

Practical Business Considerations for Artists

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It can sometimes be difficult for artists to focus on the business aspect of their profession. Creating art is their passion, and the business end of it can seem unimportant, or even overwhelming. It is important for every professional artist to understand the business aspects of creating art, as it can make all the difference in sustaining and moving forward any artist's career. This article addresses a critical business consideration for any artist—whether to operate as an individual (a “sole proprietor”) or through a business entity, and if the latter, which business entity is best.

Sole Proprietorship

A sole proprietorship is the simplest and least expensive business structure for a sole business owner. In essence, the artist himself or herself is the business. However, sole proprietors are liable for any legal or financial problems that occur. So, unless the artist has professional liability insurance, there is no protection from any potential liabilities. Business and personal assets are at risk to potential creditors.

In this scenario, self-employment taxes and estimated quarterly taxes will likely need to be paid. All of the tax items associated with the business are reported on a Schedule C to the artist's personal income tax return.

Limited Liability Companies

As an alternative to operating an art business as a sole proprietor, the artist can choose to operate through a business entity. In general, the legal rules for LLCs are simpler than other business entities, yet they provide protection for personal assets and property in the event of a lawsuit, debt, or financial problem. This personal liability protection is the biggest benefit of an LLC. The LLC is also simpler than other business entities from a tax perspective—like a sole proprietor, the LLC's tax items are reported on the artist's individual income tax return as long as the artist is the LLC's sole owner (and the artist has not chosen to treat the LLC as a corporation for tax purposes).

Registering as an LLC can provide some legitimacy and professionalism to an artist's business, and may cause collectors, gallerists, and clients to take the artist and their business more insofar as it telegraphs a greater level of commercial sophistication to potential business partners.

Registering also protects an artist's business name, so that no one else can sell art under that name. An artist can also register a trademark to protect their brand from copycats.

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As mentioned previously, a prime benefit of an LLC is that it separates business assets from personal assets, and there is a clearer delineation between personal and business expenses for tax purposes. A separate business bank account should be set up and then all of the expenses related to the business are paid through that account. The artist should always be sure that the LLC has sufficient cash to maintain its obligations.

Corporations

An alternative to an LLC is a corporation. An artist may operate a business as a corporation in two ways: as a state law corporation, the legal requirements for which are more formalistic than LLCs, or as an LLC that elects to be treated as a corporation for income tax purposes. For income tax purposes, a corporation can be either a "C" corporation or an "S" corporation. Both the C corporation and its shareholders are taxable on the corporation's income, while in an S corporation only the shareholders pay tax on the corporation's income. Both forms of corporations must file their own income tax returns at tax time. That said, one advantage of a corporation is that the artist can be treated as an employee, which has some tax advantages. Although everyone's situation is different, the simplest and most straightforward path is to forgo operating as a corporation. On the other hand, if a corporation is desirable, electing to be treated as an S corporation is frequently the better approach.

We can help!

It is important to have professional legal counsel before making any legal decision related to your business. At Flaster Greenberg, our corporate attorneys can help you choose and set up the business entity that is right for you and your business.

ATTORNEYS MENTIONED

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