

## **First Rule of Business: Protect Yourself!** **802 Legal Corner**

by Harvey S. Mars, Esq.

Musicians often wonder how they should do business.

There are primarily five ways to organize a business. From most complicated to least complicated, they are: corporation, limited liability corporation (LLC), limited liability partnership (LLP), general partnership, and sole proprietor.

### **CORPORATION**

The primary reason why people form corporations is to protect their personal assets.

Since a corporation is, under most circumstances, considered a legal entity, separate and apart from its owners, if the corporation has a legal or financial obligation which it is unable to satisfy, the owners' assets are shielded and may not be utilized to satisfy the corporation's debt.

This means, if someone sues your corporation, he usually can't come after your personal bank account to collect.

But if you are deemed to have used your corporation as a shield for conducting your personal business, a court may "pierce the corporate veil" and allow creditors to collect your personal assets! (I, in fact, have been successful in collecting employee health benefit contributions from single engagement employers who were using corporate entities to mask their own personal enterprises.) Forming a corporation can be a relatively inexpensive endeavor but it does involve some amount of work and the use of an attorney.

Your corporation is taxed as a separate entity that you have to pay separate taxes on. This usually requires the advice of an accountant.

See [www.dos.state.ny.us](http://www.dos.state.ny.us) for more questions and answers about forming corporations.

#### ***Special Note: Pension***

Some Local 802 members have formed corporations so that pension or health benefit contributions can be made on their behalf.

As you may know, only an employer can make these benefit contributions on behalf of an employee.

That means, every time you are the bandleader -- the person paying other musicians -- you can't earn pension on that gig unless you have your own corporation.

That corporation then becomes the employer of record and can make the benefit contributions on behalf of all the musicians, including yourself.

But the pension fund now allows employers to designate someone else as the contributor to the pension fund, so it is possible now to have pension contributions made on behalf of yourself without being incorporated. (See the article in this issue about [the new LS-1 contract](#).)

### **LIMITED LIABILITY CORPORATION (LLC)**

An LLC is an inexpensive alternative to forming a corporation for musicians who desire to conduct business in their own name, but yet protect their personal assets.

The pension fund, however, does not recognize an LLC as a separate legal entity for the purpose of benefit contributions.

So if you are interested in incorporating to gain access to union benefit plans, the LLC is not what you need.

An LLC, however, has a tax advantage and a liability advantage.

Unlike a corporation, instead of being taxed as a separate entity, an LLC can be taxed through your normal tax return as personal income.

Furthermore, the owners of the LLC are sheltered from the debts and obligations of the company. LLC's may exist in partnership form or may be a sole proprietorship.

Owners of an LLC are known as "members" and operation of the LLC is determined specifically by an operating agreement.

An LLC may simply be formed by filing an article of organization with the Secretary of State and

paying a nominal filing fee.  
See [www.dos.state.ny.us](http://www.dos.state.ny.us) for more information.

### **LIMITED LIABILITY PARTNERSHIP (LLP)**

An LLP is very similar to an LLC, except that LLP's are specifically intended to be used by two or more people.

It, however, provides less protection than an LLC in the event that one partner incurs liability because he or she has engaged in legally improper conduct.

However, in an LLP, partners are accorded greater control over distribution of income.

As with an LLC, LLP partners are personally shielded from liability.

It, too, is created by filing an application with the Secretary of State.

The pension fund does not recognize an LLP as a separate legal entity for the purpose of benefit contributions.

See [www.dos.state.ny.us](http://www.dos.state.ny.us).

### **GENERAL PARTNERSHIP**

A general partnership is basically two or more people who want to go into business together.

If you want to operate a partnership, then you and your partners need to name your business and file an assumed name certificate (also known as a d/b/a or "doing business as") with the county clerk.

In Manhattan, the county clerk is at 60 Centre Street, room 161, (212) 374-8589 or (212) 374-8587.

If you are sued, then the personal bank accounts of everyone involved in the partnership can be collected on: there are no legal protections against your personal accounts.

A partnership is not a separate taxable entity; business income is taxed through each general partner's personal tax return.

The pension fund does not recognize a general partnership as a separate legal entity for the purpose of benefit contributions.

### **SOLE PROPRIETOR**

Being a sole proprietor is how most musicians operate.

If you just go out and accept gigs on your own behalf, you are a sole proprietor.

You can be a little more fancy and name your business.

If you do, then you can get checks made out with your business name and people can write checks to your business.

If you want to do this, you have to file an assumed name certificate with the county clerk (see above).

In a sole proprietorship, if you are sued, then your personal bank accounts can be collected on: you have no legal protection against your personal assets.

And you are taxed as an individual, with all of your income just being reported on your individual tax forms.

The pension fund does not recognize a sole proprietorship as a separate legal entity for the purpose of benefit contributions.

### **THE BOTTOM LINE**

For most musicians, retaining and in some cases insisting on your proper status as employees is the best situation.

In other words, you shouldn't have to be the employer.

Why? Because employers are the ones who should be making statutory benefit contributions, paying their share of Social Security and Medicare and making union benefit contributions on behalf of your side musicians and yourself. This shouldn't be your responsibility.

If you work in situations where that is simply impossible, you might consider the various options described in this article.

Forming these entities requires a little more research and advice than it is possible to go into in this column.

Consult your attorney or accountant for more information.

There are also resources available at [www.dos.state.ny.us](http://www.dos.state.ny.us) and [www.NYLovesSmallBiz.com](http://www.NYLovesSmallBiz.com).

*Nothing in this article should be construed as formal legal advice given in the context of an attorney-client relationship.*

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