

Select Your Business Structure

Business Structure Options

Business may be conducted through a variety of organizational structures; an attorney, accountant, financial advisor, tax advisor, or banker may help you decide which form would be most suitable. One primary consideration in selecting a business organization is protection of a business owner from liability. Also to be considered is the transferability of ownership rights, the ability to continue as a business in the event of the death or withdrawal of one or more of the owners, the capital needs of the business, and tax liabilities.

Note: Legal requirements are determined by the business structure selected. The statutes are very specific on the regulations required as you set up your business structure. The Corporations Division of the Georgia Secretary of State has information and literature that can help determine the best structure for you. You can visit their web site at <http://www.sos.state.ga.us/corporations/>. Ultimately, however, legal counsel or the assistance of a professional accountant may be needed.

The Most Common Business Structures

Sole Proprietorship - The single owner of the business is a sole proprietor and has sole control and responsibility. This allows for important decisions to be made quickly, and may enjoy fewer legal restrictions.

The sole proprietor's responsibilities include:

- Procuring all capital.
- Personal liability for all claims against the business.
- Showing business profits as part of the owner's individual taxable income.
- Obtaining local business licenses.
- Registering the name of the business when using a trade name in the county where it will transact a majority of its business.

General Partnership - A partnership is an association of two or more people acting as co-owners of a business for profit. A partnership can be created by an oral or written contract between the individuals. It is wise to have an attorney draw up a partnership agreement specifying rights and obligations of the partners. Almost any management and profitsharing agreement can be arranged. A general partnership requires no official registration beyond that required for a sole proprietorship. It extends liability to the personal assets of the business partners. It is required to file those germane to all business entities such as a business license, trade name registration, proper permits, and the like. Each partner shares its profits and losses and is then taxed at personal income tax rates.

Limited Partnership - Limited partnerships are more closely regulated than general partnerships, permitting investors to become silent or limited partners without assuming unlimited liability. There must be at least one general partner who manages the business with one or more limited partners whose liability is limited to the extent of their investment.

In a limited partnership:

- General partners share full liability.
- Limited partners may take no part in running the business.
- The limited partnership must register with the Georgia Secretary of State Corporations Division. However, they do not have the requirements of filings, publications, or record maintenance of corporations.

Business Corporation - A corporation is a more complex form of business organization and is a legal entity and exists apart from its owners or shareholders. As a separate entity, it has its own rights, privileges, and liabilities apart from the individuals.

A corporation:

- Must file its Articles of Incorporation with the Corporations Division of the Georgia Secretary of State.
- May be formed for profit or for nonprofit purposes.
- It has limited liability.
- The liability of shareholders (or owners) to creditors is ordinarily limited to the amount of each shareholder's capital stock investment.
- Is unaffected in its continuity by death or transfer of shares by any of the owners.
- Requires more extensive record keeping.
- Pays taxes on its profits.
- Taxes on dividends are paid by its shareholders.

S Corporation - The S Corporation combines parts of the corporate and partnership forms of business organization. The Internal Revenue Code permits a privately held corporation with up to 35 shareholders, to avoid corporate taxation by having each shareholder report the share of corporate income on his or her individual income tax return.

The S Corporation:

- Generally does not pay tax itself. However, there are two situations which may result in tax to the corporation:
 1. Excess net passive income
 2. Tax on certain capital gains
- Remains a corporation in the view of the state and complies with state corporation regulations.
- Must have only one class of stock.

- Uses a calendar tax year or shows a business purpose for adopting a fiscal year.
- Must have the consent of all shareholders to having S Corporation status.
- Must be made up of shareholders that are individuals, estates, or trusts, but not corporations.
- Can only have shareholders that are United States citizens or residents.
- Cannot be a member of an affiliated group of corporations. Also ineligible are most financial institutions, insurance companies, and domestic international sales corporations. See IRS regulations for more information.
- Prohibits certain types of income and business activities.

