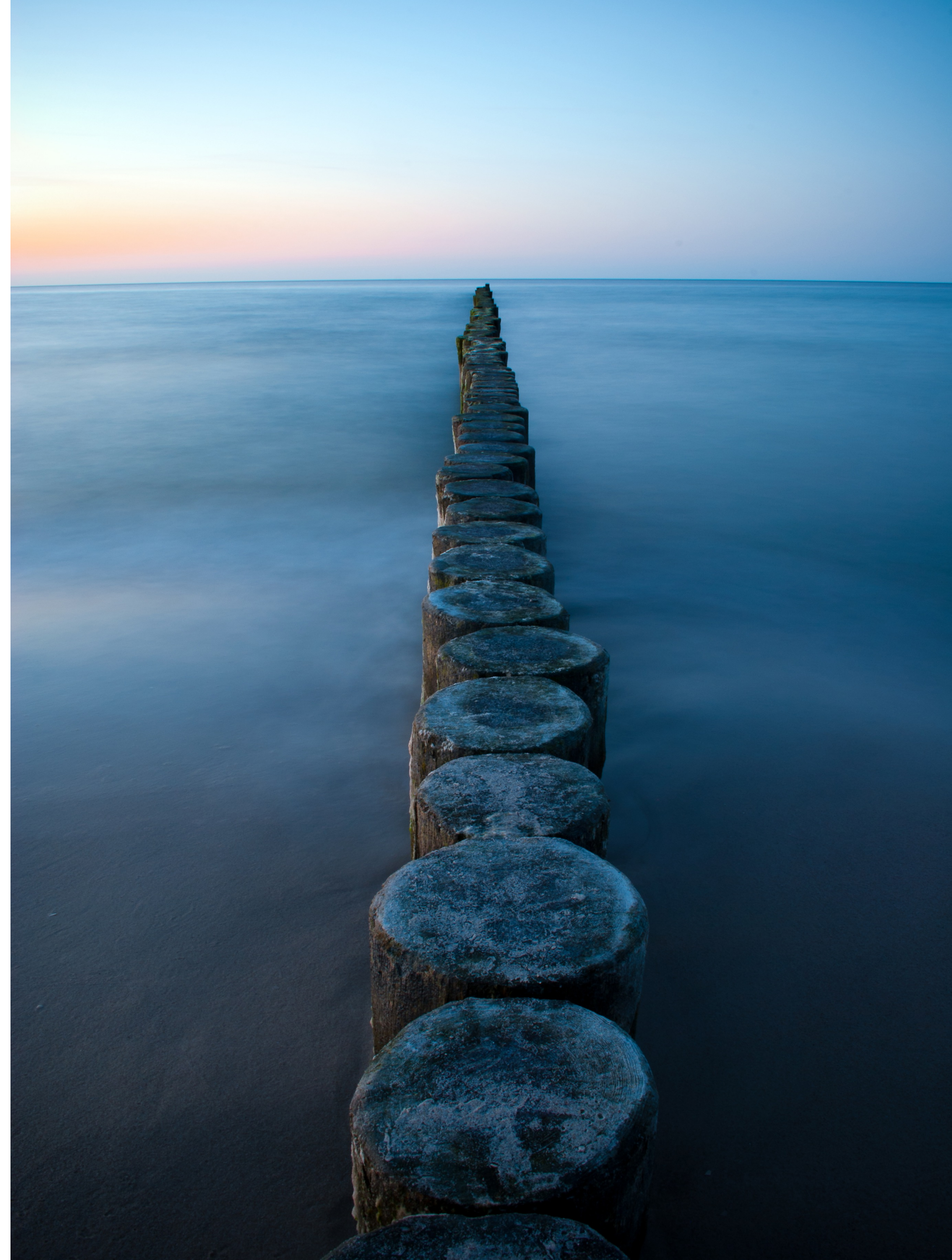
Starting your own business is an exciting time; you have an amazing idea that people are sure to love and you can't wait to share it with the world. This time is crucial for your business because you are setting the foundation. We all know what happens to a house with a bad foundation. So now is the time to pick a proper business name because otherwise your venture may be over before it even starts. In this section, we will give you a legal primer so that you can ensure that your name has not been already taken by someone else and that you can protect the brand that you build.

Your business name is a tracking system that your state uses to inform consumers and others of who is the person behind the business in case of a lawsuit. It does not confer an enforceable right on the person behind the business name. To ensure that you are the owner of this business name and that no one else can use it for any purposes, the best practice is to trademark the name.

Pick a name for your business that is not used by another company. State laws prohibit you from using the same name as another company. Depending on your state, you may not be able to use a name that is deceptively similar to that of another company. What does it mean for a name to be deceptively similar? Names are considered to be deceptively similar when a person who uses the same level of caution, care and observation as the rest of the public would mistake your proposed name with an existing name. In regular terms, this means that if the public is likely to mistake your name with another company's name then your name is deceptively similar and may not be allowed depending on the laws of your state.



Using words such as “Department” or “Bureau” in addition to your state’s name can be held as misleading the public and therefore the Secretary of State will reject your proposed name. In addition, if you are forming a certain type of entity, you may also have to add “LLC” or “Incorporated” to your name. If you are forming a certain type of business such as an insurance company or a bank, you will be subject to an additional set of rules that regulate those types of businesses.





# HOW DO YOU FIND OUT IF A NAME IS TAKEN?

## ➤ DOMAIN SEARCH

You can start by doing a domain search on a website such as [www.godaddy.com](http://www.godaddy.com). If the domain is already taken, chances are that the name is not the best one for you to use. The name may already be in use by someone else and you will probably want to use your business name for your website in the future. Thus, it's best to avoid future trouble and go back to brainstorming a new name.

## ➤ STATE SEARCH

Search your state's records. Generally speaking, most states use the Secretary of State's website to list all LLCs and Corporations in that particular state. If you do a search of the name that you want to use and there are no companies in your state by that name, then you can move on to the next step. Otherwise, go back to the drawing board and come up with a new name.

## ➤ USPTO SEARCH

Perform a search on the U.S. Patent and Trademark Office website to see if anyone has trademarked the name that you want to use. The owner of the trademark can stop you from using his or her trademarked name if (i) you use the name as a trademark; (ii) you use the name in relation to goods or services covered by the trademark registration; or (iii) your name is deceptively similar to the registered trademark. When it comes to someone having a trademark on a name that is very similar to yours, it may be best practice to avoid that name altogether and therefore avoid future lawsuits and costs.





