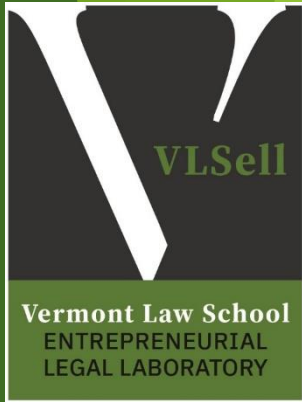




# **Building and Protecting Your Childcare Business**

*Act 76: Time to Register Your Business*



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# Topics for Today

- ▶ Act 76 – the legal implications
- ▶ What's an entity?
- ▶ Childcare: at the intersections of law and business
- ▶ Why formalize your business organization
- ▶ DIY – the good, the bad, and the ugly!



# Intersections with the Law

## ► Top Childcare Legal Issues

- Entity Formation
- Operating Agreements
- Funding
- Contracts – agreements with parents
- Labor – HR has legal implications
- And all of those issues specific to setting you up for success and protecting your dream...



# Know the Basics

Our example:

- ▶ Entities (What *is* an entity?)
  - ▶ Factors in the choice
    - ▶ How many people?
    - ▶ Control - you, members, a board?
    - ▶ For profit or social enterprise?
    - ▶ Taxes, taxes, taxes!
    - ▶ Funding: How will you get start-up cash?



# Business Entity Options in Vermont

- ▶ Sole proprietor
- ▶ Partnership
- ▶ Limited liability company (LLC)
  - ▶ Member-managed
  - ▶ Manager-managed
- ▶ Non-profit tax status (aka public benefit corporation in Vermont)



# A few quick things!



- ▶ Lawyer recommended



- ▶ Accountant recommended

**DBA**

- ▶ “Doing Business As” name

# Sole Proprietorships

## What is it?

Any business owned and run by **one** person.  
(i.e., writer, consultant, independent landscaper)

## How To Set It Up

It's the default. If you do business, by yourself, without registering with an entity, you're a sole proprietorship.

## Funding

Personal investments or personal loans from financial institutions.

## Taxes

Business and personal taxes are the same.  
Only need to submit taxes once.  
Remember: self employment taxes

## Legal and Financial Protections?

Because owners are not considered separate from the business, owners are personally liable.



# Partnerships

## What is it?

Two or more people share ownership of a business.

## How To Set It Up

Set up a Partnership Agreement, which sets up a blue print of how to operate.

## Funding

Financial institutions and partners (could be silent partners).

## Taxes

Like sole proprietorships, every partners splits profits through the business, and file their own personal taxes.

## Legal and Financial Protections?

Similar to sole proprietorships, there is personal liability amongst all partners. Partnerships can elect to be a limited liability partnership to provide protection against this kind of relationship. Limited partnerships are also an option.



# Limited Liability Company

## What is it?

Structure that combines taxing of a partnership and limited liability of a corporation. Looks similar to a partnership.

## How To Set It Up

Business name;  
Registered Agent;  
Articles of  
Organization; and  
Operating Agreement

## Funding

Financial institutions  
and private  
investments.

## Taxes

Personal and self-  
employment tax  
-OR-  
Corporate tax

## Legal and Financial Protections?

Generally, LLC legal protections cover:

1. Personal liability from all debts of the business
2. Personal liability for the actions of other LLC members or employees
3. Personal liability for your own actions with the LLC
4. LLC liability for members' debts and financial obligations
5. Insurance

# Non-Profit

## What is it?

An organization for purposes other than generating profits, and no parts of the organizations income is distributed to its members, officers, or directors.

## How To Set It Up

Incorporate; 501(c)(3) status; Bylaws; Ongoing compliance

## Funding

Donations and grants

## Taxes

Exempt.

## Legal and Financial Protections?

Generally, members of a nonprofit board are protected against personal liability because the incorporated entity is responsible for its debts. Generally, any judgments against the nonprofit are paid by the organization, not individual directors.

# WRAPPING IT ALL TOGETHER

<i>Business Form</i>	<i>Governance</i>	<i>Liability</i>	<i>Governing Documents</i>	<i>Funding</i>	<i>Taxes</i>	<i>Level of Government Requirements</i>
<b>Sole Proprietorship</b>	One person	Personal	Personal Choice	Personal/ Financial Institution	Personal and self-employment tax	Low
<b>Partnership</b>	Multiple people	Personal or limited liability (for an LLP)	Partnership Agreement	Banks and partners (could be silent partners)	Personal and self-employment tax	Low
<b>Limited Liability Company</b>	One or more people	Limited Liability	Articles of Organization and Operating Agreement	Banks and member contributions (private investments)	Personal and self-employment tax -OR- Corporate tax (see an accountant)	Medium
<b>Non-Profit</b>	One or more people	Limited Liability	Nonprofit Bylaws	Donations and grants	Tax exempt	High

# Benefits Cliff

- ▶ Increased revenue = increased income
- ▶ Providers with income sensitivity be aware
- ▶ Profits and grants may be held by corporations
- ▶ LLC entities provide the most flexibility for tax filing: Partnership, S-corp or C-corp
- ▶ <https://benefitscliffs.org/>



# What does this mean for your business

- ▶ Depends on the business entity's tax structure
  - ▶ Sole Proprietor
    - ▶ Personal Income
  - ▶ LLC/Corporation\*
    - ▶ Disregarded entity default - one owner
      - ▶ Personal Income
      - ▶ IRS Form 1040
    - ▶ Partnership - two or more owners
      - ▶ "Owner's" personal income - pass-through
      - ▶ IRS Form 1065
    - ▶ S Corp\*
      - ▶ "Employee" salary income
      - ▶ IRS Form 1120-S
    - ▶ C Corp\*
      - ▶ Double taxation - (1) Corporation taxed on profits and (2) Shareholders pay dividend tax
      - ▶ Form 1120
- ▶ ALWAYS CONSULT WITH AN ACCOUNTANT!



# How Can a Lawyer Help You Choose Your Business Entity?

- ▶ Make informed choices
  - ▶ Future growth
  - ▶ Transition (plan now)
- ▶ What parts should have a lawyer?
  - ▶ Structure choice – lawyers can advise
  - ▶ Operating agreement/bylaws – lawyers can write or review
  - ▶ Financing – lawyers can write, review, and watch your back



# Can I Do It Myself?

- ▶ Some entities are DIY friendly
- ▶ Lots of resources to help, even a wizard online at the Secretary of State's website
- ▶ There are LOTS of tools out there – some good, some not
- ▶ Lawyers can provide a legal proofread
- ▶ Lawyers can do some not all
- ▶ Get creative! Clients choose how to work with a lawyer





# How Do I Find a Lawyer?

- Word of mouth
- Law firm websites
- Vermont Bar Association's Lawyer Referral Service
  - 1-800-889-2047
  - [Vtbar.org/find-a-lawyer](http://Vtbar.org/find-a-lawyer)
  - Initial ½ hour consultation for not more than \$25
- VLSell



# Need Legal Services?

- ▶ Visit us at: <https://www.vermontlaw.edu/cnpp>
- ▶ Services offered:
  - ▶ Individual educational consults – a team of legal experts to answer your legal questions
  - ▶ Paid attorney referral – we find the attorney who can meet your legal needs, and pay for the first part of your services to get you going
  - ▶ Public educational events – presentations and Q&A on legal topics relevant to small businesses
  - ▶ Legal educational materials - helpful materials to explain the law and help business owners navigate legal decisions



# Contact Information

## General Business Questions and Updates

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