Nonprofit Corporation - A nonprofit corporation may be formed in Georgia for any lawful purpose, but not for financial profit. It is an organizing structure useful to small and large scale activities, involving only a few people or many hundreds of people. It does not require large sums of money and it can be prepared initially by following a few simple rules:

- It may not have shareholders or pay dividends.
- It may compensate members, officers, and trustees, (in reasonable amounts) for services rendered.
- Nonprofit incorporation status does not guarantee that your organization will be granted tax exempt status, nor does it ensure that your contributors can deduct their gifts from reported personal income. Nonprofit incorporation is generally a prerequisite to applying to the Internal Revenue Service for preferential tax status, under IRS Code section 501(c)(3). To apply for exempt status contact the IRS for the necessary application forms.

Limited Liability Company - The Limited Liability Company (LLC) combines many favorable characteristics of corporations, and limited and general partnerships. It also provides limited liability to its members and offers them the same favorable IRS tax treatment enjoyed by partners in general and limited partnerships.

A Limited Liability Company:

- Must file “Articles of Organization” with the Corporations Division of the Secretary of State.
- Allows members to manage the company themselves or to elect managers.
- Allows members to engage in management without risk of losing their limited liability status.
- Follows simple registration and annual reporting requirements similar to those of corporations and limited partnerships.
- May be taxed by the IRS as either a corporation or as a partnership, depending on its structure.

Cooperatives - First and foremost, cooperatives are businesses that are autonomously owned and democratically controlled by people who buy their goods or use their services-not by investors. Unlike investor owned businesses, cooperatives are organized solely to meet the needs of the member-owners, not to accumulate capital for investors. As democratically controlled businesses, many cooperatives practice the principle of "one member, one vote," providing members with equal control over the cooperative.

Cooperatives fall into four categories: consumer, producer, worker, and purchasing/shared services.

Cooperatives follow seven internationally recognized principles:

- Voluntary and Open Membership
- Democratic Member Control (one member, one vote)
- Member Economic Participation
- Autonomy and Independence
- Education, Training and Information
- Cooperation Among Cooperatives
- Concern for Community

Under the Georgia Code, only agricultural producers may form a cooperative. Other groups may form a corporation and act like a cooperative but only agricultural cooperative may use the name "cooperative" in their title.

A cooperative:

- Must file its Articles of Incorporation with the Corporations Division of the Georgia Secretary of State. Cooperative are incorporated under Title 3-10-80 of the Georgia code.
- May be formed for profit purposes.
- It has limited liability to members. The liability of members (or owners) to creditors is ordinarily limited to the amount of each member's investment in the cooperative.
- Is unaffected in its continuity by death or transfer of stock shares by any of the members.
- Requires more extensive record keeping.
- May have limited tax exempt status on its profits based on IRS status.
- Taxes on patronage is paid by its members based on use.

Table 1: General Comparison of Georgia's Most Commonly Used Types of Business Organizations						
	Proprietorship	General Partnership	Limited Partnership	Corporations	LLC	Cooperatives
Method of Creation	Owner commences business activity	Created by agreement of the parties	Created by registration with the state under statutory authority	Charter issued by the state under statutory authority	Charter issued by the state under statutory authority	Charter issued by the state under statutory authority
Entity Status	Not separate from owner.	In some cases , can be separate from owners.	Separate from limited partners, not usually separate from the general partners	Legal entity, separate and distinct from owners.	Legal entity separate and distinct from the member/owners.	Legal entity separate and distinct from the member/owners
Liability of Owners	Owner is 100% liable for all debts.	Unlimited liability for all partners.	Limited liability for limited partners only.	Shareholders liable only to extent of paid-in capital.	Members enjoy complete limited liability similar to that of limited partners.	Member is liable only to extent of paid-in capital.
Duration	Same as owner	Terminated by agreement of partners, or by a partner's death, withdrawal or bankruptcy	May be perpetual	May be perpetual	May be required to specify term of years; must be 99 years or less	May be perpetual
Transfer of Interest	May be sold at any time	Generally, sale of partnership interest terminates the partnership; may create new partnership.	Limited partner may sell interests; general partners may not sell interests without consent of the others, depending on the by-laws or charter	Shareholders may sell or transfer shares of stock	Operating agreement defines restrictions, if any, to transferability of a member's interests	Membership limited to agricultural producers and may be further limited by charter

