CORPORATIONS

TABLE OF CONTENTS

PART ONE—CHARACTERISTICS AND FORMATION OF CORPORATIONS 1

I. CORPORATION VS. OTHER BUSINESS ENTITIES 1
- A. INTRODUCTION 1
- B. GENERAL CHARACTERISTICS OF A CORPORATION 1
  - 1. Limited Liability for Owners, Directors, and Officers 1
  - 2. Centralized Management 1
  - 3. Free Transferability of Ownership 1
  - 4. Continuity of Life 2
  - 5. Taxation 2
    - a. C Corporation 2
    - b. S Corporation 2
- C. COMPARISON WITH SOLE PROPRIETORSHIP 2
- D. COMPARISON WITH PARTNERSHIP 2
- E. COMPARISON WITH LIMITED PARTNERSHIP 3
- F. COMPARISON WITH LIMITED LIABILITY PARTNERSHIP 3
- G. COMPARISON WITH LIMITED LIABILITY COMPANY 3
- H. CONSTITUTIONAL CHARACTERISTICS OF A CORPORATION 3
  - 1. "Person" 3
  - 2. "Citizen" 3
    - a. Constitutional References to "Citizens" 3
    - b. Federal Diversity Jurisdiction 4
      - 1) Principal Place of Business 4
      - 2) Multiple Incorporation 4
  - 3. "Resident" 4
  - 4. "Domicile" 4

II. FORMATION AND STATUS OF THE CORPORATION 4
- A. CREATED UNDER STATUTE 4
- B. FORMATION TERMINOLOGY 4
- C. FORMATION OF A DE JURE CORPORATION 4
  - 1. Incorporator Defined 5
  - 2. Contents of Articles 5
    - a. Mandatory Provisions 5
    - b. Optional Provisions 5
      - 1) Business Purposes 5
        - a) Ultra Vires Acts 5
          - (1) Effect 6
          - (2) Charitable Donations 6
          - (3) Loans 7
      - 2) Initial Directors 7
  - 3. Corporate Existence Begins on Filing by the State 7
  - 4. Additional Procedures to Make De Jure Corporation Operative 7
    - a. Bylaws 7

1) Compare—Articles . . . 7
D. RECOGNITION OF CORPORATENESS WHEN CORPORATION IS DEFECTIVE . . . 7
1. De Facto Corporation . . . 7
a. Common Law Requirements . . . 8
1) Statute for Valid Incorporation Available . . . 8
2) Colorable Compliance and Good Faith . . . 8
3) Exercise of Corporate Privileges . . . 8
b. Limitation on De Facto Doctrine . . . 8
2. Corporation by Estoppel . . . 8
3. Application of De Facto and Estoppel Doctrines . . . 9
a. Contracts . . . 9
b. Torts . . . 9
c. Liability of Associates . . . 9
4. Limitation of Doctrines . . . 9
E. DISREGARD OF CORPORATE ENTITY (PIERCING THE CORPORATE VEIL) . . . 9
1. Elements Justifying Piercing the Corporate Veil . . . 10
a. Alter Ego (Ignoring Corporate Formalities) . . . 10
1) Individual Shareholders . . . 10
2) Parent-Subsidiary Corporations . . . 10
3) Affiliated Corporations . . . 10
b. Inadequate Capitalization . . . 10
1) One-Person or Close Corporation . . . 11
2) Parent-Subsidiary Corporations . . . 11
c. Avoidance of Existing Obligations, Fraud, or Evasion of Statutory Provisions . . . 11
1) Avoiding Liability . . . 11
2) Fraud . . . 11
2. Who Is Liable? . . . 11
a. Active-Inactive Tests . . . 11
b. Theories of Liability . . . 11
1) Joint and Several . . . 11
2) Property Cases . . . 11
3. Types of Liability . . . 12
a. Tort . . . 12
b. Contract . . . 12
c. Bankruptcy and Subordination of Claims . . . 12
4. Who May "Pierce"? . . . 12
a. Creditors . . . 12
b. Shareholders . . . 12

