

Comparison of Delaware Business Entities



	Corporation ("Corp")	Subchapter S Corporation ("S Corp")	Limited Liability Company ("LLC")	Limited Partnership ("LP")	General Partnership ("Gp")	Limited Liability Partnership ("LLP")	Statutory Trust ("DST")
Key Features	<ul style="list-style-type: none"> Centralized management Corp-level tax Predictability Limited Liability 	<ul style="list-style-type: none"> Predictability Pass-through taxation Limited Liability Restrictions on ownership 	<ul style="list-style-type: none"> Flexibility Pass-through taxation Limited Liability 	<ul style="list-style-type: none"> Centralized management Flexibility Pass-through taxation Limited liability for limited partners 	<ul style="list-style-type: none"> Decentralized management General Liability Pass-through taxation 	<ul style="list-style-type: none"> Decentralized management Pass-through taxation Limited Liability Existing GP can elect LLP status 	<ul style="list-style-type: none"> Centralized management Trust law as gap filler Delaware resident trustee required
Filing to Form	Certificate of Incorporation ("COI")	COI IRS Form 2557	Certificate of Formation	Certificate of Limited Partnership	None required; Statement of Existence, optional	Statement of Qualification	Certificate of Trust
Governing Agreement	COI and Bylaws	COI and Bylaws	Limited Liability Company Agreement (can be oral) ("LLC Agreement")	Limited Partnership Agreement (can be oral) ("LP Agreement")	Partnership Agreement (can be oral)	Partnership Agreement (must state that will be an LLP)	Governing Instrument (Trust agreement or declaration of trust)
Timing of Filing	Filing commences formation process	Filing commences formation process; Form 2557 required by 2 months & 15 days after Corp has assets, issues stock or starts business	Filing can be made before or after LLC Agreement signed	Filing can be made before or after LP Agreement signed	Optional	Filing made at time of formation or upon partner election to become an LLP	Filing must be made after governing instrument signed
Number of Owners	One or more stockholders	One or more stockholders, but not more than 100	One or more members	2+ partners; at least one general, one limited	2+ partners	2+ partners	At least one beneficial owner
Limits on eligible owners?	No	Yes. Only U.S. resident individuals, qualified subchapter S trusts, S Corps	No	No	No	No	No
Decision Makers	Board of directors; stockholders as to certain extraordinary matters	Board of directors; stockholders as to certain extraordinary matters	Members by majority interest in profits, or managers or managing members as per LLC Agreement	General Partner(s)	For decisions in the ordinary course of business, a majority of the partners, per capita; for matters outside the ordinary course, all partners unanimously or as per agreement	For decisions in the ordinary course of business, a majority of the partners, per capita; for matters outside the ordinary course, all partners unanimously or as per agreement	Trustee(s); or as per governing instrument
Day to Day Management	Officers	Officers	Members, or managing members, managers or agents, per LLC Agreement	General partners or designees	All partners or managers or agents, per LP Agreement	All partners or per agreement	Trustees; or per agreement or delegation
Authorized Business	As per COI. Any lawful business except banking & trust company business or issuing academic or honorary degrees (except with approval of Department of Education)	As per COI. Any lawful business except banking & trust company business or issuing academic or honorary degrees (except with approval of Department of Education), insurance company, DISC	As per LLC Agreement. Any lawful business or activity whether or not for profit, except the business of banking	As per LP Agreement. Any lawful business or activity whether or not for profit, except the business of banking	As per agreement. Any lawful business or activity	As per agreement. Any lawful business or activity	As per governing instrument. Can hold, manage, administer, control invest or operate assets and carry on lawful business or activity, whether or not for profit
Fiduciary Duties	At common law, officers, directors and majority stockholders; COI can limit liability of directors for monetary damages for breach of duty of care	At common law, officers, directors and majority shareholders; COI can limit liability of directors for monetary damages for breach of duty of care	At common law, managers and managing members; LLC Agreement can restrict or eliminate (except implied covenant of good faith and fair dealing)	General partners have duty of loyalty and care; LP Agreement can restrict or eliminate (except implied covenant of good faith and fair dealing)	Duties of loyalty and care, per 15 Del. C. §15-404	Duties of loyalty and care per 15 Del. C. §15-404	Trustees have fiduciary duties, can be restricted or eliminated by trust instrument
Taxation	Owes corporate income tax at state and federal levels	Pass through taxation under subchapter S – most state laws recognize	Can be partnership, disregarded entity (if one member) or can elect corporate taxation	Partnership taxation or can elect corporate taxation	Partnership taxation or can elect corporate taxation	Partnership taxation or can elect corporate taxation	Grantor trust, corporation, partnership or disregarded, as applicable
