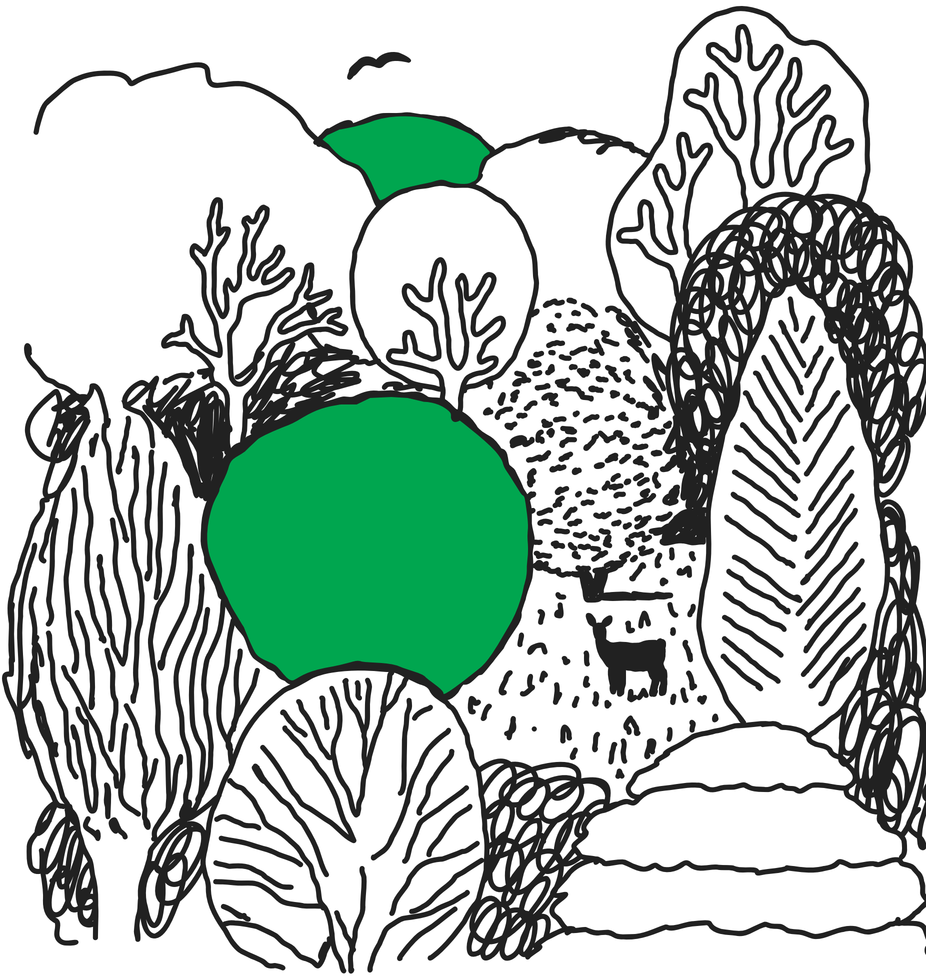
A THOUSAND FORESTS

LEGAL STRUCTURES FOR CREATIVE PRACTICES

A choose-your-own-adventure book
for creative entrepreneurs.



HOLD UP, WAIT A MINUTE!

Read me before you go any further!

This handbook is designed to help creative entrepreneurs, community galvanizers, and artists at all stages of their career understand some of the legal structures available to support their work and mission. Think of this handbook as a business savvy friend — the one in the next studio over who always helps you do your taxes — but not a substitute for a professional lawyer or accountant. As always, be sure to seek your own professional legal counsel and tax advice as you navigate your path toward creative sustainability.

HOW TO USE THIS GUIDE

Choose your own (legal) adventure.

The guide will assist you in determining a legal structure that may be appropriate for your practice while aligning it with your vision. Just like life, one decision will lead to another, and before you know it, you'll have found your way.

Your first decision, on p. 5, will determine which page you'll turn to next and assign you a color. Follow your color through the book to help you find your way and deepen your understanding of your options.

Just want the cold hard facts? In the back of the book, starting on p. 20, you'll find a simplified breakdown of common legal structures, including their basic requirements and pros and cons. Let's get started.

WHERE TO BEGIN?

Decisions, decisions.

The creative life is full of questions. Can you afford a studio? How can your creative enterprise support your community? What should you make today? But then there's the biggest question of all, the one creatives have been asking themselves forever: *How are you going to sustain yourself and your practice?* Creative sovereignty is the ultimate destination. But what does your journey getting there look like?