III. CAPITAL STRUCTURE . . . 12
A. TYPES OF CORPORATE SECURITIES . . . 12
1. Debt Securities . . . 13
2. Equity Securities . . . 13
B. DEBT SECURITIES . . . 13
C. EQUITY SECURITIES (SHARES) . . . 13
1. Terminology . . . 13

2. Classification of Shares 13
a. Classes and Series Must Be Described in Articles 13
1) Authorized Rights, Preferences, and Limitations 14
3. Fractional Shares 14
a. Rights of Holders of Fractional Shares and Scrip 14
4. Subscription Agreements 14
a. Acceptance and Revocation 14
b. Payment 14
1) Discrimination Not Allowed 14
2) Penalties for Failure to Pay 15
5. Consideration for Shares 15
a. Forms of Consideration 15
b. Amount of Consideration 15
1) Traditional Par Value Approach 15
2) RMBCA Approach 15
a) Watered Stock 16
c. Unpaid Stock 16
6. Federal Law 16
a. Registration and Prospectus Requirements 16
b. Exemptions 17
c. Civil Liability 17

PART TWO—INTRACORPORATE PARTIES 17

IV. PROMOTERS 17
A. PROMOTERS PROCURE CAPITAL AND OTHER COMMITMENTS 17
B. PROMOTERS' RELATIONSHIP WITH EACH OTHER 17
C. PROMOTERS' RELATIONSHIP WITH CORPORATION 17
1. Breach of Fiduciary Duty Arising from Sale to Corporation 18
a. Independent Board of Directors 18
b. Disclosure to Subscribers or Shareholders 18
c. Promoters' Purchase of All the Stock 18
2. Fraud 18
3. Federal Securities Law 18
D. PROMOTERS' RELATIONSHIP WITH THIRD PARTIES—PREINCORPORATION AGREEMENTS 19
1. Promoter's Liability 19
a. Liability Continues After Formation Absent Novation 19
b. Exception—Agreement Expressly Relieves Promoter of Liability 19
c. Promoter Indemnification 19
2. Corporation's Liability 19
a. General Rule—No Liability Prior to Incorporation 20
b. Adoption 20

V. SHAREHOLDERS 20
A. SHAREHOLDER CONTROL OVER MANAGEMENT 20
1. Direct Control 20
2. Indirect Control 20
a. Shareholders Elect and May Remove Directors 20

b. Shareholders May Modify Bylaws 20
c. Shareholders Must Approve Fundamental Corporate Changes 20
B. SHAREHOLDERS' MEETINGS AND VOTING POWER 21
1. Convening Meetings 21
a. Annual Meetings 21
b. Special Meeting 21
2. Place of the Meeting 21
3. Notice 21
a. Time Within Which Notice Must Be Sent 21
b. Contents of Notice 21
c. Notice May Be Waived 21
4. Eligibility to Vote 21
a. Record Date 21
1) If Record Date Not Set 22
b. Shareholders' List for Meeting 22
1) List Available for Inspection 22
a) Refusal to Allow Inspection 22
c. Voting Entitlement of Shares 22
d. Corporation's Acceptance of Votes 22
5. Proxies 23
a. Duration of Proxy 23
b. Revocability of Proxy 23
1) Death or Incapacity of Shareholder 23
c. Statutory Proxy Control 23
1) Basic Requirements 23
2) Key Issue—Materiality 24
3) Shareholder Proposals 24
6. Mechanics of Voting 24
a. Quorum 24
1) Voting by Group 24
b. Voting—In General 25
c. Director Elections 25
1) Cumulative Voting Optional 25
a) Notice Required for Cumulative Voting 25
b) Devices to Avoid Cumulative Voting 25
2) Classification of the Board 26
d. Class Voting on Article Amendments 26
7. Shareholders May Act Without Meeting by Unanimous Written Consent . . . 26
C. SHAREHOLDER AGREEMENTS 26
1. Voting Trusts 26
2. Voting Agreements 27
3. Shareholder Management Agreements 27
a. Statutory Requirements 27
b. Enforceability 27
c. Termination of Agreement's Effectiveness 27
d. Agreement Does Not Impose Personal Liability on Shareholders 28
4. Restrictions on Transfer of Shares 28
a. Permissible Restrictions 28
b. Enforceability 28

