**8759. What is a sole proprietorship and how is it formed?**

A sole proprietorship is an unincorporated business entity that is owned by a single business owner. The primary distinguishing feature of the sole proprietorship is that only one person owns and manages the business. The business exists as an extension of the proprietor.[[1]](#footnote-1)

Because of this, the structure of the sole proprietorship is simple and relatively easy to establish. The proprietor usually need only buy some stock-in-trade, possibly rent some business space, and open his door for business. In some states it will be necessary for the proprietor to file or record what is commonly called a “fictitious business name”; d/b/a or “doing business as”; or “assumed name” registration if the business owner intends to operate the business under a different name than the owner’s name. The proprietor may also be required to obtain state and local licenses, if any are applicable to the business.

However, the owner largely avoids the complexity and expense involved in organizing a partnership (see Q 8761), limited liability company (see Q 8797), S corporation (see Q 8789) or C corporation (see Q 8777). A proprietor is not required to draft a partnership agreement, LLC operating agreement or articles of incorporation and bylaws. Therefore, the sole proprietor can avoid the cost of attorney's fees, filing, publication, and recording and annual administrative maintenance costs.

In some cases, however, these advantages are outweighed by the risk of increased liability, an important disadvantage to the proprietorship structure. Since the business is an extension of the proprietor and not a separate legal entity, the liabilities or losses of the business are the personal liabilities and losses of the proprietor. No legal distinction is made between a proprietor's personal liabilities and those created as a proprietor. Therefore, liability for these business obligations is unlimited and unshared. If business assets are insufficient to cover these business liabilities, creditors may reach the proprietor's personal assets to satisfy their claims. A sole proprietorship can also be more difficult to transfer in that the ownership can not be divided.

1. . See Williams v. McGowan, 152 F.2d 570 (1945). [↑](#footnote-ref-1)