



**THE LEGAL AND FINANCIAL
RESPONSIBILITIES OF
THE LOCAL JOINT COMMITTEE**

**By: J. Brian Hittinger
Krieg DeVault LLP
8001 Broadway, Ste. 400
Merrillville, IN 46410
(219) 227-6114**

LOCAL JOINT COMMITTEE

What is it?

1. Division of the Company
2. Joint Venture between the Company and the Union
3. Partnership with the Company
4. Separate Entity

DIVISION OF THE COMPANY

1. LJC operates as an arm of the Company
2. Expenses are paid by the Company
3. Coordinator, other members of the Committee, and other employees are generally all employees of the Company
4. Insurance is obtained and provided by the Company

BEST PRACTICES WHEN OPERATING AS DIVISION OF THE COMPANY

1. Use Company's Taxpayer Identification Number whenever necessary
2. Sign on behalf of Company if ever possible
3. Petty Cash or Prepaid Credit Cards – Spending through either Petty Cash or Prepaid Cards requires established limits and tracking with receipts. Use of these methods should be justified and regulated through the annual plan and reported process. Prepaid Cards solve some problems by enabling the user to make online purchases or guarantee hotel rooms and **do not require a Tax ID#**
4. Establish accounts with local vendors – These accounts generally enable the LJC to purchase supplies without a Tax ID#. Vendors using these accounts typically work with company accounting and send direct bills. It may be easier to set up this type of account with current company providers because of the established relationship.
5. Instructors – Sometimes the instructor is the one who purchases supplies. In some cases, the educational provider has agreements with its vendors which allow for additional access or discount.

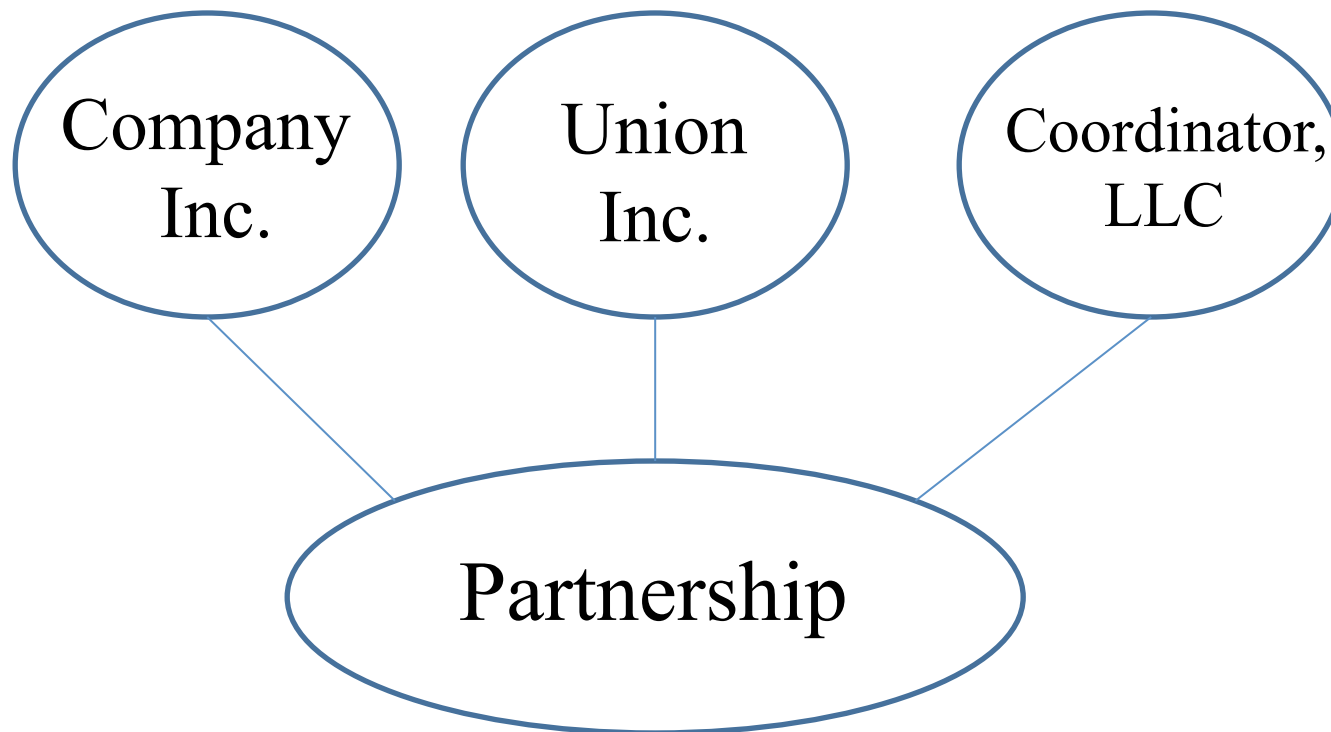
JOINT VENTURE vs. PARTNERSHIP

Joint Venture – legal entity in the nature of a partnership engaged in the joint prosecution of a particular transaction for mutual profit.