5. Agreements Affecting Action by Directors 28
D. SHAREHOLDERS' INSPECTION RIGHTS 28
1. RMBCA Approach—In General 29
a. Unqualified Right 29
b. Right May Not Be Limited 29
c. Inspection by Court Order 29
E. PREEMPTIVE RIGHTS 29
1. Waiver 29
2. Limitations 29
3. Sales to Outsiders 30
F. SHAREHOLDER SUITS 30
1. Direct Actions 30
a. Nature of Action 30
b. Recovery 30
2. Derivative Actions 30
a. Nature of Action 30
b. Standing—Ownership at Time of Wrong 31
c. Demand Requirements 31
1) If Demand Futile 31
d. Corporation Named as Defendant 31
e. Dismissal If Not in Corporation's Best Interests 31
1) Burden of Proof 31
f. Discontinuance or Settlement Requires Court Approval 32
g. Court May Order Payment of Expenses 32
G. DISTRIBUTIONS 32
1. Types of Distributions 32
2. Rights to Distributions 32
a. Declaration Generally Solely Within Board's Discretion 32
1) Limitations 32
a) Solvency Requirements 32
b) Restrictions in the Articles 33
c) Share Dividends 33
2) Historical Note—Par Value and Capital Accounts 33
b. Contractual Rights in Regard to Distributions 33
1) Limitations and Preferences 33
a) (Noncumulative) Preferred Shares 33
b) Cumulative Preferred Shares 34
c) Cumulative If Earned Shares 34
d) Participating Shares 34
2) Rights After Declaration—Same as a General Creditor 34
c. Who May Receive—Shareholder of Record on Record Date 34
3. Liability for Unlawful Distributions 34
a. Good Faith Defense 34
b. Contribution 35
H. SHAREHOLDERS' LIABILITIES 35
1. General Rule—No Fiduciary Duty 35
2. Liability Pursuant to Shareholder Agreement 35
3. Close Corporations 35
4. Limitations on Controlling Shareholders 35

a. Sale at a Premium 36
b. Controlling Shareholder Under Securities Laws 36

VI. DIRECTORS 36
A. GENERAL POWERS 36
B. QUALIFICATIONS 36
C. NUMBER, ELECTION, AND TERMS OF OFFICE 36
1. Number of Directors—One or More as Set in Articles or Bylaws 36
2. Election of Directors 36
3. Terms of Directors 37
a. Staggering Director Terms 37
4. Resignation of Director 37
5. Vacancies May Be Filled by Directors or Shareholders 37
a. Where Director Elected by Voting Group 37
D. REMOVAL OF DIRECTORS 37
1. Cumulative Voting Limitation 37
2. Where Director Elected by Voting Group 37
E. DIRECTORS' MEETING 37
1. Initial Meeting 38
2. Notice of Meetings 38
a. Notice May Be Waived 38
3. Quorum 38
a. Breaking Quorum 38
4. Approval of Action 38
a. Right to Dissent 38
b. Action May Be Taken Without Meeting by Unanimous Written Consent . . 39
F. MAY DELEGATE AUTHORITY TO COMMITTEES OR OFFICERS 39
1. Executive Committees 39
a. Selection 39
b. Powers 39
2. Officers 39
G. DIRECTORS' RIGHT TO INSPECT 40
H. DE FACTO DIRECTORS 40
I. DIRECTORS' DUTIES AND LIABILITIES 40
1. Personal Liability of Directors May Be Limited 40
2. Duty of Care 40
a. Burden on Challenger 40
b. Director May Rely on Reports or Other Information 40
c. Doctrine of Waste 41
3. Duty of Loyalty (Common Law) 41
a. Conflicting Interest Transactions 41
1) What Constitutes a Conflicting Interest Transaction? 41
2) Standards for Upholding Conflicting Interest Transaction 41
a) Interested Director's Presence at Meeting Irrelevant 42
b) Special Quorum Requirements 42
c) Factors to Be Considered in Determining Fairness 42
d) Statutory Interpretation 42
e) Remedies 42
3) Directors May Set Own Compensation 42

b. Corporate Opportunity Doctrine 42
1) Corporation Must Have Interest or Expectancy 43
a) Scope of Interest 43
b) Lack of Financial Ability Probably Not a Defense 43
2) Board Generally Decides 43
3) Remedies 43
c. Competing Business 43
d. Common Law Insider Trading—Special Circumstances Rule 43