Term	Perpetual, unless limited in certificate of incorporation	Perpetual, unless limited in certificate of incorporation	Perpetual, unless limited in certificate of incorporation	Perpetual unless limited in certificate of LP	Finite term or completion of specified undertaking,	Finite term or completion of specified undertaking, agreement	As per governing instrument; no rule against perpetuities
Legal entity with power to sue, hold property, contract?	Yes	Yes	Yes	Yes	Yes (unless opt out)	Yes (unless opt out)	Yes
Can it have segregated series with liability shield?	No	No	Can create series of members, managers, interests or assets, as per certificate of formation and LLC Agreement, with power to sue and be sued, grant liens, contract and hold title to assets	Can create series of partners, general partners, interests or assets, as per certificate of LP and LP Agreement, with power to sue and be sued, grant liens, contract and hold title to assets	No	No	Can create series of trustees, beneficial owners or interests, as per certificate of trust and governing instrument, with liability shield but no entity attributes
Freely Transferable interests?	Yes (subject to securities laws restrictions or restriction in COI, bylaws or stockholders agreement)	Yes (must restrict transfer in COI bylaws or stockholder agreement to qualify as S Corp.)	Yes, but can be restricted in LLC Agreement; assignee not automatically admitted as a member unless LLC Agreement permits or members consent	Yes, but can be restricted in LP Agreement; assignee not automatically admitted as a member unless LP Agreement permits or partners consent	Economic interest is freely transferable, unless restricted in Partnership Agreement, but dissociation may be wrongful	Economic interest is freely transferable, unless restricted in Partnership Agreement, but dissociation may be wrongful	Yes, but can be restricted in governing instrument
Residency requirements?	No, just need a registered agent in Delaware	No, just need a registered agent in Delaware	No, just need a registered agent in Delaware	No, just need a registered agent in Delaware	No, just need a registered agent in Delaware	No, just need a registered agent in Delaware	Must have a Delaware resident trustee
Annual meeting?	Yes	No	No	No	No	No	No
Multiple classes of interests?	Yes	No, only one class of stock permitted	Yes	Yes	Yes	Yes	Yes
Can creditors of owners execute on interests?	Yes	Yes	Charging order is exclusive remedy	Charging order is exclusive remedy	Charging order is exclusive remedy	Charging order is exclusive remedy	Yes, unless spendthrift trust
Dissolution Process	Dissolves by filing certificate of dissolution, Corp continues for 3 year winding up period, subject to extension by Court of Chancery	Dissolves by filing certificate of dissolution, Corp continues for 3 year winding up period, subject to extension by Court of Chancery	Dissolves per terms of Act or LLC agreement, wind up and liquidate, then terminate legal existence by filing certificate of cancellation	Dissolves per terms of Act or LP agreement, wind up and liquidate, then terminate legal existence by filing certificate of cancellation	Dissolves per terms of Act or agreement. Can cancel certificate of existence (if applicable) or file optional statement of dissolution	Dissolves per agreement, terms of Act or agreement, and file cancellation of statement of qualification	Dissolves per governing instrument, wind up and liquidate, then terminate legal existence by filing certificate of cancellation
Who Liquidates?	Officers and directors manage liquidation process	Officers and directors manage liquidation process	Manager who has not wrongfully dissolved the LLC, or, if none, members with a majority interest in profits or as per agreement wind up and liquidate or as per agreement	General partners who have not wrongfully dissolved wind up and liquidate; if none, limited partners or designees or as per agreement	Partners and dissociated (but not wrongfully) partners settle accounts and must contribute capital to fund deficits	Partners and dissociated (but not wrongfully) partners settle accounts and must contribute capital to fund deficits	Persons responsible under governing instrument
Reserve on liquidation?	Reasonable provision for pending litigation, contingent, unliquidated or unmatured claims likely to arise within 10 years. Safe harbor process available	Reasonable provision for pending litigation, contingent, unliquidated or unmatured claims likely to arise within 10 years. Safe harbor process available	Reasonable provision for pending litigation, contingent, unliquidated or unmatured claims likely to arise within 10 years.	Reasonable provision for pending litigation, contingent, unliquidated or unmatured claims likely to arise within 10 years.	Reasonable provision for all obligations to creditors, partners contribute and fund deficit	Reasonable provision for pending litigation, contingent, unliquidated or unmatured claims likely to arise within 10 years.	Reasonable provision for pending litigation, contingent, unliquidated or unmatured claims likely to arise within 10 years.

NOTE: This chart does not constitute legal advice. Please consult a lawyer to determine which entity form is appropriate for you.