LEGAL  
ENTITIES

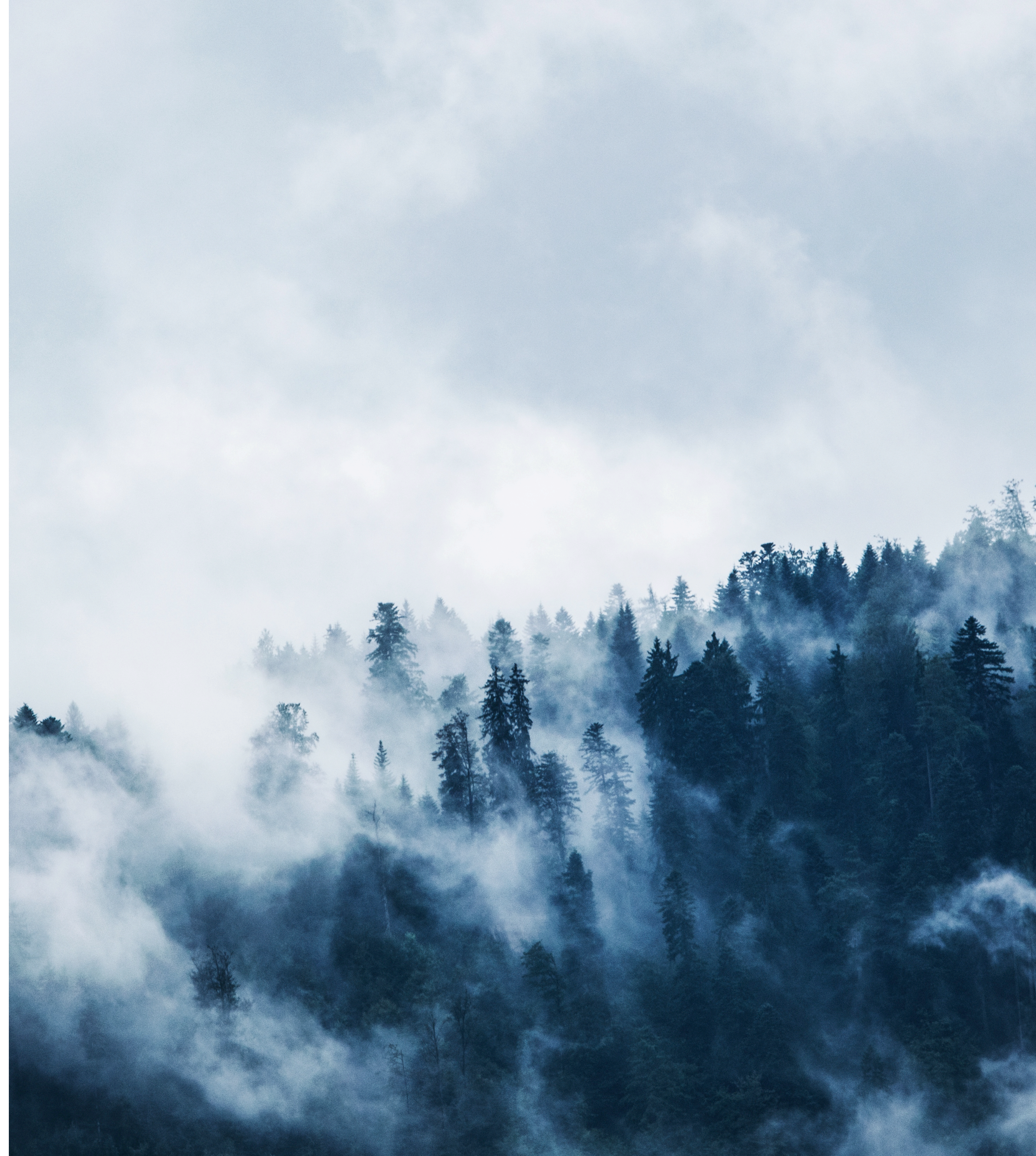


# Choosing the right legal entity to protect your personal assets

Now that you have picked the right name for your business, it is time to delve deeper into how you can protect your personal assets from the liabilities of your business. One of the best ways to protect your assets is to form a legal entity that separates them from your personal assets.

Even though they are not recommended since they do not offer limited liability, we will first quickly explain sole proprietorships and partnerships. Why? These entities do offer some benefits and we want you to make a fully informed decision.

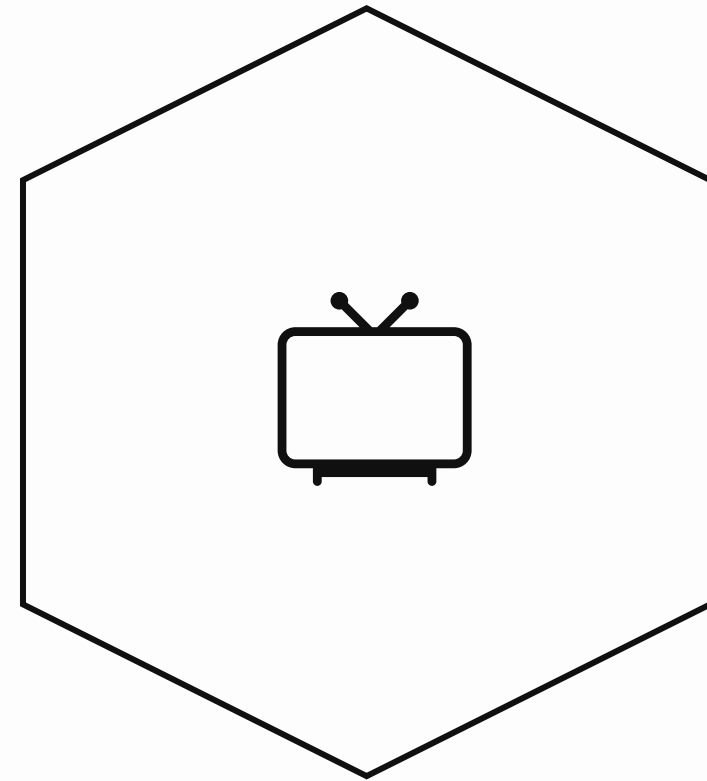
After that, we will give you a primer on limited liability companies, C corporations and S corporations. Along the way, we will also discuss the tax choices that you can make with each entity so that you can get a holistic view and make the best decision for protecting yourself.



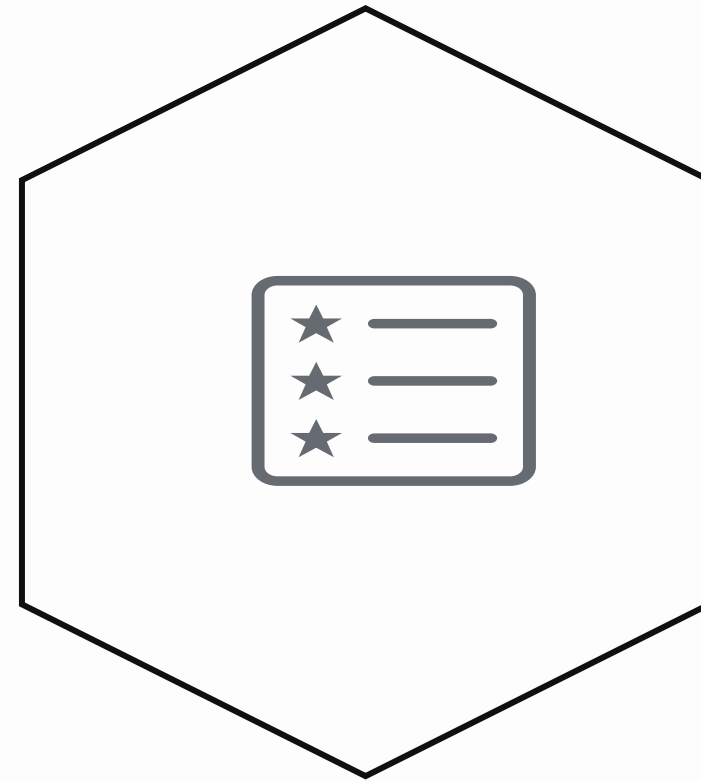


# LEGAL ENTITIES

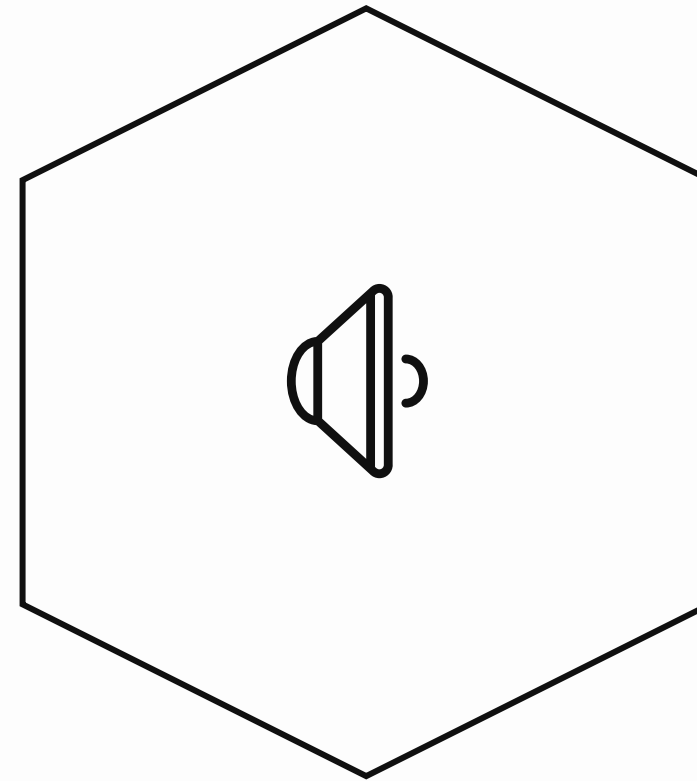
In this section, we will talk about the following entities:



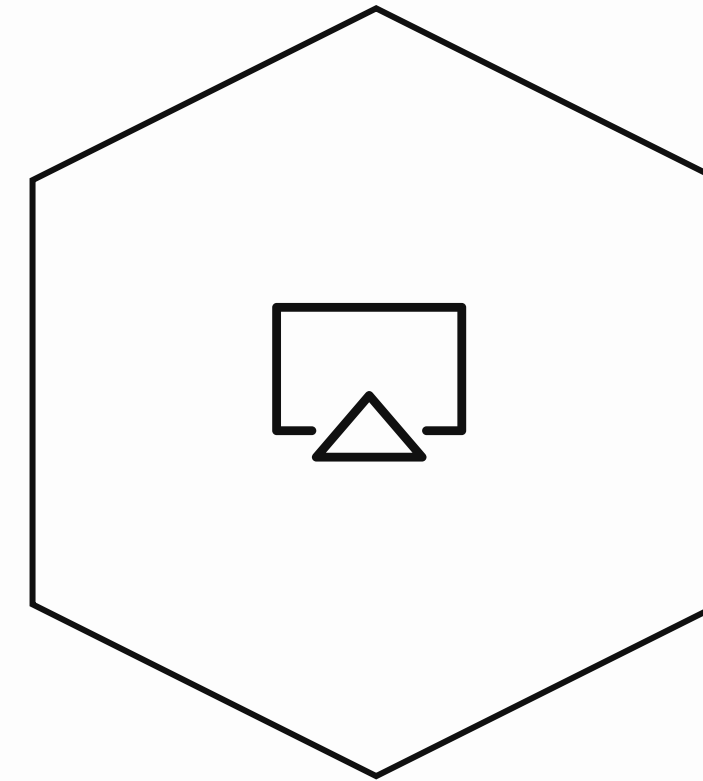
SOLE  
PROPRIETORSHIP



PARTNERSHIP



LIMITED  
LIABILITY  
COMPANY



C  
CORPORATION



S  
CORPORATION



# SOLE PROPRIETORSHIP

Sole proprietorships are designed for single owners who do not want to bother with a different entity. The advantages of being a sole proprietor are the following: you do not need to be a U.S. citizen or resident to be an owner, you can report business profit or loss on your personal tax returns and you are not required to hold annual meetings or record meeting minutes.

However, the largest disadvantage of operating as a sole proprietorship is that you do not get limited liability. This means that if someone sues you and wins, they may be able to get your car, house or other personal assets.



# PARTNERSHIP

Partnerships are very similar to sole proprietorships because the owners receive all of the profits, it is easy to start and costs less than other entities because there are no filing fees and you pay only personal income tax on the profits. These partners do not have to be U.S. citizens or residents and are not required to hold annual meetings or record meeting minutes. The biggest disadvantage of partnerships is that they do not offer limited liability.

\*Please note that the above only applies to general partnerships.

There are 4 types of partnerships:

1. General partnership. A general partnership is an association of two or more persons that carry on a business for profit. There is no setup or filing of documents; as soon as you start your business you are, by default, in a general partnership. You do not enjoy limited liability. Thus, if someone sues you and wins, you may lose your home, car or other personal assets.
2. Limited liability partnership (LLP). An LLP is a partnership that enjoys limited liability. For example, if the partners get sued, their personal assets may not be on the line anymore. To establish an LLP, you must file an application with your state's Secretary of State and pay the applicable filing fees.

3. Limited partnership (LP). An LP is a partnership that has one or more general partners and one or more limited partners and is formed under a state's limited partnership act. The general partners have authority to manage and conduct the business and may be personally liable for the liability and debts of the business. On the other hand, limited partners do not have control over the daily business decisions and are not personally liable for the liabilities of the business.
4. Limited liability limited partnership (LLLLP). An LLLL is a marriage between limited liability and the limited partnership. This particular entity works to eliminate the liabilities of the general partners. Not all of the states have adopted this type of entity so tread carefully.



# LIMITED LIABILITY COMPANY (LLC)

The LLC is a relatively new but arguably one of the most popular choices for business entities. An LLC is organized under a state's laws, meaning that you will have to fill out an application and pay a fee to form the LLC.

The LLC also offers limited liability protection, meaning that your assets are protected from the liabilities of your business. An LLC is, by default, taxed as a partnership for federal income taxes. This means that you are able to report the profits and losses of the LLC on your personal tax return. However, you can also elect to have your LLC taxed as corporation. It is important to note here that you may have to pay taxes on the LLC in certain states, in the form of yearly taxes to renew your LLC.

The LLC has no limits on the number of owners, the owners do not need to be U.S. citizens or residents and you will not be required to hold annual meetings or take minutes at such meetings.



# CORPORATION

Corporations are legal and tax structures that are separate from your personal assets, meaning that your personal assets will be protected. There are two types of corporations:

1. C corporation. C corporations are taxed twice: the corporation makes money and is taxed on that income; once the owners receive dividends, they are also taxed on that income. With a C corporation, there are no limits on the number of shareholders that you have and the shareholders do not have to be U.S. citizens or residents. This is why C corporations are so popular for large companies that are publicly traded or want to be publicly traded. If you are not interested in becoming publicly traded and are not put off by the requirements of the S corporation or an LLC, a C corporation may not be the best choice simply because of the double taxation structure.

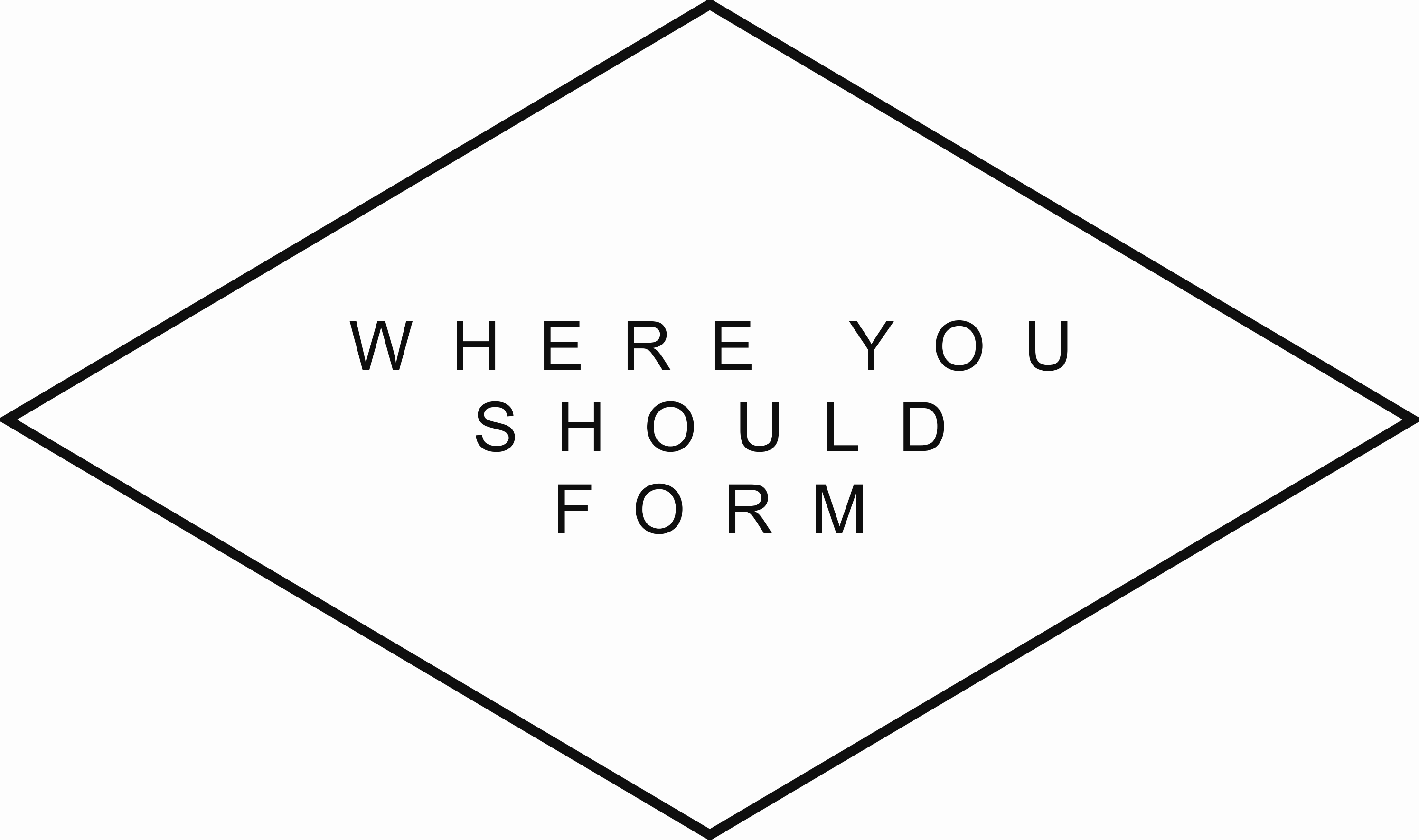
2. S corporation. S corporations also serve as a shield to your personal assets, thus protecting your home and other personal assets from the liabilities of your business. The S corporation is only taxed once – the owners report income or loss on their personal tax returns. In exchange for this preferable tax treatment, there are limits placed on the number of shareholders and each shareholder must be a U.S. citizen or resident. S corporations are also a good choice as you will only get taxed once.