VII. OFFICERS 44
A. IN GENERAL 44
B. DUTIES 44
C. POWERS 44
1. Actual Authority 44
a. President 44
b. Vice President 44
c. Secretary 44
d. Treasurer 44
2. Apparent Authority 45
D. STANDARD OF CONDUCT 45
E. RESIGNATION AND REMOVAL 45

VIII. INDEMNIFICATION OF DIRECTORS, OFFICERS, AND EMPLOYEES 45
A. IN GENERAL 45
B. MANDATORY INDEMNIFICATION 45
C. DISCRETIONARY INDEMNIFICATION 45
1. Exceptions 46
2. Who Makes Determination? 46
3. Officers 46
D. COURT-ORDERED INDEMNIFICATION 46
E. ADVANCES 46
F. LIABILITY INSURANCE 46
G. AGENTS AND EMPLOYEES 46

PART THREE—CHANGES IN STRUCTURE 46

IX. FUNDAMENTAL CHANGES IN CORPORATE STRUCTURE 46
A. INTRODUCTION 46
1. Types of Fundamental Corporate Changes 46
2. General Procedure for Fundamental Change 47
B. AMENDMENTS OF THE ARTICLES OF INCORPORATION 47
1. Amendments that Board Can Make Without Shareholder Approval 47
2. Amendments by Board and Shareholders 47
a. Vote Required 48
C. MERGER, SHARE EXCHANGE, AND CONVERSION 48
1. Not All Shareholders Need Approve 48
a. Merger 48
1) No Significant Change to Surviving Corporation 48
2) Short Form Merger of Subsidiary 49

b. Share Exchange 49
c. Conversion 49
2. Effect 49
a. Merger 49
b. Share Exchange 49
D. DISPOSITION OF PROPERTY OUTSIDE THE USUAL AND REGULAR COURSE OF BUSINESS 50
1. What Constitutes "Substantially All"? 50
2. Compare—Dispositions Within Usual and Regular Course of Business 50
3. Compare—Mortgages, Pledges, Etc. 50
4. Effect on Purchaser 50
a. Factors Contributing to De Facto Merger 50
E. PROTECTION AGAINST AND LIMITATIONS ON FUNDAMENTAL CHANGES 50
1. Dissenting Shareholders' Appraisal Remedy 51
a. Who May Dissent? 51
1) Merger 51
2) Share Exchange 51
3) Disposition of Property 51
4) Amendment of Articles 51
b. Procedure 51
1) Corporation Must Give Shareholders Notice 51
2) Shareholder Must Give Notice of Intent to Demand Payment 51
3) Corporation Must Give Dissenters Notice 52
4) Shareholders Must Demand Payment 52
5) Corporation Must Pay 52
6) Notice of Dissatisfaction 52
7) Court Action 52
2. Tender Offers and Corporate Control Transactions 52
a. Federal Regulation of Tender Offers—The Williams Act 52
1) Regulation of the Bidder 52
a) Disclosure Required 53
b) Regulation of Terms of Tender Offer 53
2) Regulation of the Target 53
3) General Antifraud Provisions 54
a) Shareholders of Target Have Standing for Civil Damage Action 54
b) SEC May Seek Injunction 54
b. State Regulation—Control Share Acquisition Statutes 54
1) Limitation on Scope 54

X. DISSOLUTION AND LIQUIDATION 55
A. INTRODUCTION 55
B. VOLUNTARY DISSOLUTION 55
1. Dissolution by Incorporators or Initial Directors 55
2. Dissolution by Corporate Act 55
3. Effect of Dissolution 55
a. Barring Claims Against the Corporation 55
1) Known Claims Against Dissolved Corporation—120 Days 56

