
Understanding with Whom You Are Doing Business

No business can manage every aspect of operation on its own. This is especially true of hotels and other hospitality service providers who must utilize many vendors and contractors in order to accommodate their clients' needs and meet their own daily business requirements. Undoubtedly, the hospitality service provider knows the nature and details of the deal with the contractor. However, far too often, the type of organization with whom they are dealing is ignored. Unfortunately, this oversight has the potential to result in negative consequences for the hospitality service provider.

In most instances, transactions are completed as agreed upon and thus, the form of organization is irrelevant. However, when things do not go so smoothly, the type of organization you are in contract with may be even more important than the actual terms of the contract. The primary reason for this? Imposing liability! In other words, who is held responsible for any failures, breach of contract issues, or mishaps as a result of the business relationship very well may change with the type of organization involved.

Let's look at an example: A midsize hotel is retained to host a very large wedding. As a result, the hotel needs the following items: 15 arrangements of water lilies floating in vases filled with gold fish, 100 pounds of salmon, crab legs, shrimp and oysters, and 10 pounds black Beluga caviar. (*Clearly this is a seafood-loving affair!*) The big day arrives. However, instead of 15 flower arrangements, 12 are delivered. While the catering manager is ranting at the flower store, the catering assistant figures out how to make due. The day is saved and goes off without a hitch. Until the next morning when you, the General Manager, are awakened by an irate father of the bride who claims that all guests who ate the caviar are suffering the wrath of food poisoning. So, who will be held responsible for the flowers and bad caviar?

The answer depends not only on the contract terms, but also on the type of business of the florist and the seafood dealer. If the seafood dealer is a sole proprietorship, the liability may fall directly on its owners. Thus, if they own a home, have little to no other personal assets, and have a moderate income, receiving a favorable judgment may be easy, but getting the money may prove next to impossible. Thus the importance of knowing, in advance, the type of organization you select as a vendor may be as important as the terms of the contract. It may very well effect your bottom line, not to mention spare you from many headaches and undue frustration.

This article is designed to be a primer for the hospitality professional to understand the different types of organizations with whom they may contract.

Types of Business Organizations:

Sole Proprietorship

Sole proprietorships are the most popular form of organization and account for a large majority of businesses. Most are small, employing only the founder and a few others. However, the impact of a sole proprietorship should not be underestimated. There are many whose revenues run into millions of dollars.

The primary advantage of a sole proprietorship is freedom of decision. Stated simply, the sole proprietor is his or her own boss. Only the sole proprietor reaps the rewards of success or faces the consequences of failure.

The disadvantage of a sole proprietorship is unlimited liability. It is not its own being recognized by law and thus any liability, monetary or otherwise, falls directly upon the owners. What they have in their personal "pocket" is all you will be able to recover, the only caveat being any insurance they may hold for certain risk liability. The sole proprietor is responsible for paying all expenses and covering all losses. Lack of continuity is an additional drawback, that is, the life of a sole proprietorship is no longer than the life of the owner.

General Partnership

A partnership is generally known as two or more persons who conduct business as co-owners for profit. All states have laws governing the organization and control of general partnerships. Many of these laws have been codified so they are relatively uniform in most of the 50 states.

Similar to sole proprietorships, partnerships are generally simple to organize with few legal requirements.

An agreement generally defines the terms of the partnership. If no specific agreement is entered into, then applicable state partnership laws will apply. At a minimum, any partnership agreement should include:

- 1) who invests what sums and the relative interests;
- 2) who serves what function(s) and who reports to whom;
- 3) what happens if the partnership ceases to exist or the parties no longer want to continue in business; and
- 4) what the partners can do to protect themselves upon the death of one or more partners.

One advantage of a general partnership is that it generally draws on a larger pool of talent than sole proprietorships. Partnerships can be small or large in number. In fact, until the recent introduction of limited liability companies, many of the largest accounting companies in the world were general partnerships, which consisted of hundreds of partners. Also, federal and state tax laws are such that partnerships may be advantageous.

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