



**Start Smart  
Law Presents:**

**Social Enterprise -  
Profit with  
A Purpose**

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# **This is Not Legal Advice!**

- **Stephanie – I do NOT practice law**
- **Purpose of Tonight's Session:  
To Make You a Better  
Consumer of Legal Services,  
Saving you Time and Money**

# What Is a Social Enterprise?

A "social enterprise" is defined as "a business that directly addresses a social need through its products and services."

Jerr Boschee,  
Adjunct Professor  
CMU's Heinz College

# Reasons for Founding a Social Enterprise

- Do something positive with your professional/working life
- Other Possible Reasons
  - Consumers consider social and environmental impact
  - Investors consider social and environmental Impact
  - Foundations Fund Some Social Enterprises

# What Legal Entity Should My Social Enterprise Be?

- **Non-Profit**
- **For-Profit**
- **Hybrid**
- **Combination**
- **What are the Costs and Benefits of Each?**

# Non-Profit Organization

- **Benefits**
  - **Tax Deduction for Charitable Contributions**
  - **Eligible for Foundation Grants**
  - **Legally Able to Use Unpaid Volunteers**

# Disadvantages of Non-Profit Organization

## You Don't Own it – the Public Does!

- You Can't Make a Profit
- Non-profits Can Pay You a Reasonable Salary and Reimburse Legitimate Expenses
- But You Can't Share in Financial Upside
- Serious Penalties for Private Inurement and Conflicts of Interest

# Another Disadvantage of Non-Profit Status

## You Don't Make the Decisions!

- A Board of Directors (Acting for the Public) Makes the Decisions
- This Includes The Decision as to Whether to Hire or Fire You and the Rest of the Staff
- Founders' Syndrome



# Non-Profit Administrative Burdens

## Public Filings

- Initial Filing
- Annual Return
  - Includes Disclosure of all Potential Board Conflicts of Interest

## Grant Reporting

# For-Profit Company

- **Benefits**

- You Can Make a Profit
- You Can Make the Decisions

- **Costs**

- No Tax Deductions for Contributions
- Less Able to Use Unpaid Volunteers
- Must Focus on Maximizing Profit for Owners
  - Social Benefit is secondary consideration

# Hybrid Entities – Combine Profit and Purpose

**The Best of Both Worlds?**

**Yes, in that Company Combines Profit with Purpose**

- **Can Earn Profit**
- **Can Consider Purpose in Decision Making**

**However:**

- **No Charitable Deductions for Contributions**
- **Less able to Use Unpaid Volunteers**
- **Fewer Grant Opportunities**

# Complications

- Different States Have Different Hybrid Corporate Forms
- Benefit Corporations, Benefit LLCs, Flexible Purpose Corporations and L3Cs are the Most Common Forms
- Approximately 26 States, including PA, have Some Version of a Benefit Corporation or Benefit LLC Statute
- Flexible Purpose Corporations and L3Cs (Low-Profit LLC) DO NOT exist in PA

# Non-Profit, For-Profit, Benefit Company Combinations

- **A Non-Profit Can Own A For-Profit**
  - **The For-Profit Subsidiary is a Disregarded Entity (i.e., Neither the Non-Profit nor the For-Profit Pays Taxes so long as they Act in line with Non-Profit Mission)**
- **Fiscal Agency Relationships**
  - **For Profits Can Sometimes Get Grants by Working with Non-Profit Fiscal Agents (but there is usually a fee, sometimes as high as 15%)**

# **B-Corp Certification ([www.bcorporation.net](http://www.bcorporation.net))**

- **Voluntary Certification, NOT Legal Structure**
  - **Can Be Applied to Any Legal Structure**
  - **Periodic Assessments and Must Publish Results**
  - **Requires addition of language to Bylaws/Operating Agreement**
  - **No difference in Tax Treatment**



# **What Entity is Right for Me?**

## **Suggestions – NOT Legal Advice**

**LLCs are often best for Start-Up Social Enterprises**

- **Most flexible**
- **Least amount of filings**
- **No required shareholders' meeting**
- **Pass through taxation treatment**

# **Social Enterprise Formed as LLC**

## **What's Different from Strictly For-Profit LLC?**

- Formation**
- Management**
- Public Reporting**



# Formation:

- **Certificate of Organization**
  - **Should state specific public benefit (like non-profit mission)**
- **Operating Agreement - Should Include:**
  - **Public benefit purpose**
  - **Special management duties**
  - **Reporting of public benefit information**

# **Special Management**

## **Duties:**

**Manager(s)/Management Committee should take social benefit into account on all decisions**

## **Reporting of Public Benefit Information:**

**Annual Assessment by Third Party**

# Other Considerations in Using LLC for Social Enterprise

## Tax Status:

- Flow Through Tax Status (no separate return – appears on your personal return)
- No reduced tax rate

## Raising Capital:

- No difference – Both Debt & Equity Financing are OK
- Seek Groups looking to Fund Social Benefit Aspects

# Challenges for For-Profit Social Enterprises

- More complicated mission (need to succeed as social enterprise and business enterprise)
- Often want benefits of nonprofits while being for profit (e.g., unpaid volunteers)
- Investors may be wary about funding unfamiliar type of entity (e.g., PA benefit corporations)



**Questions?**

**Thank you**