2) Unknown Claims Against Dissolved Corporation—Five Years 56
4. Revocation of Voluntary Dissolution 56
C. ADMINISTRATIVE DISSOLUTION 56
1. Grounds for Administrative Dissolution 56
2. Procedure and Effect 56
3. Reinstatement May Be Retroactive for up to Two Years 56
D. JUDICIAL DISSOLUTION 57
1. Action by Attorney General 57
2. Action by Shareholders 57
a. Election to Purchase in Lieu of Dissolution 57
3. Action by Creditors 57
4. Action by Corporation—Court Supervision of Voluntary Dissolution 57

PART FOUR—LIMITED LIABILITY COMPANIES, PROFESSIONAL CORPORATIONS, AND FOREIGN CORPORATIONS 58

XI. LIMITED LIABILITY COMPANIES 58
A. INTRODUCTION 58
B. PURPOSE 58
1. Compare—S Corporations and Limited Partnerships 58
2. Controlling Law—Statute vs. Operating Agreement 58
3. Distinct Entity 58
C. FORMATION 58
1. Contents of Articles 58
2. Management 59
a. Fiduciary Duties of Managers 59
D. LIABILITY OF MEMBERS 59
E. SHARING OF PROFITS AND LOSSES 59
F. MEMBERS' ACTIONS AGAINST THE LLC 59
G. TRANSFERS OF INTEREST 59
H. DISSOLUTION 59

XII. PROFESSIONAL CORPORATIONS 60
A. INTRODUCTION 60
1. Governing Law 60
B. FORMATION 60
1. Election and Filing 60
2. Corporate Name 60
C. PROFESSIONS TO WHICH APPLICABLE 60
D. OPERATION OF PROFESSIONAL CORPORATION 60
1. Generally Only One Profession 60
2. Practice Limited to Licensed Personnel 61
3. Director and Officer Qualifications 61
4. Shareholders and Proxies Must Be Licensed Professionals 61
5. Shares 61
E. LIABILITY ISSUES 61

XIII. FOREIGN CORPORATIONS 61
A. POWER TO EXCLUDE 61

B. ADMISSION 61
1. Contents of Application for Certificate of Authority 61
2. Issuance of Certificate 62
C. STATE POWER OVER INTERNAL AFFAIRS OF FOREIGN CORPORATIONS 62
D. EFFECT OF TRANSACTING BUSINESS WITHOUT CERTIFICATE 62
1. Cannot Bring Suit 62
2. No Effect on Contracts 62

PART FIVE—SECURITIES REGULATION 62

XIV. RULE 10b-5, SECTION 16(b), AND SARBANES-OXLEY 62
A. RULE 10b-5 62
1. General Elements of Cause of Action 62
a. Fraudulent Conduct 62
1) Materiality 63
2) Scienter 63
b. In Connection with the Purchase or Sale of a Security by Plaintiff 63
1) Nontrading Defendants Can Be Held Liable 63
2) Private Plaintiff May Not Maintain Suit Based on Aiding and Abetting 63
c. In Interstate Commerce 63
d. Reliance 63
1) Rebuttal of Presumption 64
e. Damages 64
2. Insider Trading 64
a. Who May Be Liable? 64
1) "Insiders" 64
2) Tippers and Tippees 65
3) Misappropriators 65
3. Remedies 65
a. In General 66
b. Insider Trading Sanctions Act and Insider Trading and Securities Fraud Enforcement Act 66
1) Private Right of Action—Insider Trading and Securities Fraud Enforcement Act 66
2) Criminal Penalties 66
B. SECTION 16(b) 66
1. Strict Liability Imposed 66
2. Elements of Cause of Action 67
a. Purchase and Sale or Sale and Purchase Within Six Months 67
b. Equity Security 67
c. Officer, Director, or More than Ten Percent Shareholder 67
1) Deputization of Director 67
2) Timing Issues 67
a) Officers or Directors 67
b) More than Ten Percent Shareholder 67
3. Profit Realized 67
C. THE SARBANES-OXLEY ACT OF 2002 68