	Proprietorship	General Partnership	Limited Partnership	Corporations	LLC	Cooperatives
Control	By owner	General partners each have a direct and equal voice in management unless expressly agreed to otherwise	Limited partners have no management rights or control	Shareholders elect the Board of Directors which sets policy and appoints officers	The company is owned by its members and is managed by its members or by elected managers; an Operating Agreement governs policy	Members elect the Board of Directors which sets policy and appoints officers
Capital	Limited to what the owner raises himself	What the general partners can raise themselves	What the limited partners and general partners can raise collectively	Based on issuance and sales of shares of stock	Raised by the members themselves	Based on equity contribution of members and debt
Taxation	Profits are taxed to owner as an individual	Profits are usually taxed to each owner as agreed in contract, or all share equally whether or not distributed	Profits are usually taxed to each general partner and each limited partner as agreed in contract	Double taxation; corporate profits are taxed to the corporation; shareholder profits in form of dividends are taxed as they receive them	Profits may be taxed to each member similar to a partnership, or the company may be taxed as a corporation	Limited tax exemption in some cases when profits allocated to members.

Identify Ways You Can Finance Your Business

Sources of Capital

New businesses must be capitalized carefully. Entrepreneurs must identify their startup capital and cash-flow requirements. The total of the two, plus a reserve, will determine the total amount needed to open a new business. Never underestimate the amount of money required to get started.

There are two forms of capital – debt and equity:

- Borrowed capital is debt that must be repaid. The terms vary depending on what is agreed upon by the parties. Interest costs are important to consider in the calculated formula for success.
- Equity is the money value of a property or of an interest in a property in excess of claims or liens against it. It also denotes a risk interest or ownership right in that property. Being a sole owner affords an element of control over the conduct of the business.

More detail regarding financing can be obtained by checking into the following capital sources:

- Commercial Bank Loans - Getting a loan is a matter of credit worthiness and a bit of salesmanship; the better prepared you are, the more likely you are to be successful. Lenders may know little about your specific business, so your job is to educate them. This educational process begins by submitting a loan proposal containing the following information:

B Loan Request

- Purpose of the loan
- Loan amount required
- Terms desired
- Source of repayment
- Collateral available
- Loan money usage

B History and Nature of the Business

- Brief and concise description of the business

B Management

- Skills you bring to the company
- Age, experience, and education of the management team
- Organization chart or management structure
- Other key advisors

B General Information

- Product or industry trends
- Marketing area and method of distribution or marketing
- Major customers
- Suppliers
- Competition
- Facilities
- Employees and unions

B Financial Information

- Three-year spreadsheets of balance sheets, income statements, and cash flow
- Three-year financial statements and tax returns
- Ratio analysis with appropriate comments
- Personal financial statement (dated within 90 days of loan request)
- Pro forma income statement for at least one year
- Cash budget for at least one year

Many Lenders Evaluate Loan Requests Against the "Five C's of Credit"

- Character - the most important, if you are not someone to be trusted, the lender doesn't want to deal with you, no matter how good the deal.
- Capacity - what is your financial strength and track record?
- Capital - how much of your own money have you invested?
- Collateral - what is available to support the primary source of repayment?
- Conditions - what is the economy doing and how will it affect your company?

Venture Capital Funds

A venture capital fund is used for very narrow or niche equity financing. It is professionally managed money used to make a high rate of return for its investors by taking high risks in investing in early stage businesses. These businesses must demonstrate the possibility of extremely rapid growth (i.e. \$50 million a year in sales after 57 years). Venture capital is equity money (money for stock), that is repaid by capital gains through the sale of stock. Investors are typically short to intermediate term investors (17 years), who generally invest over \$1 million in a company.

Revolving Loan Funds

In an effort to create jobs and improve the business climate of a community, some cities, counties, and the Economic Development Authorities will lend money to small businesses located in their areas. The amount available to a business varies from a few thousand dollars to over \$100,000. Typically, the money is used for plant and equipment, working capital, inventory or accounts receivable financing. Rates are usually less than or equal to conventional lender financing, and the term for repayment may be either short (6 months) or extended (many years).

This type of financing is often used in conjunction with other financing since most revolving loan programs will accept a second or third position on financed assets. For information, contact your local county or Economic Development Authority office.

