



COMMUNITY  
**LEGAL SERVICES**  
of MID-FLORIDA



FLORIDA  
COMMUNITY  
DEVELOPMENT  
LEGAL PROJECT

# Establishing Your Business with a Strong Legal Foundation and Operating in the Age of COVID-19

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Mary Kogut-Lowell, Esq.

Community Legal Services of Mid-Florida

# CLSMF Community Economic Development Team

- Mary Kogut-Lowell, Manager, Orlando
- Darlene Bell-Alexander, Staff Attorney, Orlando
- Alicia Magazu, Staff Attorney, Daytona
  
- Legal Assistant – point of contact for intake
  - Jackie Vilaboa, Daytona
  - [jackiev@clsmf.org](mailto:jackiev@clsmf.org)
  - 368-361-5202



# Statewide Initiative: Florida Community Development Legal Project

- Funded by a grant from the Florida Bar Foundation
- Team: 11 attorneys, 3 paralegals/legal assistants
- Participating legal aid organizations:
  - Legal Services of Greater Miami (Lead Agency)
  - Community Legal Services of Mid-Florida
  - Legal Aid Service of Broward County
  - Bay Area Legal Services, Inc.
  - Jacksonville Legal Aid
  - Legal Services of North Florida, Inc.
- Website: <https://www.flcommunitydevelopment.org/>



# Our Clients

- Small businesses serving low to moderate income communities
- Non-profits engaged in
  - Affordable housing,
  - Neighborhood stabilization, and
  - Community development activities

# Eligibility Requirements for Small Businesses

- Must serve low to moderate income neighborhoods
- Each owner's income cannot exceed 140% of Area Median Income (AMI) of the county in which the owner resides.
- Owners must be citizens or legal residents
- Owners do NOT have to reside in CLSMF's service area



# How much is 140% of AMI?

<b>Income Limit Area</b>	<b>AMI</b>	<b>140% of AMI</b>
Orlando-Kissimmee-Sanford, FL (Lake, Orange, Osceola, Seminole Counties)	\$68,100	<b>\$95,340</b>
Deltona-Daytona Beach-Ormond Beach (Volusia County)	\$64,900	<b>\$90,860</b>
Tampa-St. Petersburg-Clearwater, FL (Hernando, Hillsborough, Pasco, Pinellas Counties)	\$69,200	<b>\$96,880</b>
Ocala, FL (Marion County)	\$55,000	<b>\$77,000</b>
Palm Bay-Melbourne-Titusville, FL (Brevard County)	\$69,200	<b>\$96,880</b>
The Villages, FL (Sumter County)	\$67,500	<b>\$94,000</b>
Palm Coast, FL (Flagler County)	\$65,600	<b>\$91,940</b>
Putnam County, FL	\$41,600	<b>\$58,240</b>

Source:

<https://www.huduser.gov/portal/datasets/il/il2020/2020summary.odn> (family of four)



# Eligibility Requirements for Non-Profit Businesses

- Must be engaged in community development, neighborhood stabilization, or affordable housing activities benefitting low to moderate income neighborhoods
- Business must be unable to afford legal services.

# Disclaimer

- Please consult with or retain a qualified attorney or financial advisor on all matters contained in this presentation.
- This presentation and its contents are intended to convey general information only and not to provide legal advice or opinions.



# Agenda

1. Florida Business Entities
2. Businesses and COVID-19
3. Filing and Document Requirements for For-Profit Businesses
4. For-Profit vs. Non-Profit Entities



Topic 1:

# Florida Business Entities

# Initial Considerations Before Starting Your Business

- A Business Plan
  - Document setting out a business's future objectives and strategies for achieving them.
  - Grows as the business does, so not a static document.
  - Not a legal requirement.
- A Business Name
  - Make sure name is available in Florida (and not used by another business or trademarked).
    - <http://search.sunbiz.org/Inquiry/CorporationSearch/ByName>
  - Check for federal trademark registrations.
    - <https://www.uspto.gov/trademarks-application-process/search-trademark-database>
  - Typically must include a corporate identifier after the name.
    - Example: Inc., Corp, etc. for corporations; LLC for limited liability companies.