1. Introduction 68
2. Public Company Accounting Oversight Board 68
3. Corporate Responsibility 68
a. Public Company Audit Committees 68
1) Additional Duties 68
2) Authority and Funding 68
b. Corporate Responsibility for Financial Reports 68
c. Forfeiture of Bonuses and Profits 69
d. Prohibition Against Insider Trades During Pension Blackout Periods . . 69
1) Remedies 69
e. Prohibition Against Personal Loans to Executives 69
f. Code of Ethics for Senior Financial Officers 69
g. Disclosure of Audit Committee Financial Expert 70
4. Corporate and Criminal Fraud 70
a. Criminal Penalties for Destruction, Alteration, Etc. 70
b. Criminal Penalty for Destruction of Corporate Audit Records 70
c. Statute of Limitations for Fraud 70
d. Whistleblower Protection 70
e. Criminal Penalties for Defrauding Shareholders and the Public 70

PART ONE—CHARACTERISTICS AND FORMATION OF CORPORATIONS

I. CORPORATION VS. OTHER BUSINESS ENTITIES

A. INTRODUCTION

The corporation is a form of business ownership that has advantages and disadvantages over other forms of business ownership. There are even a number of forms of corporations, each with its own advantages and disadvantages. Thus, the first issue to be addressed in corporate law is how the corporate form differs from other business entities and how the various corporate forms differ from each other.

B. GENERAL CHARACTERISTICS OF A CORPORATION

A corporation is a legal entity distinct from its owners. Creation of such an entity generally requires filing certain documents with the state, and running a corporation generally requires more formality than is required to run most other types of business entities. Corporations generally have the following characteristics:

1. Limited Liability for Owners, Directors, and Officers

The owners of a corporation (called "shareholders") generally are not personally liable for the obligations of the corporation; neither are the corporation's directors or officers. Generally only the corporation itself can be held liable for corporate obligations. The owners risk only the investment that they make in the business to purchase their ownership interests ("shares"). Thus, if a person wants to set up a business entity that protects his personal assets from the possibility of being seized to satisfy obligations of the business, a corporation would be a good business form to consider.

2. Centralized Management

Generally, the right to manage a corporation is not spread out among the shareholders, but rather is centralized in a board of directors, who usually delegate day-to-day management duties to officers. Thus, if a person wants to avoid conflicts with co-owners of a business regarding management of the business, a corporation may be a good form of business to choose.

Note: Although the general rule is that a corporation is run by managers, shareholders can enter into agreements vesting management power in themselves rather than in a board.

3. Free Transferability of Ownership

Generally, ownership of a corporation is freely transferable; a shareholder can sell his shares to whomever he wants, whenever he wants, at whatever price he wants in most circumstances. Thus, if a person wants to set up a business entity that will enable him to easily bring in new investors in exchange for ownership interests, the corporate form is worth considering.

Note: Transferability of shares can be restricted by agreement of the shareholders. Such restriction is popular in close corporations so that current owners have some control over who may join their business in the future. Restrictions may also be necessary to assure eligibility of S corporation status. (*See* below.)

4. Continuity of Life

A corporation may exist perpetually and generally is not affected by changes in ownership (*i.e.*, sale of shares). Thus, if a person wants to create a business entity that can exist apart from and beyond its current owners, the corporate form is worth considering.

5. Taxation

a. C Corporation

Generally, a corporation is taxed as an entity distinct from its owners; *i.e.*, it must pay income taxes on any profits that it makes, and generally shareholders do not have to pay income tax on the corporation's profits until the profits are distributed. (Under the tax laws, such a corporation is known as a "C corporation.") The corporate tax rate generally is lower than the personal tax rate, and so this arrangement can be advantageous to persons who want to delay the realization of income. However, this advantage comes at a price—double taxation—because when the corporation does make distributions to shareholders, the distributions are treated as taxable income to the shareholders even though the corporation has already paid taxes on its profits.

b. S Corporation

The tax laws permit certain corporations to elect to be taxed like partnerships and yet retain the other advantages (above) of the corporate form. Such corporations are called "S corporations" under the tax laws. Partnerships and S corporations are not subject to double taxation—profits and losses flow directly through to the owners. This may be advantageous when losses are expected for the first few years that the business will be operating, since it allows the owners to offset the losses against their current incomes. It also may result in lower overall taxes on profits because there is no double taxation. However, there are a number of restrictions on S corporations (*e.g.*, stock can be held by no more than 100 persons, generally shareholders must be individuals, there can be only one class of stock [*see* 26 U.S.C. §1361]).