To get started, you have some choices to make on how to gain financial support. Pick the option that best suits your practice and flip to the corresponding page.

How will I sustain my creative practice, my life, and my community?

Through the commercial sale of goods.

Turn to p. 06 & p. 08

Through investors.

Turn to p. 10 & p. 12

Through grants and charitable donations.

Turn to p. 14 & p. 16

I want it all, baby.

Turn to p. 18

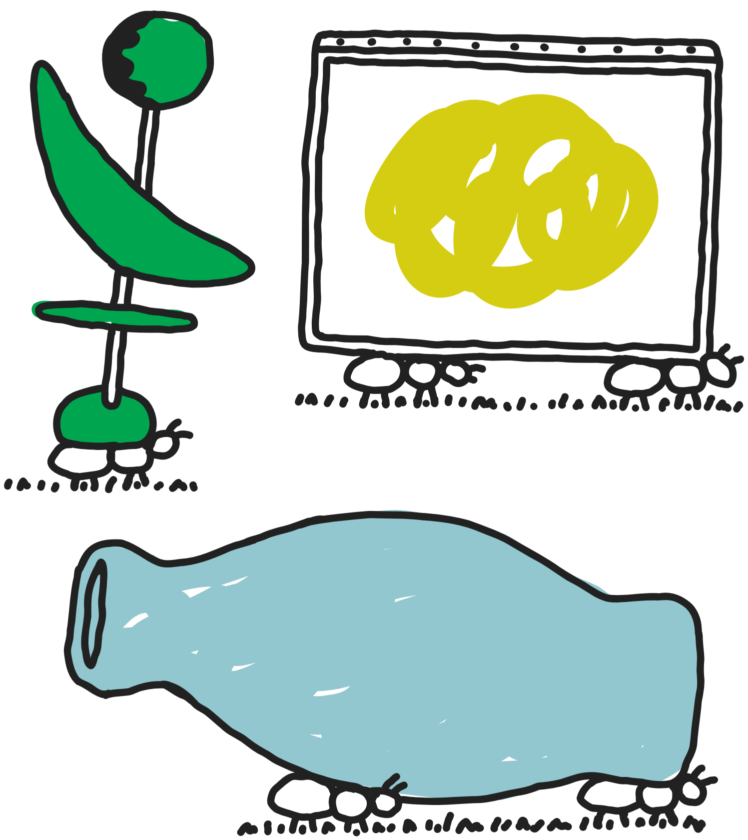
OTHER CONSIDERATIONS:

- Are you going to make things to sell?
- Is your practice one that functions outside of a commercial marketplace?
- Are you ready to enter into a mutually beneficial relationship with a funder?
- What kinds of funders are within your reach and community?
- Do you want the flexibility to use funds how you like or do you want to be obligated to give all but a reasonable salary back to your community?

SELLING YOUR WORK

Creativity is a valuable thing.

Your plan is to sell things to sustain yourself and your practice — what you make, what others make, or other creative outputs. Hooray! But before you make any plans to deposit that first check, let's look at potential structures that may work for your business, depending on a number of factors, including who you'll need to support.



I want to sustain myself through selling my work.

Will I have a staff to support?

Yes.

LLC, Corp, PBC or PBLLC

Flip to p. 12 to learn the difference.

Nope, just me!

Are you willing to be personally liable for the activities of your business?

Yes!

Sole Proprietor

No!

LLC, Corp, PBC or PBLLC

OTHER CONSIDERATIONS:

- Do you need a chaos wrangler (studio manager)?
- Will you need an extra pair of hands (studio assistant)?
- Are you interested in managing a business (or is this a hard no)?
- How are you going to manage day-to-day operations including benefits, bank accounts, payroll, insurance, etc.?
- Do you want to lease or buy dedicated space? You may want to set up a separate entity for that.

WORKING COLLECTIVELY

Building working relationships that work.

You're part of a collective, group, or partnership that makes and sells things together. There's nothing better than co-creation — the trick is knowing who's responsible for what, so things don't get sticky.

We're in this together! Yeah, but who is really doing the work or taking on obligations?

Each individual continues to operate as a sole proprietor that works together.	Each individual will be responsible for their share (profits, losses, and obligations).	A subset of people working within the collective will be responsible to divvy up profits, losses, and obligations.
Unincorporated Collective or Informal Partnership	LLCs or Formal Partnership	Manager Managed LLC, Corporation, PBC or PBLLC

OTHER CONSIDERATIONS:

- How does your group conceptualize financial responsibility?
- Is it important that things like money, responsibility, and ownership are divided equally between members?
- Is the collective itself treated as an entity, or is it more informal?