# Business Structures

- Types of structures to choose from:
  1. Sole Proprietorship
  2. Corporation (either S-Corp or C-Corp)
  3. Limited Liability Company (LLC)
  4. Partnership
  
- Which entity you use will depend on:
  - Liability associated with the business
  - Financial situation
  - Goals for the business
  - Control
  - Capital considerations
  - Transferability of ownership interests
  - Method of creation and termination
  - Tax considerations (discuss with tax professional)

*\*Generally, but not always, the best structures for small businesses are S-corporations and limited liability companies. Make sure to check with an attorney and/or tax professional.*



# Sole Proprietorship

- Most simple structure, common structure.
- Owned by a single individual.
- No distinction between individual owner and the business.
- Business profits are taxed personally to the proprietor.
- Owner is personally liable for business debts and obligations.
- Single individual owner uses individual name as business name.
  - Example: Roseann Garrett, a hairdresser, conducts business as “Roseann Garrett.”
- If owner does not operate under his or her name, owner must register a fictitious name with the state.
  - Example: If Roseann Garrett would like to conduct business with the name “Studio 852,” she must register that fictitious name.
    - More on this later



# Other Common Business Structures: S-Corporations and LLCs

- Legal “entities” or “persons” that can sue and be sued.
- S-Corporations are not subject to federal income tax. Rather, shareholders are taxed on their respective shares of the business income.
- Profits/losses from an LLC become taxable to the members and are claimed on their individual tax returns.
- Provide limited liability protection.
  - Owners/shareholders enjoy limited liability in exchange for more formalities (filing articles and annual report, record retention, etc.)
  - “Piercing the corporate veil” - Usually involves fraud, undercapitalization, or failure to follow corporate formalities
  - Avoid personal liability by making decisions in good faith with a reasonable basis in support of your business (also known as the “business judgement rule”).
- Entity is liable for agents’ actions.
- To form, **MUST FILE ARTICLES WITH STATE.**
  - Corporation → Articles of INCORPORATION
  - LLC → Articles of ORGANIZATION



# Bylaws (for Corporations)

- Should be adopted to establish how the business will be managed.
- May contain any provision that is not inconsistent with law or the articles of incorporation (see section 607.0206, Fla. Stat.)
- Are NOT public/filed with the Florida Department of State.
- Address matters such as:
  - Purpose
  - Duties of Directors and Officers
  - Meetings
  - Record keeping and retention
  - Indemnification
  - Etc.



# Operating Agreement (for LLCs)

- Similar to a corporation's bylaws.
- Should include:
  - The relationships among the members as members and between the members and the limited liability company;
  - The rights and duties of the person acting as the manager;
  - The activities and affairs of the company and the conduct of those activities and affairs;
  - The process of amending the operating agreement.
- May not do certain things (see section 605.0105(3), Fla. Stat).  
Example: can't limit liability for conduct involving bad faith, willful or intentional misconduct, or a knowing violation of law.





# Other Business Structures

- Other business entity structures that are NOT generally used by small businesses include:
  - C-Corporation: A corporation that is taxed separately from its owners, as distinguished from an S-Corporation, which generally is not taxed separately
  - Partnership: Two or more persons joining to carry on a trade or business, where such persons share (not necessarily equally if there is an agreement to the contrary) ownership and liability. Four types in Florida:
    - General Partnership,
    - Limited Partnership (LP),
    - Limited Liability Partnership (LLP), and
    - Limited Liability Limited Partnership (LLLP).



Topic 2:

Businesses and COVID-19

# Economic Issues

- Preparing to restart your business
  - Coronavirus small business resources:  
<https://orlando.score.org/coronavirus>
- Commercial leases
  - Can I terminate the lease if I can no longer afford to pay the rent?
  - Read your lease carefully. Does it include a *force majeure* clause?
    - May free both parties from liability or obligation when an extraordinary event or circumstance beyond the control of the parties prevents one or both parties from fulfilling their obligations under the contract.
    - Depending on the contract, may or may not apply in the event of a war, strike riot, crime, epidemic, or an act of God.
    - Most *force majeure* clauses do not excuse a party's non-performance entirely, but only suspend it for the duration of the *force majeure*.
    - Generally intended to include occurrences beyond the reasonable control of a party.
    - Consider including appropriate language in future leases.