C. COMPARISON WITH SOLE PROPRIETORSHIP

A sole proprietorship is a form of business in which one person owns all of the assets of the business. The sole proprietorship generally does not exist as an entity apart from its owner, and thus little formality is required to form it. However, since a sole proprietorship is not an entity distinct from its owner, its owner is personally liable for the business's obligations and the business "entity" cannot continue beyond the life of the owner. Management is centralized (since there is only one owner), and the owner is free to transfer his interest in the sole proprietorship at will. All profits and losses from the business flow through directly to the owner. Thus, if a person is interested in setting up a business with only one owner, desires little formality, is willing to risk personal assets, and wants to avoid double taxation, the sole proprietorship is worth considering as a business form.

D. COMPARISON WITH PARTNERSHIP

A partnership is similar to a sole proprietorship except that there are at least two owners of a partnership. Little formality is required to form a partnership (just an intention to run as co-owners a business for profit). Partnerships may have a few entity characteristics (*e.g.*, property may be held in the name of the partnership, suits can be maintained in the name of the partnership), but generally partnerships are not treated as legal entities. Partners are personally liable for

obligations of the partnership; management generally is not centralized, but rather is spread among the partners; ownership interests of partners cannot be transferred without the consent of the other partners; and a partnership generally does not continue beyond the lives of its owners (although the partners can agree to allow remaining partners to continue the partnership business after a partner leaves). Finally, as indicated above, profits and losses of a partnership flow through directly to the partners. Thus, if a person is interested in forming a business with more than one owner, does not want to bother with a lot of formality, does not mind sharing management rights with co-owners, does not mind putting personal assets at risk, etc., a partnership might be an appropriate entity to form.

E. COMPARISON WITH LIMITED PARTNERSHIP

A limited partnership is a partnership that provides for limited liability of some investors (called "limited partners"), but otherwise is similar to other partnerships. A limited partnership can be formed only by compliance with the limited partnership statute. There must be at least one general partner, who has full personal liability for partnership debts and has most management rights. Thus, this form of business entity offers limited liability to most investors, centralized management (*i.e.*, management by the general partner(s) rather than by all owners), and the flow-through tax advantages of a partnership, without the 100-investor limit of an S corporation.

F. COMPARISON WITH LIMITED LIABILITY PARTNERSHIP

A limited liability partnership ("LLP") is a relatively new form of business entity that provides for the limited liability of all of its members; there is not a general partner who stands liable for the actions of the partnership. Formation requires filing a "statement of qualification" with the secretary of state. Otherwise, the entity is similar to other partnerships.

G. COMPARISON WITH LIMITED LIABILITY COMPANY

The limited liability company ("LLC") is a relatively new form of business entity designed to offer the limited liability of a corporation and the flow-through tax advantages of a partnership. Like a corporation, it may be formed only by filing appropriate documents with the state, but otherwise it is a very flexible business form: owners may choose centralized management or owner management, free transferability of ownership or restricted transferability, etc. (For more detail, *see* XI., *infra*.)

H. CONSTITUTIONAL CHARACTERISTICS OF A CORPORATION

1. "Person"

Corporations are entitled to due process of law and equal protection of the law. A corporation is entitled to raise the attorney-client privilege, but cannot invoke the privilege against self-incrimination. Generally, unless the context of the statute or constitutional provision requires application only to ***natural*** persons, a corporation is entitled to the protection and rights afforded thereby.

2. "Citizen"

a. Constitutional References to "Citizens"

A corporation is ***not*** a citizen for purposes of the Privileges and Immunities Clause of the Constitution. Therefore, state-imposed restrictions on a foreign corporation's activities are valid if they are a reasonable exercise of the state's police power. A