

# Make It Official

**Presented by: Paul Matonis  
& Tom Selken**



# Presenter: Paul Matonis



Paul Matonis of Matonis Peck & Wurst LLC specializes in taxes and accounting for individual and small businesses. He is an Enrolled Agent so he can represent taxpayers' at all administrative levels with the Internal Revenue Service along with the State and Local taxing authorities.

Paul has been a tax accountant for 23 years and has been at his current location with the same business partners for 15 years. Paul and his lovely wife Pam of 27 years have lived in Fort Collins since 1979. They have 2 daughters Megan & Melissa ages 24 & 22. He offers a free initial consultation and he promises it will be time well spent.

# Presenter: Tom Selken

Tom Selken obtained a business degree in Economics from University of South Dakota in 1990. He obtained his Juris Doctorate law degree from University of Nebraska in 1997. After business school and prior to law school, Tom was a commercial and consumer loan officer in the banking field. Tom has been active in various community organizations, including Sertoma, Jaycees, and Poudre Wilderness Volunteers. He also taught Business Law for Front Range Community College for four years.

Tom opened his law practice in 1997 and his practice is primarily business transactional, including business formation, buy sell agreements, contract formation and estate planning.



# Workshop Agenda

1. One-Minute Introductions
2. The Fine Print
3. Purpose & Goal
4. Reality
5. The Bottom Line
6. The Myth
7. It Depends... On What?
8. The Options
9. The Criteria
10. Bringing It Together
11. Business Registration & Permits
12. Articles of Incorporation
13. Next Steps
14. Your Turn! (Tell us your action steps)
15. Evaluate Us
16. Recommended Workshops

# One-Minute Introductions

1. My name
2. My business and what it's known for
3. How old is my business?
4. What have I already done regarding the subject of this class?
5. A question for the person who just spoke

# The Fine Print

## NOTICE

**The information presented in this workshop is for educational purposes only.**

**It is not designed for nor should you rely on this presentation to provide legal guidance.**

**The contents of this presentation are not legal or tax advice, and you should always consult an attorney or accountant/CPA of your choosing to discuss specific legal or tax issues.**

# Purpose & Goal

*"Decide what you want, decide what you are willing to exchange for it. Establish your priorities and go to work."*

- H.L. Hunt

## **Purpose:**

- To educate entrepreneurs on the criteria by which you should answer the question "What organizational structure makes the most sense for me and my new business?"

## **Goal:**

- To enable and empower entrepreneurs to have a meaningful, well balanced and focused discussion with a CPA or Attorney.
- NOT** to 'select' a business entity.

# Reality

State law controls the formation of your business.

Federal tax law controls how your business is

- All businesses have an organization form
  - If an organization form is NOT selected a default applies
- All businesses must file a tax return with the IRS
  - The tax form you use will depend on how your business is organized
- 3 most common tax forms used:
  - Schedule C form 1040
  - Partnership form 1065
  - S-Corp. form 1120S



# Bottom Line

*"The buck stops here!"*

- H.S. Truman

## You are ultimately accountable and responsible for your business

- The most important decision you will make will be the selection of a legal structure for your business
  - **You** need to understand the legal responsibilities and limitations of your business form.
  - **You** need to understand the tax liability and reporting requirements of your business form.
    - *Unofficial IRS Audit Motto: Guilty until proven innocent.*
- Begin your business ownership fully informed.
  - **Risk:** Ensure that your business is not taking unnecessary risks. Your goal should be the 'sleep at night' policy.
  - **Quality:** Get it right the first time. Cost of rework is not just \$\$\$ but your time away from your business.
  - **ROI:** Your biggest asset is your time. The time value of money.
  - **Peer Networking:** Ask business owners for advice. Entrepreneurial words of wisdom "Do what you do best and hire the rest!"
  - **Decision Making:** Information gathering and analysis.

# The Myth

- There is no perfect form
- One form is not necessarily better than another
- One size does not fit all businesses
- It is a trade-off ... cost vs.. benefit vs.. risk ... which is unique to you and your business

*"If you don't know where you are, a map won't help."*  
- T. Peters

So what do I choose ????

It depends....

# It Depends.... On What??

*"If you don't know where you are going, any road will do."*  
- Lao-Tzu

- The IRS
  - Liability Protection
  - Recordkeeping
- Business Management Considerations
  - Ownership
  - Managerial Flexibility
  - Exit Strategy

# The Options

State law controls the formation of your  
business.