# Employee and Customer Safety

- Centers for Disease Control and Prevention (CDC) Interim Guidance for Businesses and Employers Responding to COVID-19:  
<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>
- Per CDC, “All employers should implement and update as necessary a plan that:
  - Is specific to your workplace,
  - Identifies all areas and job tasks with potential exposures to COVID-19, and
  - Includes control measures to eliminate or reduce such exposures.”
- CDC strategies and recommendations for employers seeking to resume normal or phased business operations include, without limitation:
  - Conducting a hazard assessment of the workplace
  - Encouraging employees to wear cloth face coverings in the workplace, if appropriate
  - Implementing policies and practices for social distancing in the workplace
  - Improving the building ventilation system
- Also consider any local guidance or requirements.



# Workplace Safety

- The General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health (OSH) Act of 1970, 29 USC 654(a)(1), requires employers to furnish to each worker “employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.”
- U.S. Dept. of Labor, Occupational Safety and Health Administration (OSHA) Guidance for Preparing Workplaces for COVID-19: <https://www.osha.gov/Publications/OSHA3990.pdf>
  - Includes recommendations that apply to all employers, including without limitation:
    - Engineering Controls (installing high-efficiency air filter, increasing ventilation rates in the workplace, installing physical barriers, etc.),
    - Safe Work Practices (providing resources that promote personal hygiene, regular hand washing, posting handwashing signs in bathroom),
    - Personal Protective Equipment (PPE) such as gloves, face masks, etc., where appropriate.
  - Includes additional recommendations depending on whether the risk of worker exposure to COVID 19 is considered Very High, High, Medium, or Lower Risk.



# DCF Guidance for Child Care Providers

Child care programs that remain operational should operate under the following conditions:

- Implement social distancing strategies – work with your county health department to determine a set of strategies appropriate for your community’s situation.
- Intensify cleaning and disinfection efforts, including devising a schedule, and focus on toys, games, and other objects and surfaces that are frequently used.
- Modify drop-off and pick-up procedures to include thorough screening -- all individuals entering a facility should be screened according to Centers for Disease Control and Prevention (CDC) guidelines.
- Maintain an adequate ratio of staff to children to ensure safety.
- Children and child care providers shall not change from one group to another.
- If more than one group of children is cared for at one facility, each group shall be in a separate room and not mix or interact with each other.
- Additional CDC guidance for child care programs that remain open: <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-childcare.html>



# Human Resource Issues

- The Equal Employment Opportunities Commission (EEOC) has provided guidance that can help employers implement strategies to navigate the impact of COVID-19 in the workplace. See [Pandemic Preparedness in the Workplace and the Americans With Disabilities Act](#)
  - This publication, written during the prior H1N1 outbreak, is still relevant today and identifies established ADA and Rehabilitation Act principles to answer questions frequently asked about the workplace during a pandemic.
  - It was updated on March 19, 2020 to address examples and information regarding COVID-19.
  - It identifies established ADA principles that are relevant to questions frequently asked about workplace pandemic planning such as:
    - How much information may an employer request from an employee who calls in sick, to protect the rest of its workforce when an influenza pandemic appears imminent?
    - When may an ADA-covered employer take the body temperature of employees during a pandemic?
    - Does the ADA allow employers to require employees to stay home if they have symptoms of the pandemic influenza virus?
    - When employees return to work, does the ADA allow employers to require doctors' notes certifying their fitness for duty?



# Families First Coronavirus Response Act (FFCRA or Act)

- The FFCRA requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply through December 31, 2020.
  - Administered and enforced by the Department of Labor's Wage and Hour Division.
  - Applies to certain public employers, and to private employers with fewer than 500 employees.
  - Additional details at: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>
  - Generally provides that employees of covered employers are eligible for:
    - *Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular rate of pay where employee is unable to work because employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or*
    - *Two weeks (up to 80 hours) of **paid sick leave** at two-thirds the employee's regular rate of pay because employee is unable to work because of a bona fide need to care for an individual subject to quarantine, or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor; and*
    - *Up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.*





Topic 3:  
Filing and Document Requirements for For-  
Profit Businesses

# Filing and Document Requirements

## 1. Florida Department of State, Division of Corporations

- Register the business where it's transacting business (*SunBiz.org*).
- Articles of Incorporation (for corporation) or Articles of Organization (for LLC).
  - Filing fees range from \$70-\$160 for the Articles.
  - Fees for amending Articles as well.
  - Will need to designate a Registered Agent with a street address.

## 2. Internal Revenue Service

- Obtain a Federal Employment Identification Number (FEIN) from the IRS (like a SSN for the business).
- If you want Sub-Chapter S status for your corporation, file Form 2553 with the IRS.