USDA Rural Development

Stephens Federal Building
335 East Hancock Ave.
Athens, Georgia 30601-2768
(706) 546-2162
Fax (706) 546-2152
Email: stone.workman@ga.usda.gov

The Business and Industrial Loan Guarantee Program guarantees loans by eligible local lenders to businesses located in rural areas with a population of less than 50,000. The program's primary purpose is to create and maintain employment and improve the economic and environmental climate in rural communities. Loan guarantees are limited to a maximum of \$10 million per borrower. Interest rates and terms are negotiated between the lender and the borrower. Most types of businesses can be financed with the exception of agricultural production.

US Small Business Administration (SBA)

Georgia District Office
233 Peachtree St. NE,
Suite 1900
Atlanta, GA 30303
(404) 331-0100
Acting District Director -- Mitchell Morand

Federally Guaranteed Loans

The SBA offers a variety of special loan programs to eligible small businesses that cannot borrow on reasonable terms from conventional lenders. The most appropriate loan program will vary with the amount of financing needed and the uses of loan proceeds.

In most cases, the SBA's business loans are made by private lenders and guaranteed by the SBA. The maximum loan guarantee amount is \$1,000,000. SBA loan programs include 7(a) Guaranty Loan, LowDoc Loans, Fastrak, CapLines, 7(m) Micro Loans, 504 Certified Development Company, and Women's and Minority Prequalification Loan Program. The SBA encourages potential borrowers to utilize its business development programs, such as SCORE, the Small Business Development Center, and the Business Information Center, to help them prepare business plans and loan applications.

Certified Development Companies

Certified Development Companies (CDCs) are private companies licensed by the U.S. Small Business Administration to provide long term financing to expanding businesses. The SBA 504 Program loans provide long term fixed asset financing, with a maximum SBA share of \$750,000 or 40 percent of project cost. At least 10 percent must be provided by the borrower, and the remainder of the project cost is provided by a private lender. Georgia's Certified Development Companies include the following:

Atlanta Local Development Corporation

86 Pryor Street, SW Suite 300
 Atlanta, Georgia 30303
 Phone 404/880-4100 CITY OF ATLANTA ONLY
 Fax 404/589-8707

***The Business Growth Corporation of Georgia**

1450 S. Johnson Ferry Road
 Atlanta, Georgia 30319
 Phone 404/475-6002
 Fax 404/475-6016

Certified Dev. Corp. Of Northeast Georgia

305 Research Drive
 Athens, Georgia 30605-2795
 Phone 706/369-5601
 Fax 706/369-5792

Coastal Area District Development Auth.

501 Gloucester Street, Ste 201
 Brunswick, Georgia 31520
 Phone 912/261-2500
 Fax 912/261-0032

Or

31 West Congress Street, Ste 205
 Savannah, Georgia 31401
 Phone 912/236-9566
 Fax 912/236-9562

CSRA Local Development Corporation

3023 Riverwatch Parkway, Ste A
 P. O. Box 2800
 Augusta, Georgia 30907-2016

Phone 706/210-2010
Fax 706/210-2006

Development Corporation of Middle Georgia

175-C Emery Highway
Macon, Georgia 31201
Phone 478/751-6160
Fax 478/751-6517

Economic Devel. Corp. Of Fulton County

141 Pryor St., Suite 5001
Atlanta, Georgia 30303
Phone 404/836-7731 FULTON COUNTY ONLY
Fax 404/836-7712

Georgia Certified Development Corporation

3353 Peachtree Road, NE, Suite 1155
Atlanta, GA 30326
Phone 404/442-2480
Fax 404/442-2481

Georgia Mountains Regional Econ. Dev. Corp.

460 S. Enota Drive
Gainesville, Georgia 30503
Phone 770/536-7839
Fax 770/536-9026

Middle Flint Area Development Corp.

228 West Lamar Street
Americus, Georgia 31709
Phone 229/931-2914
Fax 229/931-2745

North Georgia Certified Development Corp.