Forming a legal entity for your business helps you protect your personal assets from the liabilities of your business. When you build this strong foundation, you can feel more secure and confident about your future. So pat yourself on the back for this great accomplishment!







W H E R E Y O U  
S H O U L D  
F O R M

# Where should you form your legal entity?

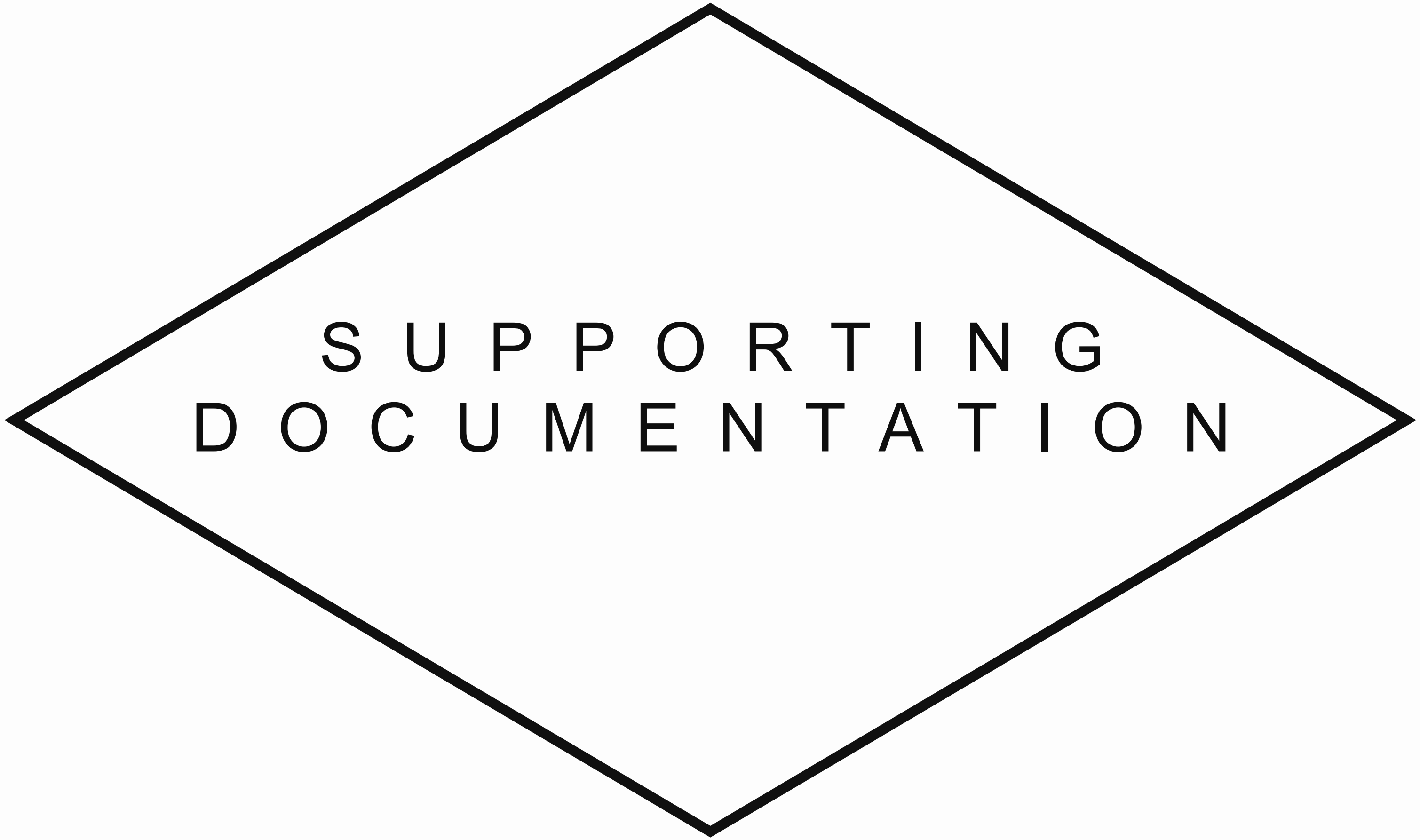
We are not sure if it is just us, but we hear this question all of the time: “where should I form my legal entity, my home state or Delaware?” The answer is “it depends on what business you are in and how you run your business. In this section, we will present you with all of the facts that you need to know to make an informed decision.

Filing in your home state may be a good choice if you have a store or a physical office. When you file in your state, you do not have to register as a “foreign entity”, nor do you need to pay money for a registered agent, thereby saving yourself money on yearly expenses. However, you should consider the costs of filing and taxes in your state. Since each state sets its own fees and taxes, you may save money by filing elsewhere.

Filing in Delaware is a very popular choice for those filing an LLC or a Corporation. Delaware is known to be friendly to businesses and has low filing fees. Furthermore, Delaware does not tax out of state income. In addition, Delaware has a special court that handles solely business matters and nothing else – the Chancery Court. This gives Delaware an advantage because business litigation is much faster than in other states, thereby saving you time and money. Furthermore, the Chancery Court Judges are experienced and well-versed in business matters, a stark difference from the Judges elsewhere, who handle every type of case. Finally, Delaware has hundreds of years of case law, which makes predicting the outcome of a lawsuit a little easier.

So which one should you choose? It depends on whether you do business in a physical location or online. It also depends on your ability to stomach fees for filing, upkeep of your legal entity and taxes.





SUPPORTING  
DOCUMENTATION

# What supporting documentation do you need?

Forming a legal entity is an excellent way to protect yourself and your personal assets. However, filing the paperwork is simply not enough. If you do not have the supporting documentation, the court may determine that your legal entity is simply an “alter ego” and that there is no real separation between the business and its owners. Failure to observe corporate formalities is one of the top factors that the court will consider. If the court determines that your corporation or LLC is merely your “alter ego”, it can pierce the corporate veil. Piercing the corporate veil means that the court will completely disregard your LLC or corporation and will open up your personal assets to the liabilities of your business. These rules apply even if you are the sole owner or shareholder.