INVESTOR FUNDING

Psst... Investment is a two-way street.

Your ongoing daydream: someone recognizes your incredible vision, and invests in your creative enterprise. Here's the thing: this daydream could be your reality. Investors do look to invest in the creative economy — though often with the expectation that they'll get a piece of the figurative pie in return. Whether it's a commerce platform, an agency model, or another creative enterprise that sits alongside your studio practice and plans to generate a profit, it may be that what investors want from you in return for their investment will dictate the kind of legal structure you choose.

I want to take in outside funding.

What do your funders want in return for their financial contribution?

- **Equity / share in future profits.**
  - Are you interested in making sure the company is purpose-driven?
    - Consider a for-profit PBC or PBLLC.
  - Form a for profit entity. Flip to pp. 22-24. to peep the different kinds.
- **Tax deductible contributions.**
  - Form a nonprofit entity.
- **A little bit of each.**
  - You'll need to get creative. Flip to Frankenmodels, p. 16.

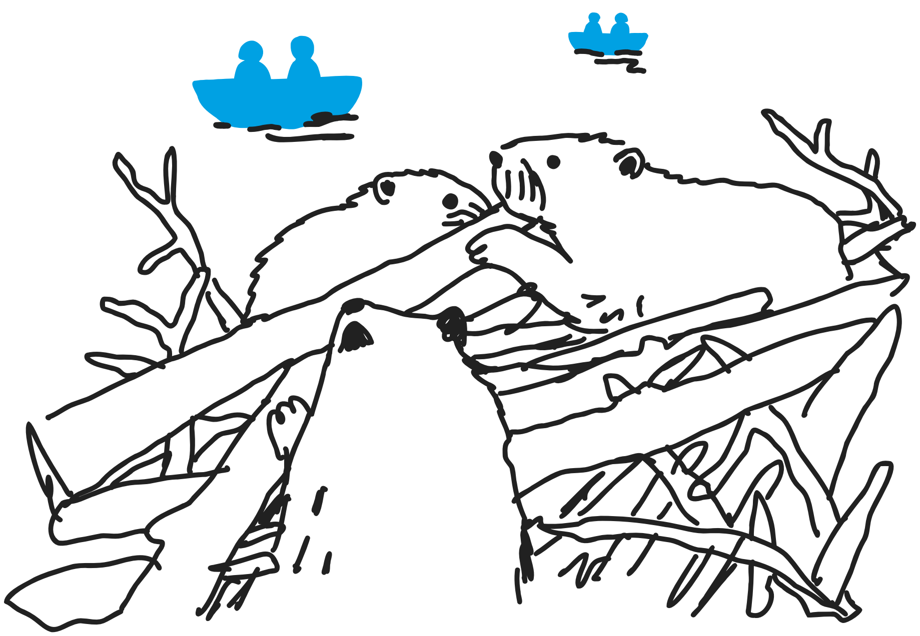
OTHER CONSIDERATIONS:

- Do you want to have obligations (financial or otherwise) to external parties?
- Do you understand the expectations of your supporters or investors? (These can include the rate of return, investment horizon, ongoing reporting expectations, creative or financial oversight, governance rights, and others.)
- Do you have the capacity to deliver on these expectations?

FOR-PROFIT WITH A PURPOSE

Guess what? Purpose can be baked right into your business.

You want to create a for-profit company that also prioritizes doing good. Can you have your cake and eat it, too?! Yes, friend, you absolutely — and legally — can. A Public Benefit Corporation (PBC) or Public Benefit LLC (PBLLC) functions just like a traditional corporation (meaning you and your investors will share in profits and be taxed similarly to a traditional for-profit business), but with a key caveat: decisions will be made not only based on shareholders' profit interest, but also on a broader public interest. The nature of this public benefit — whether it's environmental, artistic, charitable, cultural or educational — is decided upon before incorporation, and agreed upon by all involved before getting down to business. This allows you to do purpose-driven work while benefiting from traditional sources of investment capital and commercial engagement. Win, win.



I want to form a for-profit entity and bring in outside investors.

Great, that means you can all share in the profit! But one more thing: what is your main goal?

Maximize profit to me and my investors.

Corporation or LLC

Generate profits while also prioritizing "doing good".