# Filing and Document Requirements

## 3. Florida Department of Business and Professional Regulation

- Some businesses, such as restaurants, realtors, hairdressers, massage therapists, etc., need to be licensed through DBPR. See: <https://www.myfloridalicense.com/intentions2.asp?SID=>

## 4. Florida Department of Children and Families:

- Some businesses need to be licensed through DCF. See: <https://www.myflfamilies.com/service-programs/child-care/child-care-licensure.shtml>

## 5. Florida Department of Revenue

- Consult with a tax professional about the types of taxes to be collected and paid, not just to the federal government/IRS, but to the State of Florida.
- For example, may need to register business for sales tax and/or re-employment tax.



# Filing and Document Requirements

## 5. Local requirements

- Orange County – New Business Tax Receipt
  - Information: <https://www.octaxcol.com/obtain-new-business-tax-receipt/>
  - Application: <http://www.octaxcol.com/wp-content/uploads/2017/10/20171025-Application-BTR-002.pdf>
- Municipalities:
  - Apopka, Belle Isle, Eatonville, Edgewood, Maitland, Oakland, Ocoee, Orlando, Windermere, Winter Garden and Winter Park require local Business Tax Receipts.
  - A local Business Tax Receipt must be obtained before applying for an Orange County Business Tax Receipt.
    - Exceptions: Bay Lake and Lake Buena Vista do not issue a local Business Tax Receipt. Businesses located in these cities must obtain a local Business Tax Receipt from Orange County.



# Annual Reports

- Due for filing with the Department of State, Division of Corporations by **May 1st** annually.
- Purpose: Update the State (and consumers) about any changes (or lack of changes) to the information in your Articles of Incorporation/Organization.
- Required to maintain “active status” with the Florida Department of State.
- A fee is required when filing the annual report.
  - Fee varies depending on entity type.
  - **If filed late a \$400 non-negotiable additional fee is due.**
  - **Failure to file could lead to involuntary dissolution.**



# Business Names / DBAs

- If you call your business something other than your name (if operating a sole proprietorship) or something other than the business name you registered with the State, you **MUST** register the fictitious name/DBA with the State.
  - Processing fee: \$50.00.
- Valid for 5 years, then renew.
  - Filing fee: \$50.00.
- Instructions available on the Florida Department of State, Division of Corporations' website:  
<https://dos.myflorida.com/sunbiz/forms/fictitious-name/>
- Requires filing a legal notice in a newspaper circulated in the county in which the business is located prior to registering the fictitious name.



Topic 4:

For-Profit v. Non-Profit Businesses

# What is the difference between a for-profit and a non-profit business?

- For-profit purpose
  - Purpose is to earn profits for its owners/shareholders.
  - An owner can run the business on his/her own.
- Non-profit purpose and benefits/restrictions
  - In Florida , “corporation not for profit” means a corporation where no part of the income or profit is distributable to members, directors, or officers, except as otherwise provided under Chapter 617.
  - For IRS purposes, a non-profit is a corporation that is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, educational, or other specified purposes and that meets certain other requirements. See IRC section 501(c)(3).
  - Tax-exempt organizations do not have to pay federal taxes or sales tax on non-profit purchases. Also eligible for property tax exemption.
  - An owner cannot run a non-profit on his/her own.
    - Requires a board of directors (at least three).
  - Allowable activities may be restricted.





# Non-Profit Filing and Document Requirements

- Formed by filing articles of Incorporation with Dept. of State, Div. of Corp.
  - Fees: \$87.50
- Bylaws – not filed with the State; voted on by BOD
- IRS Filings
  - EIN
  - Form 1023 or 1023-EZ -- used to apply for tax exempt status; cost ranges from \$275 to \$600
- Solicitation of Contributions Application: Florida Department of Agriculture and Consumer Services
- Sales and Use Tax Exemption: Florida Consumer's Certificate of Exemption from the Florida Department of Revenue (form DR-5)
- County and municipal requirements



# Questions?

Please feel free to contact us.

Community Legal Services of Mid-Florida  
Community Economic Development Unit

Mary Kogut-Lowell: [maryk@clsmf.org](mailto:maryk@clsmf.org)

Legal Assistant: [jackiev@clsmf.org](mailto:jackiev@clsmf.org)