503 West Waugh Street
Dalton, Georgia 30720
Phone 706/272-2300
Fax 706/272-2253

Small Business Assistance Corporation

111 E. Liberty Street, Ste 100
Savannah, Georgia 31401
Phone 912/232-4700
Fax 912/232-0385

****SEGA Financial Services, Inc.**

1725 South Georgia Parkway West
Waycross, Georgia 31503
Phone 912/285-6097
Fax 912/285-6126

South Georgia Area Development Corporation

327 West Savannah Ave., P. O. Box 1223
Valdosta, Georgia 31601
Phone 229/333-5281
Fax 229/333-5312

SOWEGA Economic Development Corporation

30 West Broad Street, P. O. Box 346
Camilla, Georgia 31730
Phone 229/522-3552
Fax 229/522-3558

Uptown Columbus, Inc.
P. O. Box 1237
Columbus, Georgia 31902
Phone 706/596-0111
Fax 706/596-0012

Other Georgia Programs

A number of other specialized financing programs are available to the citizens of Georgia. Many of these are available through the Department of Community Affairs. Details on these and other programs are available from DCA's *Small Business Resource Guide* and their *Economic Development Packet*.

OneGeorgia

The OneGeorgia program is intended as a highly flexible tool to assist and encourage economic development and job creation in the lesser developed areas of the State (primarily Tiers 1 and 2) by providing loans and/or grants.

The funding is divided into several distinct set-asides, each with a separate emphasis. The first set-aside is earmarked for water and sewer and solid waste projects. The second set-aside, known as the Edge Fund, is intended to assist communities engaged in competition for a specific business location with one or more out-of-state communities. The third set-aside, or Equity Fund, is designed to help local communities with their other economic development needs.

Eligible applicants vary depending on the type of funding required. Applicants include local governments and local or regional development authorities primarily located in counties designated as Tier 1 or Tier 2 for job tax credit purposes. Applicants located in Tier 3 counties may also participate under certain limited circumstances. Eligible activities vary depending on the type of funding being sought, but generally encompass the broadest range of economic development activities possible under state law.

More information on the OneGeorgia Authority can be obtained from its web page:
<http://www.onegeorgia.org/OneGeorgia/funds.html>.

Public Offering of Securities

The raising of capital through the offer and sale of securities is carefully regulated by both state and federal agencies to protect the public. The legal definition of a security includes, but is not limited to: common and preferred stocks, notes, bonds, debentures, voting trust certificates, certificates of deposit, warrants, options, subscription rights, and undivided oil and gas interests. Recently, some interests in limited liability companies and royalty interests have been determined to be securities as well.

The Secretary of State serves as the Georgia Commissioner of Securities. In that capacity, the Secretary regulates the offer for sale and sale of securities within and from the state of Georgia. These securities may range from traditional common stocks and bonds to a broad range of more complex forms of investment contracts, limited partnerships, profit-sharing arrangements and the newly-emerging market in derivatives.

The purpose of registration is to provide adequate information to the investing public by requiring the registrant to give complete business and financial disclosures as a part of their registration statement. For information concerning state securities registration and exemptions from registration contact the Georgia Secretary of State or see their web page:
<http://www.sos.state.ga.us/securities/>.

Federal registration of the security may also be required. For information concerning federal regulations call or write the US Securities and Exchange Commission.

US Securities and Exchange Commission
Atlanta District Office
Richard P. Wessel, District Administrator
3475 Lenox Road, N.E., Suite 1000
Atlanta, GA 30326-1232
(404) 842-7600
e-mail: atlanta@sec.gov

Individuals offering or selling securities in Georgia must be licensed in the State of Georgia. These licensing requirements are found in The Georgia Securities Act of 1973 and can be obtained from the Secretary of State.

Raising capital through the public markets can be successful. Due to legal complexities, you should consult an attorney with securities expertise before making any decisions. Investment banking or brokerage firms can provide good information, and can consult with you concerning the methods of raising capital from the public.

Others

In addition, there are other options you can use to raise capital:

- Funds internally generated from company sales
- Private investments or loans by interested parties (the leading source of nonpersonal monies)
- Sale or exchange of company assets
- Trade credit extended by suppliers (risky)
- Personal assets: Savings; F Home equity (mortgage); Life insurance cash value; and, Personal stocks.