PBC or PBLLC

OTHER CONSIDERATIONS:

- Is there a particular purpose you want to guarantee is preserved in your business long-term?
- Do you want to promote your business as a mission-driven or social enterprise?
- Do other corporate alternatives fit your needs? Talk to a corporate lawyer with familiarity in other hybrid entities (like an L3C) or find more information about Frankenmodels on p. 18.
- Bandwidth alert: A PBC/PBLLC requires even more reporting than a traditional corporation. If you aren't sure you'll have capacity to manage a business to begin with, you may want to rethink going this route.

GRANT FUNDING & CHARITABLE DONATIONS

Building a practice outside the marketplace — a.k.a. keeping your practice alive without the selling stuff part.

Art truism #38: your art may not be commercial, but that has nothing to do with its (or your) worth. Grants and charitable funding could be a great option if the things you make are less "sellable," or if you prefer to engage outside of traditional forms of commercial exchange. While in some cases you may be eligible to receive grant funding as an individual, you have at least two other options for how to take in money from grants: you can form a nonprofit entity or work through an existing nonprofit entity as your fiscal sponsor. Let's explore both.

I want to fund my art practice through grants and charitable donations.

Does the funding opportunity require 501(c)(3) status?

Nope!

Do this as an individual or form an LLC/PBLLC.

Sure does.

Seek a fiscal sponsor or form a 501(c)(3).

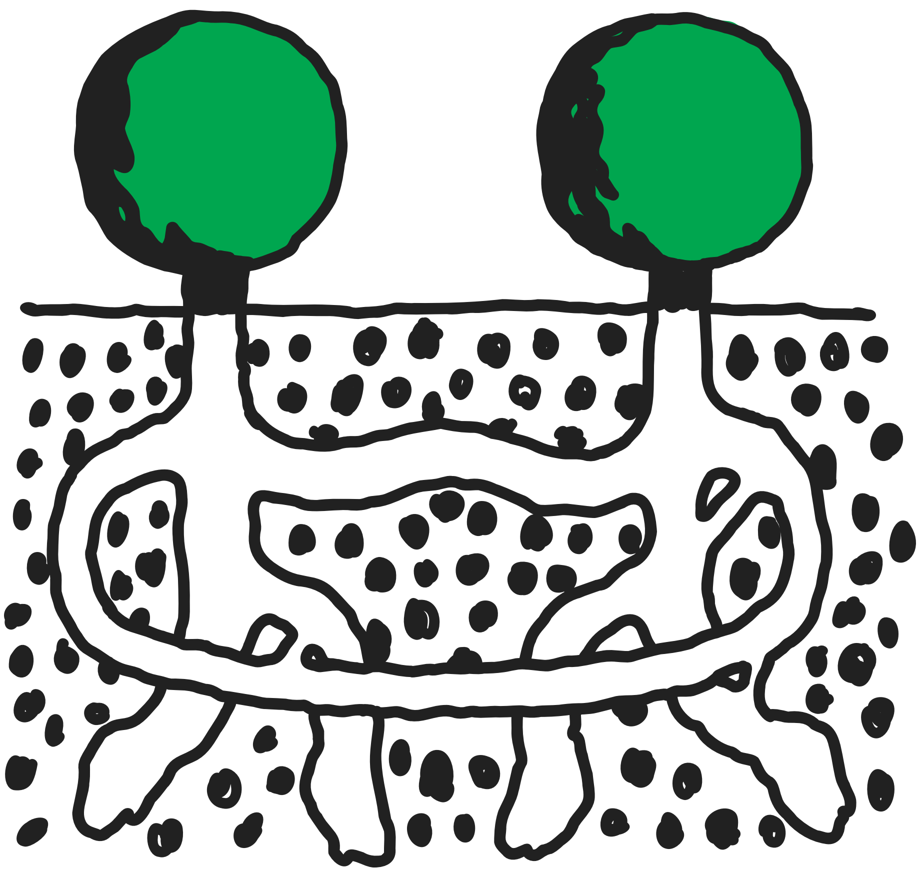
OTHER CONSIDERATIONS:

- Do you have the capacity to take on the administrative duties of managing a nonprofit?
- Are you comfortable with public reporting?
- Do you need to make more money than a "reasonable" salary?
- Is the project a one-off? If so, a fiscal sponsor might make more sense. Alternatively, if the work is ongoing, it might benefit you to form a nonprofit.
- Will the anticipated philanthropic funding be enough to sustain your business or will you need to take in other sources of capital? If the latter, you may need to look into a "Frankenmodel," p. 18.