Partnership – an association of two or more persons to carry on as co-owners of a business for profit.

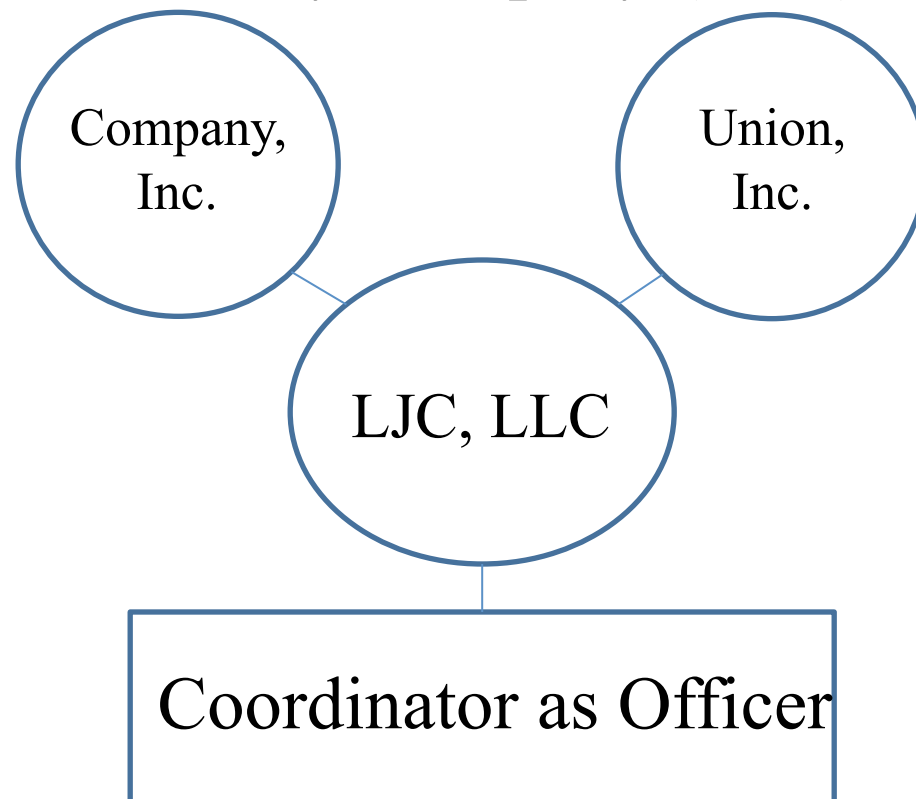
Warning: Both Joint Venture and Partnership have unlimited liability, meaning all of the partners' assets are at risk for the business venture