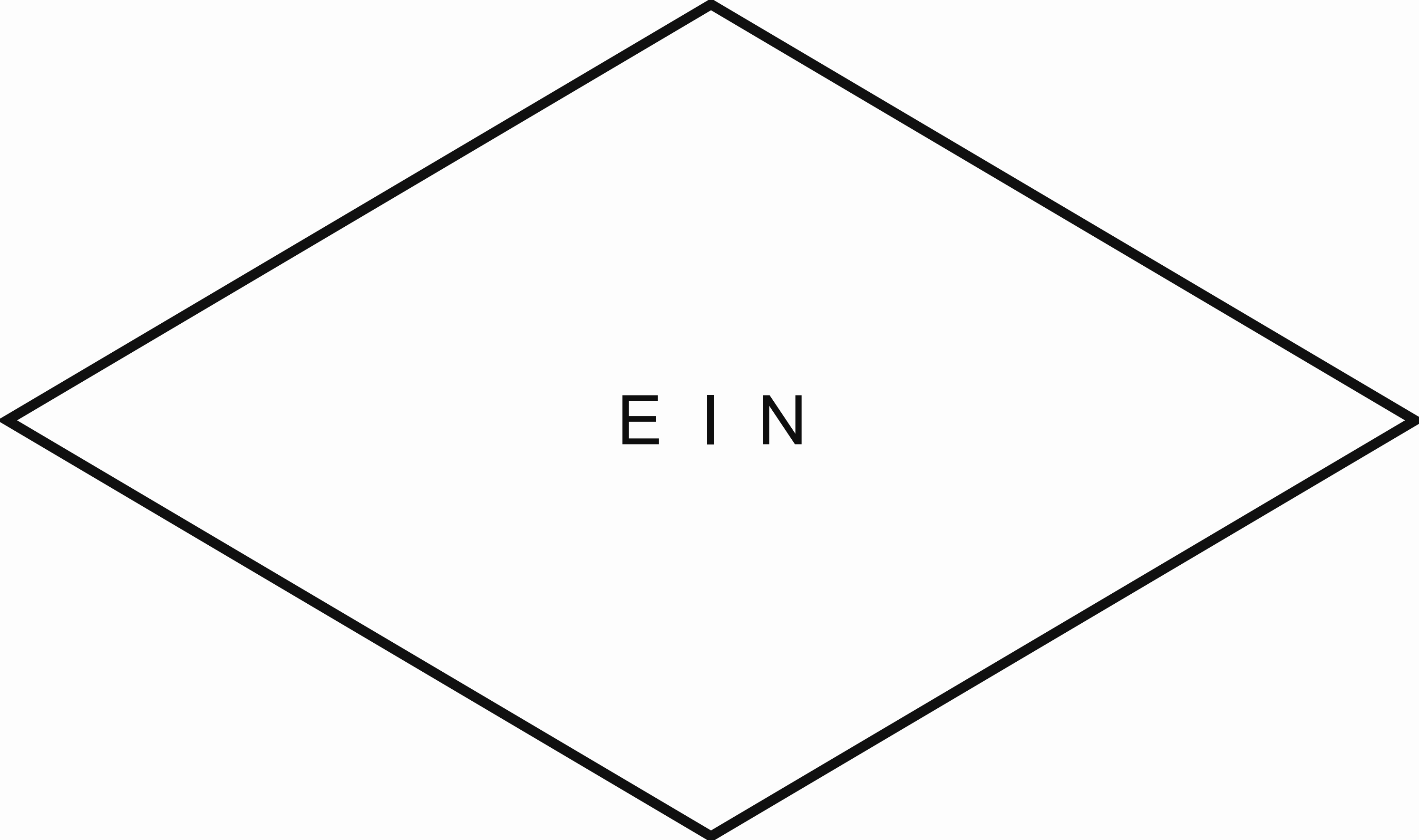
For a corporation, the formalities that you must observe include:

1. Holding annual meetings of directors and shareholders;
2. Keeping accurate, detailed records (“minutes”) of decisions that are made in the meetings;
3. Having Bylaws; and
4. Ensuring that agents and officers abide by the Bylaws.

Corporations should have Bylaws and LLC’s should have Operating Agreements. Partnerships have Partnership Agreements. These contracts are written rules that will direct how your company will be governed. They set forth rules, procedures and the structure of the board. Furthermore, these contracts determine the rights of the owners and participants in your company. These contracts provide protection against legal challenges and protect your company by providing directors and members guidance on what to do in certain situations.

For example, one of the owners wants to leave. These contracts will contain information on how to determine the price for the shares and the procedure for leaving the company.

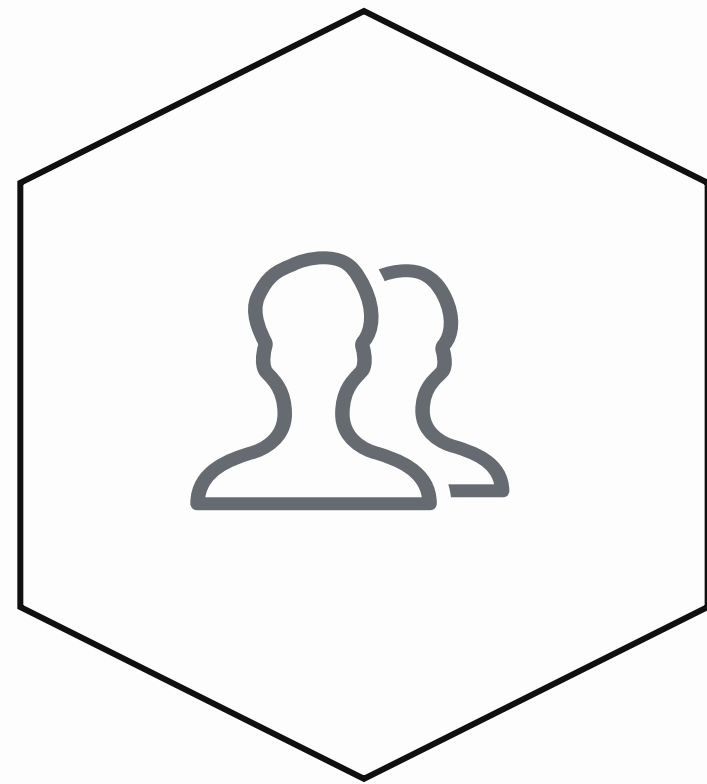






# WHO NEEDS AN EIN?

Now that you have the formalities and the contracts between you and your partners taken care of, it is time to move on to obtaining an Employer Identification Number (EIN). An EIN is a number that the IRS uses to identify the taxpayer. According to the IRS, you need an EIN if you:



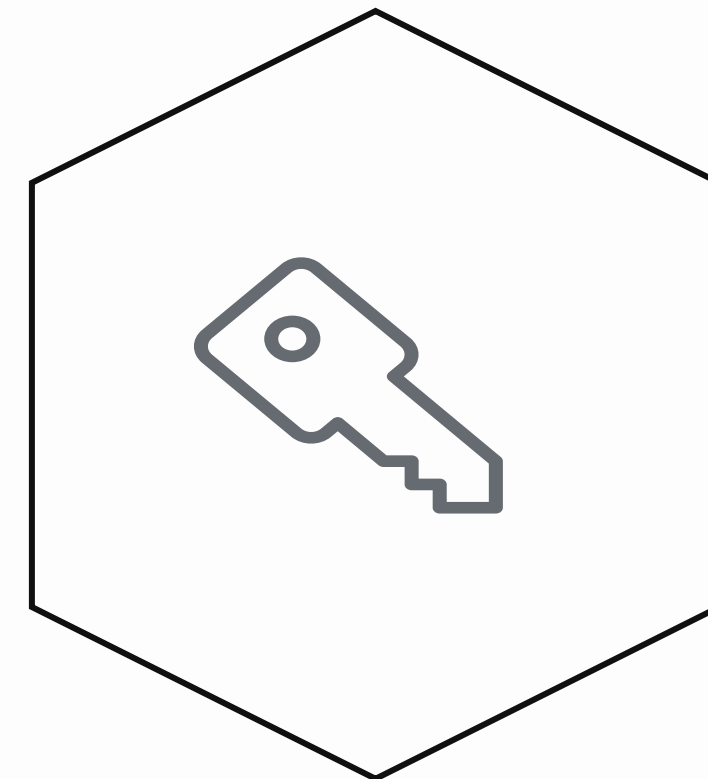
HAVE  
EMPLOYEES



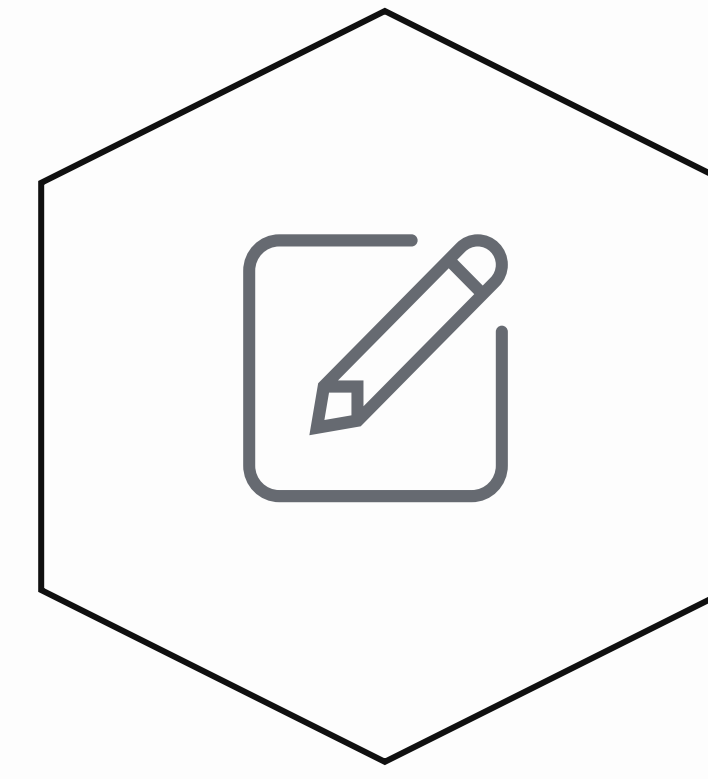
OPERATE YOUR  
BUSINESS  
AS A  
CORPORATION  
OR PARTNERSHIP