SUPPORTING YOUR COMMUNITY

Building together to ensure we all grow.

To make meaningful change to an industry, it will take all of us lifting as we climb. The good news? Anyone can give back to their community, no matter how much money you have or how you make it — whether that's through your time, creativity, commercial sales, grants, or investor funding. The way you structure your business or philanthropic activities may be determined by what, and to whom, you are planning on giving.



I want to give back to my community.

I'm going to give the entirety of my financial earnings.*

- Start a 501(c)(3) to do grantmaking.
- Set up a Donor-Advised Fund and direct gifts to charities.
- Do charitable giving via tax deductible gifts to 501(c)(3)s.

I want to give a portion of my financial earnings.

- With the portion you want to give, choose one of the mechanisms above. Maintain flexibility in the remaining funds to keep for yourself, put in another entity, or give additional gifts later.

I want to give more than money. I want to design and create programs for charitable good.

- Start a 501(c)(3) to create charitable programming.

*Speak with your accountant on the timing and feasibility of the tax benefits of each option.

OTHER CONSIDERATIONS:

- Do you want to give anonymously?
- Do you care about a tax benefit right away, or are you okay with taking tax deductions as you give?
- Do you have the capacity for the administrative duties that accompany giving back, such as financial reporting?

FRANKENMODELS

Go ahead, get weird — it's legal!

If you've come this far and are still thinking: "Existing structures simply do not serve me and my very particular creative life!" — not to fret. There are many ways to mix things up, plug and play, innovate, and reimagine when it comes to structuring your business and your practice. In other words: you can get weird.

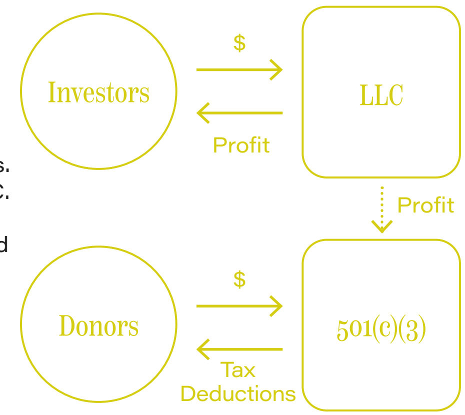
The fine print: Make sure you consult with an experienced lawyer to develop any of these hybrid structures and fully understand the requirements and limitations for each. In many cases, you'll also need to maintain two separate sets of books and records — and have a really great accountant.

The Sidecar

In this model you form two entities. Then you can take in money from both commercial and charitable pathways. Profits from the LLC can also support the 501(c)(3).

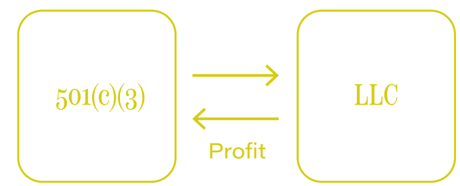
There are four benefits:

- You can get money from multiple sources.
- You can pay yourself more out of the LLC.
- You have flexibility in the types of activities you can perform (charitable and non-charitable).
- If the LLC is successful, you can reinvest more money into the 501(c)(3).



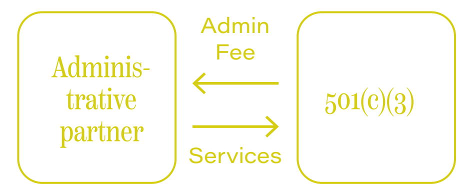
Hybird Model: For-profit Subsidary

In this hybrid configuraiton, the 501(c)(3) owns the LLC, and profits from the LLC support the work of the 501(c)(3). This model requires you to use profits for charitable activities. The advantage is that you can take in charitable donations and also perform commercial activities.



Build Your Own Frankenmodel

Are you committed to the cause but don't feel ready for the administrative burden? Surprise! You may already be building your own Frankenmodel with a fiscal sponsor, who offers administrative, payroll, technology, grants management, and nonprofit compliance functions. In addition to fiscal sponsorship, you might even call on a Professional Employer Organization (PEO), or other outside providers to take on these services.*



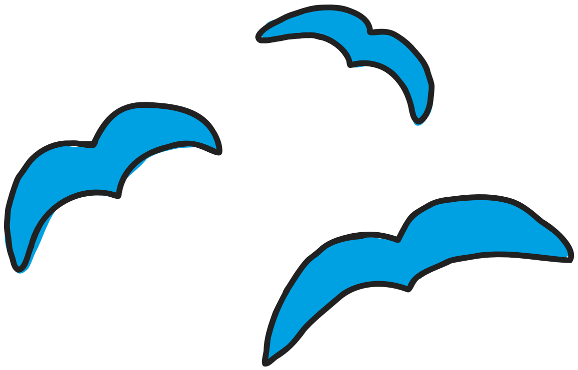
Food for Thought:
What would it look like to build this system as a creative community?