LIMITED LIABILITY TO PARTNERS

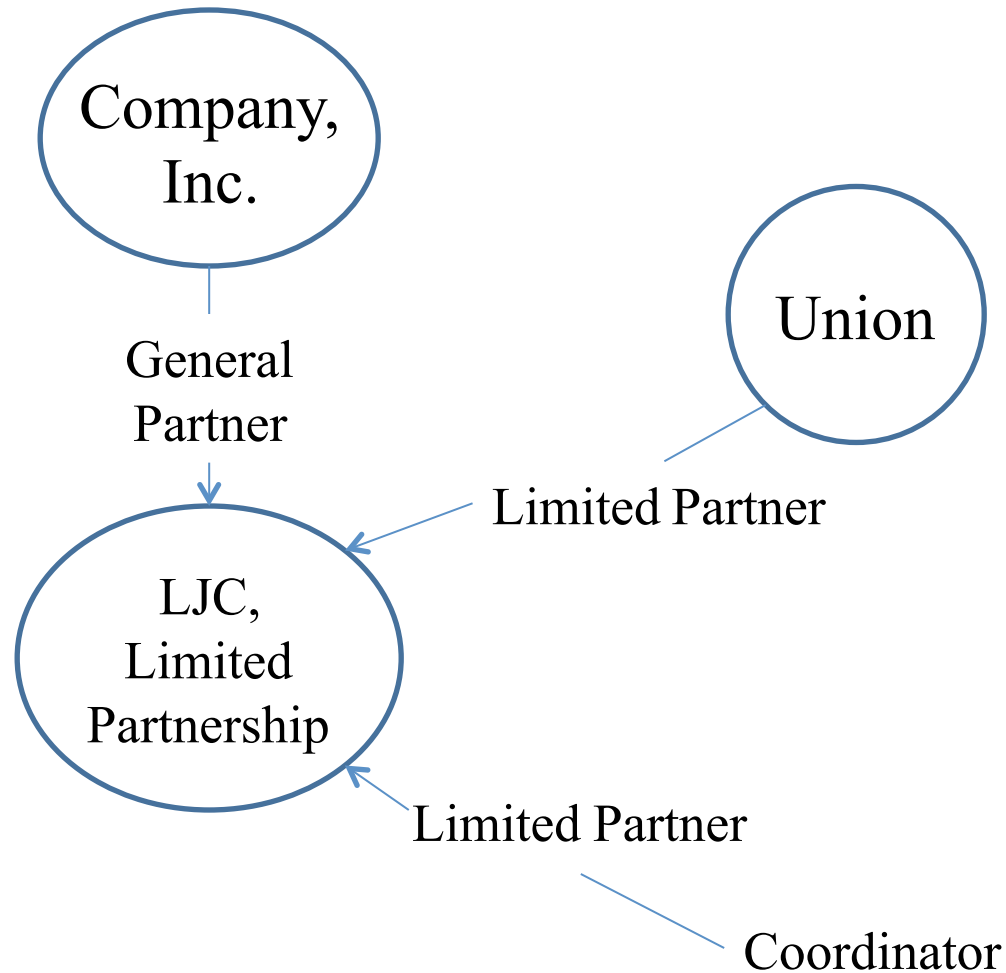


LIMITED LIABILITY TO PARTNERSHIP

1. Corporation
2. Limited Liability Company (LLC)



LIMITED LIABILITY PARTNERSHIP



LIMITED LIABILITY

- Partnerships and sole proprietorships put all of the owner's assets at risk for the business venture
- Limited partnerships subject the general partner to liability but not the limited partners
 - Generally results in general partner being corporation or LLC
- Corporate and LLC structures limit an owner's liability to the amount of capital contributed to the entity
- If the owner fails to follow statutory formalities or fails to keep the business activities separate from his personal activities the "corporate veil" may be pierced

ENTITY FORMALITIES

Corporations

- State Registration
- Minutes of Annual Meetings
- Bylaws
- Annual Financial Statements
- Record of Shareholders
- Record of Directors and Officers
- Stock Rights
- Annual or Bi-Annual Filing Fees

Limited Partnerships

- State Registration
- Partnership Agreement
- Copies of Tax Returns
- Record of Partners
- Ownership Certificates
- Record of Capital Contributions

Limited Liability Company

- State Registration
- Copies of Tax Returns
- Record of Members
- Record of Capital Contributions
- Annual or Bi-Annual Filing Fees

STATE LAW SPECIFIC

- State Law Generally Controls Entity Formation
- There are currently ICD programs being operated in at least 24 states:

Alabama

Arkansas

California

Connecticut

Illinois

Indiana

Iowa

Kansas

Kentucky

Louisiana

Massachusetts

Michigan

Minnesota

Nebraska

New York

North Carolina

Ohio

Oregon

Pennsylvania

Tennessee

Virginia

Washington

West Virginia

Wisconsin

CHOICE OF ENTITY

Principal Variables To Consider

- Limited Liability
- Taxation of Income
- Restrictions on Owners
- Economic Allocation
- Governance
- Transferability of Interests
- Continuity of Life
- Other

GOVERNANCE

Limited Partnership

- Highly Structured
- General Partner Must Manage
- Failure to Adhere to Structure May Expose Assets Of Limited Partners
- Creative Structures Permit Limited Partners to “vote” General Partner

Corporation

- Highly Structured
- Shareholder(s)/Director(s)/Officer(s)
- Failure to Adhere to Structure May Expose Assets of Shareholder(s)

LLC

- Extremely Flexible
- Member(s)/Manager(s)/Co-Manager(s)/Board of Director(s)/Officer(s)
- Management Structure Directed Within Articles of Organization

CORPORATION TAXATION OF INCOME

C-Corporation

- Recognized as separate taxable entity
- May result in “double taxation”
- Marginal tax rates may be favorable

S-Corporation

- Pass Through Entity
- Avoids “double taxation”
- Income not subject to self employment tax
- Requires payment of “reasonable wage” to managing shareholders

NON-PROFIT ORGANIZATIONS

- Corporations can seek Not-For-Profit Status
- Requires Filing Form 1023 or Form 1023-EZ
- Standard Form 1023 Requires IRS Estimated Number of Hours to Complete - 105 hours
- IRC 501(c)(3) – Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes..., no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation..., and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.
- Permits Filing For Grants and Charitable Donations