## In Colorado

- Sole Proprietorship
- Partnerships
- Limited Liability Companies
- Corporations

# The Options

## Sole Proprietorship

- A business owned by one person with no legal structure.
- Presumed to operate under their owner's name.
  - File Trade Name Certificate(<http://www.sos.state.co.us>)
- Operate using owner's SSN
  - Apply for an FEIN: SS-4  
(<http://www.irs.gov/businesses/small>)
- Considerations:
  - No required legal forms (recordkeeping)
  - Schedule C
  - No personal liability protection (liability)
  - Owner has complete control
  - Business ceases to exist when owner ceases doing business

# The Options

## Partnerships

- General Partnerships, LLC, LLP, LLLP, LPA
- A business with more than one owner who actively engages in the management of the company.
- Considerations:
  - Each partner has unlimited personal liability, including actions taken by other partners.
  - Most businesses that enter into a partnership actually form an LLC

# The Options

## Limited Liability Companies (LLC)

- A legal form which provides liability protection for the business owner/s.
- Considerations:
  - Personal liability protection
  - Profits can be distributed unevenly.
  - Limited in the number of owners (investors).
  - Multiple taxation election.
    - Sole Proprietor
    - Partnership
    - S-Corp

# The Options

## Corporations

- C Corporations; non pass-through entity
  - An entity that handles the responsibilities of the business.
  - The owner of the corporation is a shareholder.
  - Considerations:
    - Double taxation – Form 1120
    - Payroll (withholding and remittance, W2, etc.)
    - Retained earnings
- S Corporation; pass-through entity
  - A type of corporation that provides personal liability but permits pass through taxation. IRS Form 2553.
  - Considerations:
    - Cannot distribute profits unevenly.
    - Payroll (withholding and remittance, W2, etc.)
    - Limited number of shareholders (100) & one class of stock



# The Criteria

## Liability

**Definition:** The degree to which the business owner is personally liable for all financial obligations and debts of the business.

- Piercing the Corporate or LLC Veil. Liability protection provided by an organization form is '*almost always*' guaranteed as long as the business is regarded as a separate entity from the business owner/s.
- Practices that support limited liability protection:
  - Proper use of the corporate name; hold yourself out as an LLC
  - Segregated accounts; don't co-mingle funds
  - Comply with legal entity formation requirements
  - Provide adequate capital for your LLC

# The Criteria

## Record Keeping

- The amount of paperwork your business is required to complete (besides income & expenses):
  - For an LLC
    - Annual report/minutes
  - For an S-Corp
    - Board of Directors
    - By Laws
    - Corporate Books
    - Shareholder Meetings / Corporate Minutes
    - Stock Certificates
- Supports the corporate veil

## Additional Resources

- Basics of Bookkeeping: Know They Numbers
- TAXES: Get Informed and Organized Now!

# The Criteria

## Additional Recordkeeping Information

- IRS Pub 583: Starting A Business & Keeping Records
- IRS Pub 535: Business Expenses
- IRS Pub 463: Travel, Entertainment, Gifts & Car
- IRS Pub 587: Business Use of Your Home
- IRS Pub 946: How to Depreciate Property
- IRS Pub 334: Tax Guide For Small Business (Sched C.)
- IRS Pub 541: Partnerships (1065)
- IRS Pub 542: Corporations (1120)
- IRS Pub 505: Tax Withholding & Estimated Tax
- IRS Pub 15: Employer's Tax Guide
- IRS Pub 551: Basis of Assets
- IRS Pub 536: Net Operating Losses (NOL)

*"The stars might lie but the numbers never do."*

- M.C. Carpenter

# The Criteria

## Ownership

- The number of individuals and the types of entities that can invest in a company.
  - Ownership vs. management
  - Ownership vs. profit split

# The Criteria

## Managerial Flexibility

- Who has control over the business?
  - Buy / Sell agreements
  - Operating agreements
  - Partnership agreements

# The Criteria

## Exit Strategy

- What are you planning to do with the business?
  - Do you have a job or own a business?
- What happens when you leave ('exit') the business?
  - Organizationally
  - Liquidity
  - Business assets & appreciation

# Bringing It Together

*"It's in your moments of decision that your destiny is shaped."*

- A. Robbins

- Business Form Comparison Chart
  - Options vs. Criteria
    - "What organizational structure makes the most sense for me and my new business?"
- More Information:
  - <http://www.irs.gov/businesses/index.html>
  - <http://www.sba.gov/smallbusinessplanner/index.html>
  - <http://www.colorado.gov/cs/Satellite/OEDIT/OEDIT/1154721645662>
  - <http://www.coloradosbdc.org/>
- Seek & consult professional advice.

# Business Registration & Permits

“A journey of a thousand miles begins with a single step.”

- Lao-Tzu

- State of Colorado
  - Secretary of State (organization or incorporation)
    - <http://www.sos.state.co.us/biz/FileDoc.do>
  - Department of Revenue (CR 100)
    - [http://www.revenue.state.co.us/TPS\\_Dir/home.asp](http://www.revenue.state.co.us/TPS_Dir/home.asp)
- Larimer County
  - Sales / Use Tax
  - Permits & Inspections
- City of Fort Collins / City of Loveland
  - Sales / Use Tax
  - Permits & Inspections



# Articles of Organization

Colorado  
Secretary of State  
Scott Gessler

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Search for... GO

Business Home  
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Information

## Articles of Organization (Limited Liability Company)

Please complete the form and click 'Submit'. Fields followed by "\*" are required.