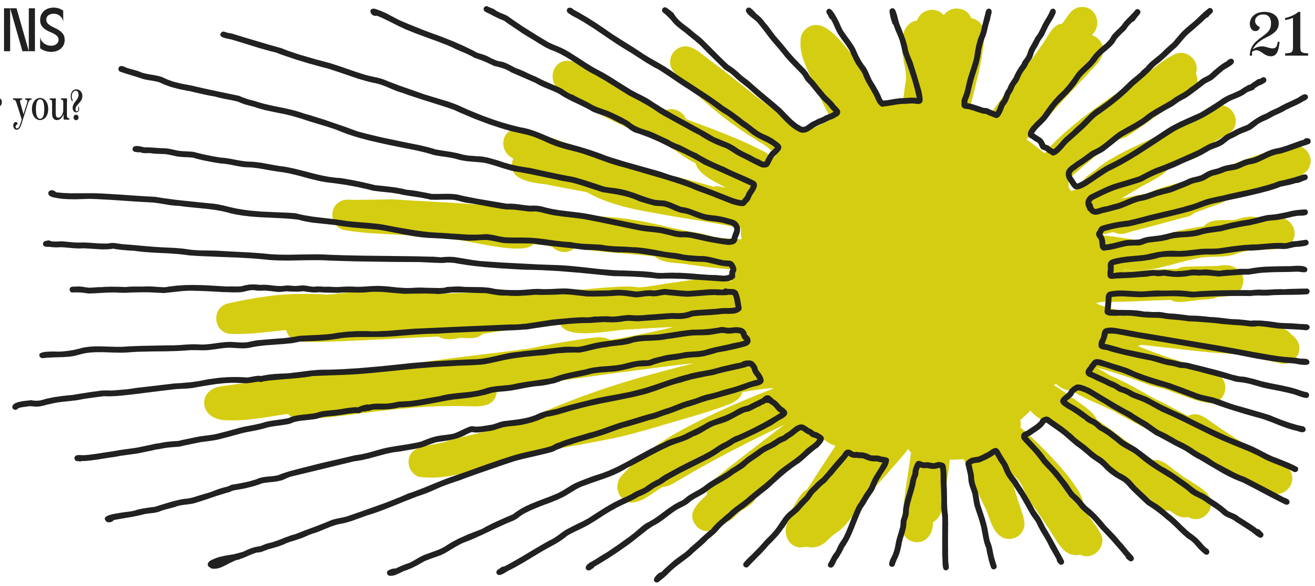
OTHER CONSIDERATIONS:

- Do you have the resources and support to help you administer multiple legal entities?
- Are you taking in money from multiple sources?
- Do you know (or know how to get) a really great lawyer and accountant?
- Are you ready to get experimental?

KEY CONSIDERATIONS

What's the most important for you?





		Personal Liability for Business Activitites	I own the IP	Organization Owns the IP	Hiring Employees	Access to Equity Investors	Administrative Burden: Separate Tax Return & Other Filings	Administrative Burden: Board of Directors Required	Access Public and Private Grants	Tax Deductible Donations	Lobbying
For-Profit	Sole Proprietor	×	×						×**		×
For-Profit	LLC			×	×	×	×		×**		×
For-Profit	Corporation			×	×	×	×	×	×**		×
For-Profit	Public Benefit Corporation			×	×		×	×	×**		×
Non-Profit	501(C)(3)			×	×		×	×	×	×	×***
Non-Profit	501(C)(4)			×	×		×	×	×		×
Non-Profit	Fiscal Sponsor			×	×		×*		×	×	×*

* Depends on circumstances

**Exceptions for mission-related work

*** No lobbying at private foundations

FOR-PROFIT STRUCTURES

Sole Proprietorship

WHAT IT IS	PROS	CONS
When you perform business activities but do not form a separate legal entity. You essentially own and operate an unincorporated business by yourself without any of the protections from personal liability that come from doing business through a separate entity. May be appropriate to test your idea, even as a branded business, before committing to the creation of a separate entity.	You don't have to create a separate entity or worry about administrative obligations and compliance regulations for a separate legal entity. (While local/state business license(s) may be required, you do not have to file separate tax returns for your business.) You can use a business name by registering as a DBA ("doing business as") to perform your business activities. Any intellectual property you create on behalf of the sole proprietorship will generally belong to you.	Because sole proprietorships are not separate legal entities, your personal assets and liabilities are not viewed as separate from your business assets and liabilities. Getting funding from investors or banks can be more challenging. Your personal credit will be used to determine the credit-worthiness of your business. It can be challenging to be an employer as a sole proprieter.