LIMITED PARTNERSHIP TAXATION OF INCOME

Limited Partnership

- Pass Through Entity
- Avoids “double taxation”
- Income to Limited Partners is not subject to self employment tax
- Income to General Partner(s) is subject to self employment tax

TAXATION OF INCOME

LLC

- Taxed pursuant to the IRS “Check-the-Box Regulations (Form 8832)
- Single member LLC may be taxed as a C-corporation; S-corporation; or sole proprietorship
- Dual member LLC may be taxed as a C-corporation; S-corporation; or partnership
- Default Rule – if no Form 8832 filed:
 - Single Member LLC – sole proprietorship
 - Dual Member LLC – partnership
- Form 8832 must be filed within 2.5 months of effective date
- Sole proprietorships and partnerships are subject to self employment tax
- LLC tax classification changes between sole proprietorship and partnership as number of members change

TAXATION OF INCOME

LLC Federal Filings

- Single Member Taxed as Sole Proprietorship Filing Schedule C Using Owner's Social Security Number:
 - (a) None
- Single Member LLC Taxed as Sole Proprietorship Filing Schedule C Using Separate EIN:
 - (a) Form SS-4 – “disregarded entity”
- Dual Member LLC Taxed as Partnership Requires EIN:
 - (a) Form SS-4 – “partnership”
- Dual or Single Member LLC Taxed as C-Corporation Requires EIN:
 - (a) Form SS-4 - “corporation”
 - (b) Form 8832 – “corporation”
- Dual or Single Member LLC Taxed as S-Corporation Requires EIN:
 - (a) Form SS-4 – “corporation”
 - (b) Form 8832 – “corporation”
 - (c) Form 2553 – “Sub-S election”

TRANSFERABILITY OF INTERESTS

Limited Partnership – Transfer of Interest Requires Consent of All Partners, Unless Agreement Provides Otherwise - I.C. §23-16-4-1

Corporation – Transfer of Shares of Stock is Permitted -I.C. §23-1-26-5

- Securities Laws May Apply
- Shareholder Agreements Valid (§I.C. 23-1-26-8)
- “Buy-Sell” Agreements Needed

LLC – Transfer of Interest Requires Consent of all Members, Unless Agreement Provides Otherwise -I.C. §23-4-1-18

- “Buy-Sell” Agreements Often Part of Operating Agreements to Avoid Dissolution – I.C. §23-18-9-1

CONTINUITY OF LIFE

- Corporations are perpetual – I.C. §23-1-22-2
- Partnerships and LLC's are for an agreed term unless some agreement or articles of organization provide otherwise – I.C. §23-4-1-23

COMMON QUESTIONS:

- **How should an individual sign a contract for the LJC?** When signing contracts, the representative should sign in the following way:

Sign: Your Organization
Your Name
Your Position

Signing this way attempts to bind the LJC rather than the individual.

- **Are there tax responsibilities incurred by the LJC operating as a separate entity?** Yes. When the LJC operates as an arm of the company, company accounting takes care of these responsibilities. As a separate entity, the LJC takes on those responsibilities. In that case specific tax responsibilities would vary by state and situation and would best be examined by an accountant hired by the LJC.
- **What is the exposure of the LJC to liability?** There is no history of law suits involving the LJC in the program although there have been injuries. In any type of accident litigation, an individual may be encouraged by an attorney to name a wide variety of parties in the suit which may include the LJC, Coordinator, ICD, company, union, instructors, building owners, equipment manufacturer, etc.

COMMON QUESTIONS, cont.

- **What insurance against liability is available?** The LJC can purchase liability insurance and protect its members from litigation resulting from injuries. Liability insurance for the Learning Center building will cover any and all activity that happens there and will also cover the LJC, its members, the company, the union, and the Coordinator. An insurance agent would have more information on this issue.
- **Can an LJC purchase insurance without a Tax ID#?** Yes. Insurance can be purchased without a Tax ID#. Although the insurance company may ask for a Tax ID#, it is not required.
- **What is the advantage of becoming a 501(c)(3)?** To become a 501(c)(3), an entity must incorporate. While this non-profit status does make the LCJ eligible to apply for grants and collect donations, it comes with all the other advantages and complication of incorporation previously discussed.
 - One of the arms of ICD in Merrillville is the ICD Educational Fund. This 501(c)(3) charitable corporation is eligible to receive tax deductible donations and grants. In most instances and depending on the requirements of the particular grant, ICD can act as Fiscal Agent for grants obtained by an LJC.