This document is entitled to be filed pursuant to sections [7-80-203](#) and [7-80-204](#), C.R.S.

**Entity name:** New Startup Company LLC

The principal office address of the entity's principal office is

Street Address	Mailing Address <small>(Required if different from street address)</small>
Address 1: <input type="text"/>	Address 1: <input type="text"/>
Address 2: <input type="text"/>	Address 2: <input type="text"/>
City: <input type="text"/>	City: <input type="text"/>
State: Colorado <input type="text"/>	State: <input type="text"/>
Zip/Postal Code: <input type="text"/>	Zip/Postal Code: <input type="text"/>
Province: <input type="text"/>	Province: <input type="text"/>
Country: United States <input type="text"/>	Country: <input type="text"/>

# Articles of Organization

The registered agent name and registered agent address of the entity's registered agent are

Name \*      Last Name      First Name      Middle Name      Suffix  
(If an individual)                        

— OR —

(If an entity)

*(Caution: Do not provide both an individual and an entity name.)*

## Street Address

## Mailing Address

*(Required if different from street address)*

Address 1:	<input type="text"/>	*	Address 1:	<input type="text"/>
Address 2:	<input type="text"/>		Address 2:	<input type="text"/>
City:	<input type="text"/>	*	City:	<input type="text"/>
State:	CO		State:	CO
Zip / Postal Code:	<input type="text"/>	*	Zip:	<input type="text"/>

*(Caution: The registered agent MUST consent to being appointed as the registered agent.)*

*(The following statement is adopted by marking the box.)*

**The person appointed as registered agent has consented to being so appointed.**

# Articles of Organization

The true name and mailing address of the person forming the limited liability company are:

Name \*      Last Name      First Name      Middle Name      Suffix  
(If an individual)                        

— OR —

(If an entity)

*(Caution: Do not provide both an individual and an entity name.)*

Address 1:  \*  
Address 2:   
City:  \*  
State: Colorado  \*  
Zip/Postal Code:  \*  
Province:   
Country: United States

*(If "Yes" is selected, include an attachment with the appropriate information.)*

The limited liability company has one or more additional persons forming the limited liability company and the name and mailing address of each such person are stated in an attachment.

Yes       No

# Articles of Organization

The management of the limited liability company is vested in

(Select the applicable statement.)

one or more managers.

**OR**

the members.

(The following statement is adopted by marking the box.)

**There is at least one member of the limited liability company.**

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

This document contains additional information as provided by law.  Yes  No

(Caution: Leave blank if the document does not have a delayed effective date. Stating a delayed effective date has significant legal consequences. Read instructions before entering a date.)

The delayed effective date and, if applicable, time of this document are  (mm/dd/yyyy hour:minute am/pm)

Note: A delayed effective date cannot be more than 90 days after today. If a date later than 90 days from today is entered, this document will become effective on the 90th day.

## Email Address (Optional)

Our office can send you email notifications about due dates and other events affecting this business record. [Information about email notifications.](#)

Email address will not be sold or otherwise disclosed by our office, and your email address will not appear on your filed document.

Do you want to sign up for email notifications?

Yes. Send my notifications to this email address:

No. I don't want to sign up for email notifications.

# Articles of Organization

**Notice:**

Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., and, if applicable, the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.

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**The true name and mailing address of the individual causing this document to be delivered for filing are**

Last Name  \*      First Name  \*      Middle Name       Suffix

Address 1:  \*

Address 2:

City:  \*

State:  \*

Zip/Postal Code:  \*

Province:

Country:

(If "Yes" is selected, include an attachment with the true name and mailing address of additional individuals.)  Yes  
Additional individuals are causing this document to be delivered for filing.  No

**Disclaimer:**

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# Next Steps

## Measure twice. Cut Once.

- **Business Name**
  - Google search on name
  - Unique in State of Colorado <http://www.sos.state.co.us/biz/BusinessEntityCriteriaExt.do>
  - Tradename
  - Trademark <http://www.uspto.gov/main/trademarks.htm>
  - Domain name registration [www.<yourbusinessnamehere>.com](http://www.<yourbusinessnamehere>.com)
- **Business Economic / Financial Feasibility**
  - SBDC Consulting
  - SBDC Workshops and Tools
- **Copyright Consideration**
- **Consult with Accountant / CPA**
- **Consult with Attorney**
  - Review of business entity selection
  - Contracts (remedy & payment)
- **Register Your Business**

# Wrap Up

- 1. Q & A**
- 2. Additional Resources**
- 3. Share Your Next Action Item**
- 4. Evaluations**

# Thank You!

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**[www.larimersbdc.org](http://www.larimersbdc.org)**

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