This summary is intended for informational purposes only and is not to be construed as legal advice or inclusive of all legal entity types or considerations. Legal and tax advisors should always be consulted based on your individual circumstances.

Limited Liability Company (LLC)

WHAT IT IS	PROS	CONS
One of the most flexible types of separate legal entities that limits the personal liability of the LLC's owners (called "members") with less formalities than a corporation.	Members are not personally on the hook for business liabilities of the LLC. You have flexibility in that you don't need to create a board, you choose who has control, how profits are shared and distributed, and how many members there are, from one to unlimited. You can avoid the "double taxation" of a corporation and instead offer a "flow-through" tax structure that passes each owner's portion of the tax onto them. Speak to an accountant to better understand tax implications for your business. Any intellectual property created by an *employee or contractor* of the LLC will generally belong to the LLC (can be contracted otherwise). You can hire people through the LLC.	Ongoing administrative obligations, but less than a corporation (an LLC has annual state and federal filings and fees, and separate tax filings). To get the benefits of limited liability, the LLC must maintain clear separation from its members, including its own bank accounts and insurance policies. Certain investors may prefer investment into a corporation over an LLC. Any intellectual property *you* create acting on behalf of the LLC will generally belong to the LLC (can be contracted otherwise).

Corporation / Public Benefit Corporation (PBC)

WHAT IT IS

A type of separate legal entity that limits the personal liability of its owners (called "shareholders" or "stockholders").

MIND YOUR B'S!

You may be wondering if a "B-Corp" is the same thing as a PBC — they're not. Unlike a PBC, a B-Corp is not a legal form; it's a private certification (kind of like a fair trade certification) based on a company's social and environmental performance and impact. An entity looking to certify as a B-Corp often converts to a PBC/PBLLC — which is where it gets confusing.

PROS

Shareholders are not *personally* on the hook for business liabilities of the corporation.

Relatively easy to get funding by selling equity shares to investors, who can share in the profits of the business.

There are two types of corporations, "S Corps" or "C Corps" which can have an impact on taxes or number of shareholders. Speak to an accountant to better understand tax implications for your business.

Any intellectual property created by an *employee or contractor* of the corporation will generally belong to the corporation (can be contracted otherwise).

Some flexibility with certain types of "public benefit corporations" that permit expansion of operations to considerations beyond what is in the best interests of the shareholders (such as some public benefit purposes that you would identify in the formation documents).

You can hire people through the corporation.

CONS

Stringent administrative obligations (a corporation has record keeping requirements, annual state and federal filings, and separate tax filings). **PBCs require biannual or annual** reports on performance promoting its public benefit purpose.*

Less flexibility than an LLC when it comes to structuring and operational processes. You need a board of directors and the company's leadership reports to the board.

Unless you are a **PBC or equivalent**, your operations must be in the best interests of the shareholders.

Two layers of taxation for C Corps. The corporation pays tax and then shareholders are taxed on their income.

To get the benefits of limited liability, the corporation must maintain clear separation from its shareholders, including its own bank accounts and insurance policies.

Any intellectual property *you* create acting on behalf of the corporation will generally belong to the corporation (can be contracted otherwise).

* In some states, reports may be public and/or required to rely on third party standards.

501(c)(3)

WHAT IT IS

A nonprofit type of separate legal entity with tax-exempt status because it is organized and operated exclusively for defined "charitable" purposes. Typically, this is a nonprofit corporation that applies for tax exempt status with the IRS.

Unlike the for-profit structures discussed above, there are no "owners."

The funders are called "donors," and the entity is controlled by a board of directors.

May be appropriate if your goal is exclusively to further a charitable purpose.

PROS

You are not *personally* on the hook for business liabilities of the 501(c)(3).

Can get funding through tax-deductible donations from donors and grants from other 501(c)(3) entities, including Donor-Advised Funds (DAFs).