FILE ANY OF  
THE FOLLOWING  
TAX RETURNS:  
EMPLOYMENT,  
EXCISE,  
ALCOHOL,  
TOBACCO  
AND  
FIREARMS



WITHHOLD TAXES  
ON INCOME,  
OTHER THAN  
WAGES,  
PAID TO A  
NON-RESIDENT  
ALIEN



HAVE A KEOGH  
PLAN

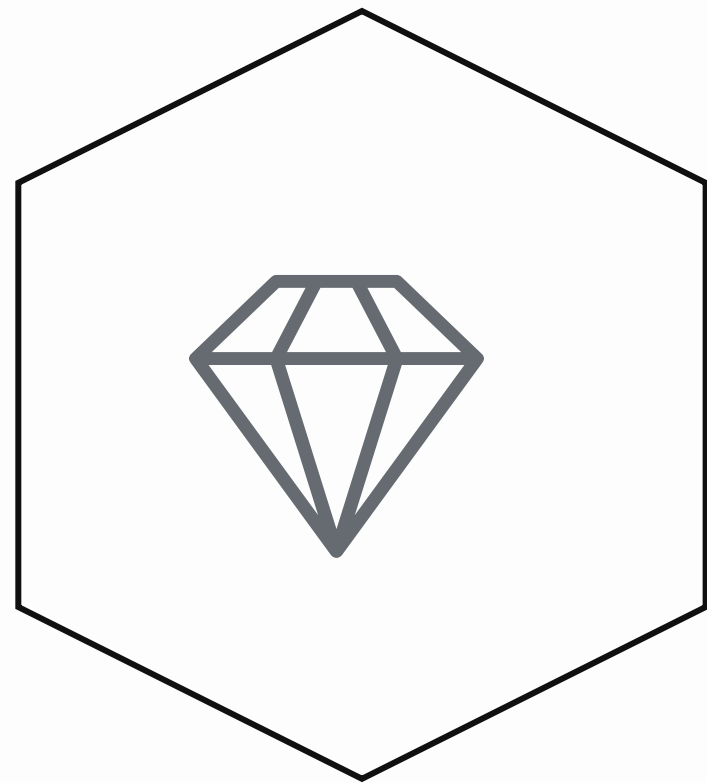


ARE INVOLVED WITH:  
TRUSTS, IRA'S, EXEMPT  
ORGANIZATION BUSINESS  
INCOME TAX RETURNS,  
ESTATES, REAL ESTATE  
MORTGAGE INVESTMENT  
CONDUITS, NON-PROFIT  
ORGANIZATIONS, FARMERS'  
COOPERATIVES, AND  
PLAN  
ADMINISTRATORS

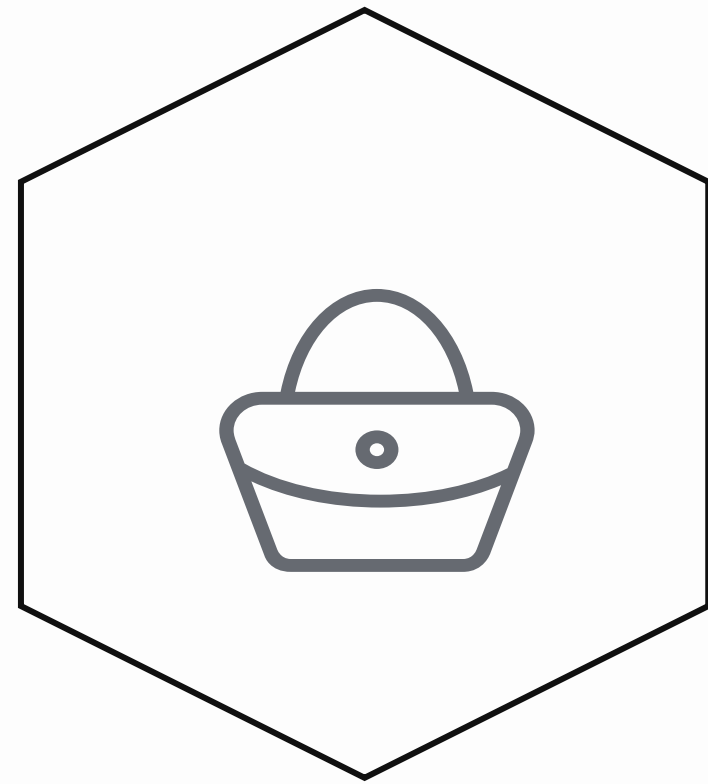


# EIN FOR SOLE PROPRIETORS

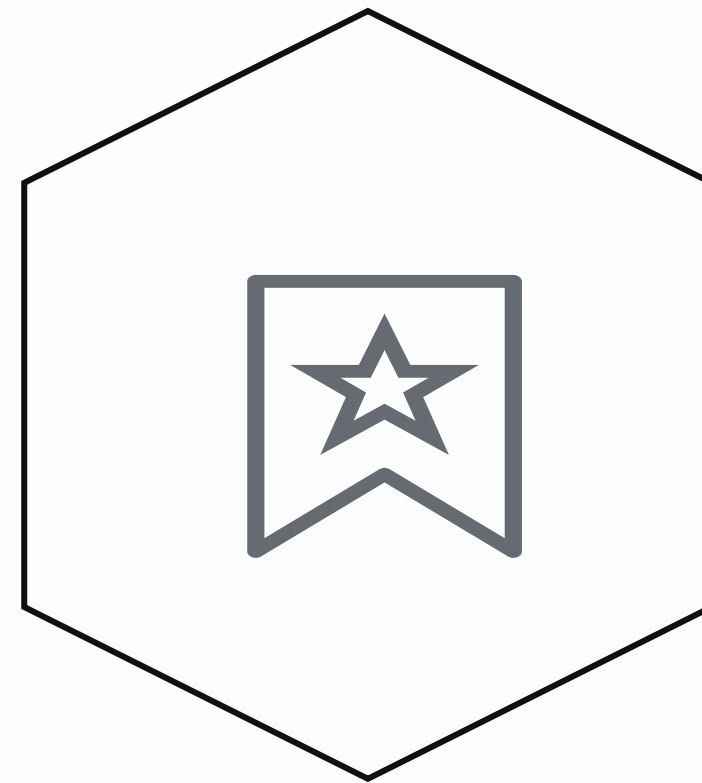
If you are continuing to work as a sole proprietor, it is most likely that you will not need to obtain an EIN unless you:



HIRE  
EMPLOYEES



HAVE A KEOGH  
OR SOLO  
401(K)  
RETIREMENT  
PLAN



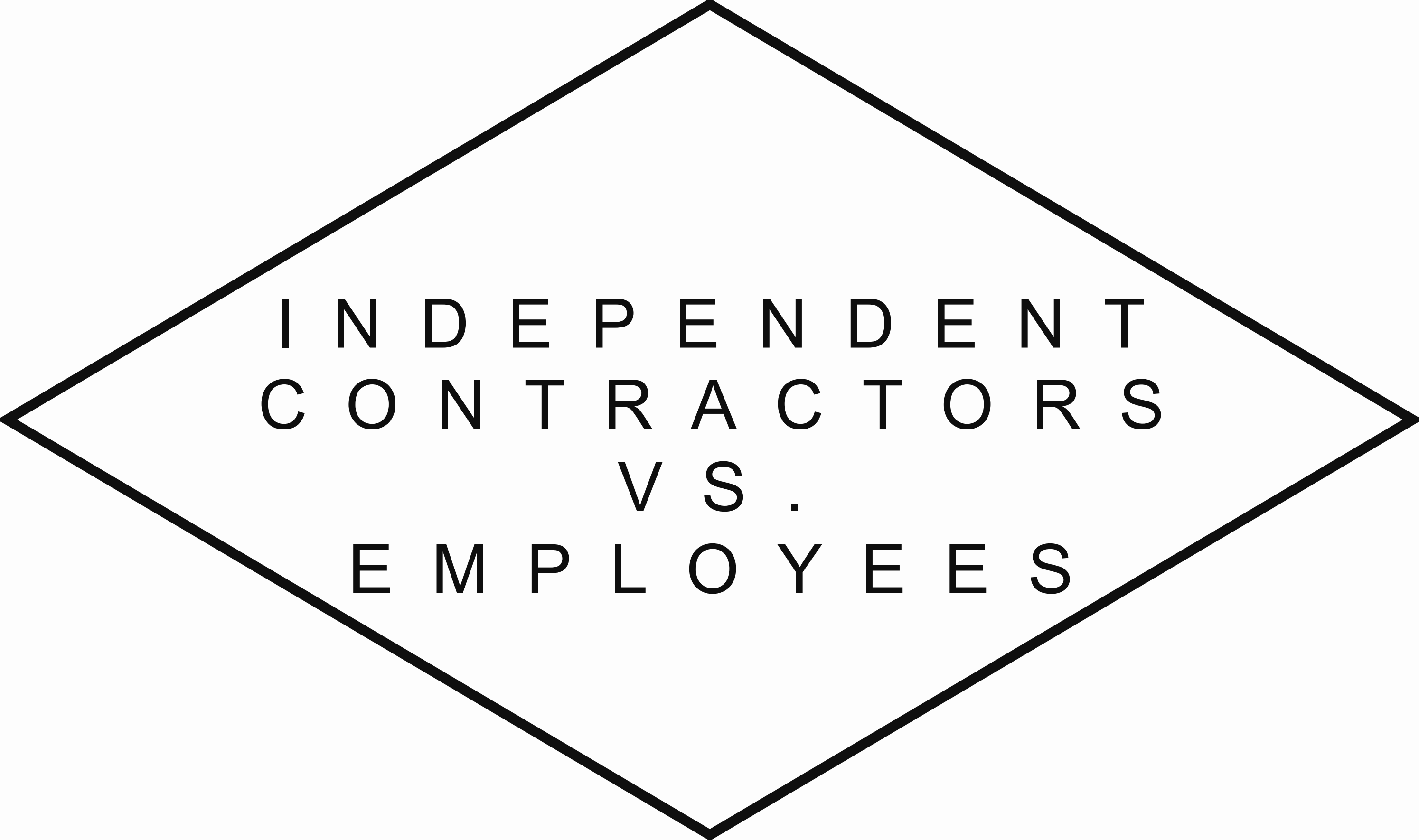
INCORPORATE,  
FORM AN LLC  
OR A  
PARTNERSHIP



FILE FOR  
BANKRUPTCY



BUY OR  
INHERIT AN  
EXISTING  
BUSINESS  
THAT YOU  
OPERATE AS A  
SOLE  
PROPRIETORSHIP



I N D E P E N D E N T  
C O N T R A C T O R S  
V S .  
E M P L O Y E E S



# What are pros and cons?

It is time for you to officially start your business. You may be at a point where you already need help. It is a very exciting moment in every entrepreneur's life when you create a job. You should be very proud of yourself! Do you know who you are going to hire and why? Do you know if you should hire an independent contractor or an employee?

In this section, we will explain the differences between independent contractors and employees and the pros and cons of each so that you can make an informed decision on what is best for you and your business.

Independent contractors are people or businesses who contract to do work for another person or business according to their own methods and processes. The contractor is not subject to your control. The advantages of independent contractors include not having to pay employer taxes and not having to give the contractor any benefits. The cons of independent contractors are that you cannot control how the contractor does his or her job, reducing your control over the worker and the project as a whole.

The main disadvantages of employees are the costs – you will have to pay employer taxes and, depending on your business size, you may have to provide benefits. The pros of employees are that you have much more control over when they show up for work, how they do their work and can direct their work to your liking. Employees are also generally more loyal to your company and to you since they are getting paid long term rather than a contractor who may work for you for a month or two.

# IRS GUIDELINES

The following questions posed by the Internal Revenue Service will help you gain clarity on whether a worker is an employee or an independent contractor.



## **BEHAVIORAL**

Does the company control or have the right to control how the worker does his or her job?



## **FINANCIAL**

Are the business aspects of the worker's job controlled by the company or the worker?



## **TYPE OF RELATIONSHIP**

Are there written contracts or employee-type benefits? Will the relationship continue and is the work performed a key aspect of the business?



# CHART OF INDEPENDENT CONTRACTORS VS. EMPLOYEES

| INDEPENDENT CONTRACTOR   | EMPLOYEE  |
|--|---|
| Usually provides services to more than 1 company.                  | Usually devotes his or her full time to working at your company.          |
| Determines their own hours and can work from anywhere.             | Works set hours, usually at your location.                                |
| Works independently and does not have to follow your instructions. | Works under your control and direction.                                   |
| Pays for his or her own self-employment taxes.                     | Receives a net salary after you withhold taxes, FICA and social security. |
| Not eligible for worker's compensation.                            | Will receive worker's compensation if injured on the job.                 |
| Is paid according to the contract.                                 | Is covered by wage and hour laws.   |



# Making the right decision for you

Unfortunately, there are no set-in-stone type of categories or questions that will determine whether someone is an independent contractor or an employee. However, a good rule of thumb to remember is that the less control you have over the worker, the more likely it is that he or she is an employee.

If you are looking for someone to help out for a few hours per week on some ancillary tasks such as answering the phone, sending cards to your clients or proofread, chances are that you need an independent contractor.

On the other hand, if you are looking for someone who will be working 40 hours per week, helping you find new clients and growing your business, you will probably need to hire an employee.

Whichever you choose for your business, always remember that you should have contracts for anyone who is working for you so that you can protect your trade secrets, employees, your business and yourself. We hope that this has helped you make an informed decision on who will be helping you grow your business.





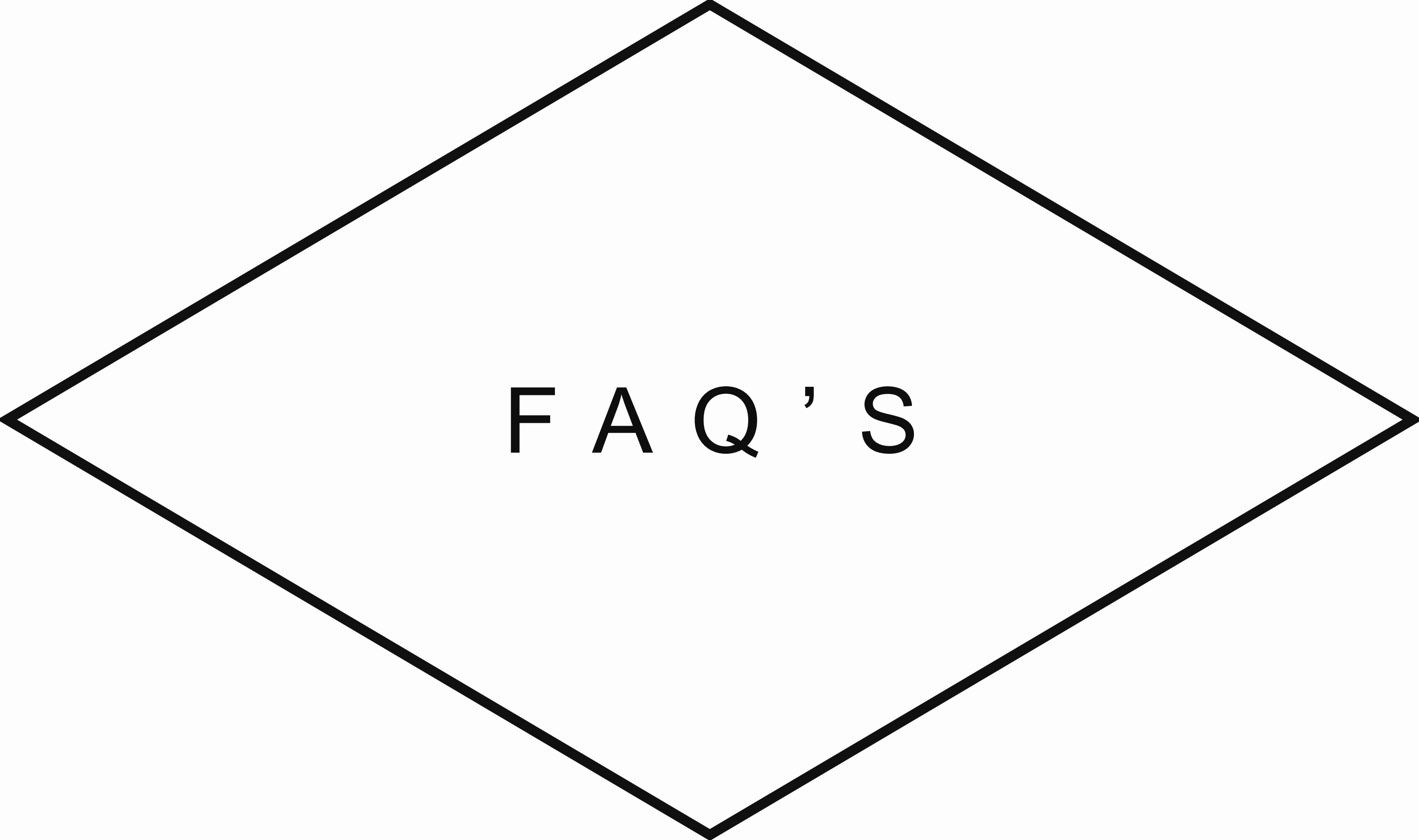
C H E C K L I S T

# Startup Legal Needs and Documentation Checklist

Now that we have thoroughly explained some of the most important things that you need to do to start your business properly, we will put everything into an easy checklist form. While this checklist includes some concepts that we have already discussed, it also includes other very important tasks that you need to complete to ensure that you and your business are protected. Here is what you need to build a strong foundation for your future:

- Decide on a business name.
- Trademark the name of your business.
- Form a legal entity.
- If you have formed a legal entity in another state, qualify to do business in your state.
- If you have a website, obtain:
  - Terms and Conditions; and
  - A Privacy Policy.
- Have an Operating Agreement or Bylaws.
- Obtain an EIN if you need one.
- Obtain a business license and all of the necessary permits.
- Obtain and display all required notices in your office.
- Obtain contracts with all of your customers.
- Obtain an employment or independent contractor contract.
- Have an employee handbook.
- Comply with all new hire laws in your state.
- Obtain contracts with all of your vendors.





FAQ'S

# Answers to Top 5 Legal FAQ's

**Q: I am not currently being sued, why do I still need a lawyer?**

A: We have all heard the phrase “an ounce of prevention is worth a pound of cure.” This concept applies to having an attorney as well. Having an attorney write the contracts with your clients, form your legal entity, write your employment contracts, write your website contracts and provide you with advice ensures that you are fully protected. This helps reduce disputes with employees and clients and makes sure that you are in compliance with laws. Therefore, having an attorney helps prevent lawsuits from forming in the first place, saving you a lot of money.

**Q: Why can't I just use a service like LegalZoom?**

A: LegalZoom attempts to find an answer or a product for all businesses. In doing so, their contracts become generic and they are not tailored to your business. Every single business is different and has different clients and faces different risks. Services such as LegalZoom are simply just not sufficient to protect your business in particular. Furthermore, the contracts that these services provide often miss crucial provisions such as a non-compete for employees or how you will solve disputes with your clients. Lastly, these services do not come with an explanation of the contract so you are on your own to figure out what it says and whether it says what you want it to say.

**Q: Why do I need contracts with my clients?**

A: Even if you do everything perfectly, there are a million opportunities for a dispute with your client. For example, you did the job and the client will not pay. Now what? Or, you are a graphic designer who made stunning designs only to have your client ask for revisions time and time again. What do you do? The contract specifies what you are supposed to deliver to the client, that the client must pay and what happens if he or she does not, the responsibilities of the client and the warranties you will be providing, just to name a few. The contract helps establish the ground rules at the very beginning of the project and serves to protect you in case of a dispute or in case of litigation. Having contracts with your clients is the best way to ensure a bright future for your business.



# Answers to Top 5 Legal FAQ's

**Q: How can I protect my trade secrets?**

A: Here is a list of a few things that you can do today to protect your secrets:

- Have employee contracts that contain a non-disclosure provision;
- Label all confidential documents as “confidential.”
- Only give confidential information to those employees who need to know the information and no one else.
- Have every third party sign a Non-Disclosure Agreement before you give them the information.
- Do not leave confidential information sitting out in the open. Have a clean desk policy.
- Train your employees on how to protect confidential information.
- Disallow USB's in your computers.
- Password-protect every computer.

**Q: How do I protect the name of my business and the logo?**

A: To gain full protection, you should trademark them at [www.uspto.gov](http://www.uspto.gov).

# Thank you!

Thank you so much for taking the time to read through our Pre-launch Startup Kit. We hope that it has been helpful and informative.

This kit is not intended to serve as legal advice. You should always consult an attorney.

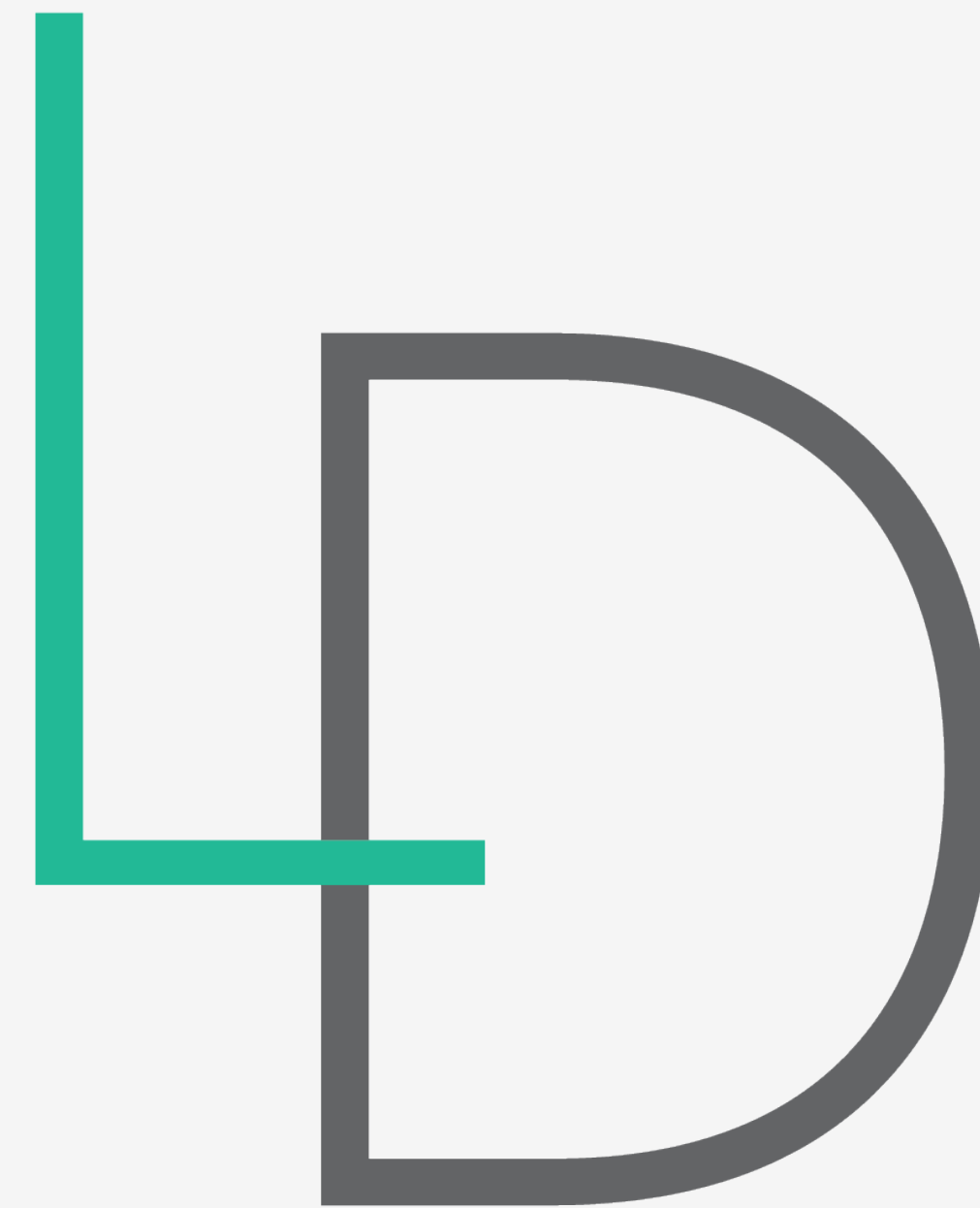
If you would like to chat more about legal protections for your business, we are always available and glad to talk. Our monthly plans start at as low as \$100.

You can find us at:

[www.legaldepartment.co](http://www.legaldepartment.co)

[donata@legaldepartment.co](mailto:donata@legaldepartment.co)

(312) 391-4341



LEGAL

DEPARTMENT