The 501(c)(3) has tax-exempt status and doesn't have to pay certain state and federal taxes.

"Halo" effect of operating within a nonprofit vs. for-profit entity.

Any intellectual property created by an *employee or contractor* of the 501(c)(3) will generally belong to the corporation (can be contracted otherwise).

You can hire people and pay reasonable salaries from a 501(c)(3).

CONS

Stringent administrative obligations and public reporting (including record keeping requirements, annual state and federal filings, and separate tax filings).

Highly regulated by state and federal law, which means significant limitations on activities. This varies based on whether the 501(c)(3) is classified as a "private foundation" or a "public charity." Generally, private foundations have more limitations, but all 501(c)(3)s must be operated exclusively for nonprofit charitable purposes, are limited in their ability to engage in political activity or lobbying, and must be mindful of benefits flowing to individuals or related parties.

Earnings from the 501(c)(3)'s activities must remain within the entity to further the charitable purposes and can't be given back to or shared with the founder or other individuals.

Any intellectual property *you* create acting on behalf of the 501(c)(3) corporation will generally belong to the corporation (can be contracted otherwise).

501(c)(4)

WHAT IT IS	PROS	CONS
A nonprofit type of separate legal entity with tax-exempt status because it is organized and operated exclusively for the "promotion of social welfare" (which can include charitable purposes similar to a 501(c)(3), but these entities may also conduct political lobbying). Typically, this is a nonprofit corporation that applies for tax exempt status with the IRS. Unlike the for-profit structures discussed above, there are no "owners." The funders are called "donors," and the entity is controlled by a board of directors. May be appropriate if your goal is exclusively to further a social welfare purpose and if you're interested in lobbying.	You are not *personally* on the hook for business liabilities of the 501(c)(4). The 501(c)(4) has tax-exempt status and doesn't have to pay certain state and federal taxes. Can get funding through grants from 501(c)(3) entities, but only for use in furtherance of activities that could be conducted by a 501(c)(3). A 501(c)(4) may engage in political activities such as lobbying and campaign activities in furtherance of its mission, which would be prohibited or limited in a 501(c)(3). Any intellectual property created by an *employee or contractor* of the 501(c)(4) corporation will generally belong to the corporation (can be contracted otherwise). You can hire people and pay reasonable salaries through a 501(c)(4).	Can receive donations from the public, but they are not tax-deductible as they are with a 501(c)(3). Stringent administrative obligations and public reporting (including record keeping requirements, annual state and federal filings, and separate tax filings). Highly regulated by state and federal law, which means limitations on activities, including that the entity must be operated exclusively for social welfare purposes, must be guardrails around permitted political activities and must be mindful of benefits flowing to individuals or related parties. Earnings from the 501(c)(4)'s activities, must remain within the entity to further the charitable purposes, and can't be given back to or shared with the founder or other individuals. Any intellectual property *you* create acting on behalf of the 501(c)(4) will generally belong to the corporation (can be contracted otherwise).

Fiscal Sponsorship

WHAT IT IS	PROS	CONS
A contractual relationship between a project that is not a 501(c)(3) and an already existing 501(c)(3) public charity. The project essentially "borrows" the status of a 501(c)(3) to receive funds that are donated to the 501(c)(3) as the "fiscal sponsor" of the charitably sponsored project. May be appropriate if your project is a one-off and you do not plan to continue the work on an ongoing basis. May be appropriate if you do not have capacity to take on the formation and administration of a separate nonprofit legal entity.	You do not need to create a separate legal entity or perform any of the administrative functions that go along with a separate entity. You're not *personally* on the hook for business liabilities of the sponsored project or the fiscal sponsor. You can receive funding in the form of tax-deductible donations from donors and grants from other 501(c)(3) entities, including Donor-Advised Funds (DAFs). "Halo" effect of operating within a nonprofit vs. for-profit entity. You can hire people and pay reasonable salaries through a fiscal sponsor.	Must pay an administrative fee to the fiscal sponsor and provide some level of reporting to the fiscal sponsor so they can do their required reporting. The sponsored project must operate within the constraints of the "borrowed" 501(c)(3). This means that the sponsored project retains all discretion and control over the funds and you must have clarity that project activities fit clearly within the charitable purpose of the 501(c)(3). Depending on the specific form of fiscal sponsorship, any intellectual property created by the project sponsor lead may belong to the fiscal sponsor (can be contracted otherwise).

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An Emerson Collective Resource

100 FORESTS