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Starting A Private Law Firm In Georgia

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Guide Index

[Introduction](#)

[Bar Admission](#)

[Business Organization](#)

[Financial Information](#)

[Money Laundering](#)

[Leasing Information](#)

[Low Cost Research Resources](#)

Introduction

Scope

The purpose of this guide is to provide the basic information about setting up a private law practice in the State of Georgia. While certain federal considerations are noted here, most of the relevant law and rules concern Georgia exclusively.

About the Author

The author of this website is David. Mr. Sistrunk is a third year law student at Georgia State University. After working in the corporate world for over 16 years, Mr. Sistrunk desires nothing more than to be his own boss and serve the legal community through private practice. If you have any questions, comments, or concerns please feel free to email the author.

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[Back to Top](#)

Bar Admission

Georgia Bar

In order to practice law in the state of Georgia you must be licensed to do so by Georgia Bar. Failure to obtain a license is a violation of [O.C.G.A. § 15-19-51](#). The Office of Bar Admissions is the administrative arm of the Supreme Court of Georgia responsible for the admission of attorneys to the practice of law in Georgia. All rules and regulations concerning bar admission can be found at their [website](#).

[Back to Top](#)

Business Organization

Partnership

A partnership is a business with more than one owner that has not filed papers with the state to become a corporation or LLC (limited liability company). There are two basic types of partnerships -- general partnerships and limited partnerships. The general partnership is the simplest and least expensive co-owned business structure to create and maintain. In a general partnership, each partner has a hand in operating the business and all partners are personally liable for all taxes and business debts. In a limited partnership, there are two different kinds of partners, general and limited. The general partner, who runs the business, has the personal liability for all debts, while the limited partners, who are basically passive investors, can lose no more than their stake in the partnership. All profits from the business are filed on each partners' personal income tax statement. As with a sole proprietorship, you still must comply with local registration, business license, or permit laws.

Limited Liability Partnership

A limited liability partnership, commonly called an "LLP," is a business structure that is similar to a LLC in that it provides exactly the same pass-through taxation of a partnership or sole proprietorship and the limited liability of a corporation without all the formality of a corporation. Typically, LLP's start out as partnerships that get converted to LLP's because partners want the benefits of corporate protection but do not want to reorganize their way of doing business in order to form a LLC. Like LLC's, partners in an LLP report business profits or losses on their personal income tax returns; the LLP itself is not a separate taxable entity. Like owners of a corporation, however, all LLP partners are protected from personal liability for business debts and claims. Creditors usually can't reach the personal assets of the LLP partners, such as a house or car. Like LLC's, LLP partners can lose this protection by acting illegally, unethically, or irresponsibly.

Like LLC's, a LLP must be registered with the Secretary of State of Georgia. Filing a LLP can not be done online but via [Form 246](#). Detailed instructions for filing can be found [here](#). Your LLC name must comply with [O.C.G.A. § 14-9-102](#). The rules for filing Certificates of Partnership are defined in [O.C.G.A. § 14-9-201](#).

Sole Proprietorship

A sole proprietorship is a one-person business that is not registered with the state as a corporation or a limited liability company (LLC). Sole proprietorships are so easy to set up and maintain that you may already own one without knowing it. For instance, if you are a freelance photographer or writer, a craftsman who takes jobs on a contract basis, a salesperson who receives only commissions, or an independent contractor who isn't on an employer's regular payroll, you are automatically a sole proprietor. However, even though a sole proprietorship is the simplest of business structures, you may have to comply with local registration, business license, or permit laws to make your business legitimate. The advantage of a sole proprietorship is all profits are taxed as personal income. The main disadvantage is you are personally responsible for paying both income taxes and business debts.

Business Licenses

Regardless of how your business is organized, you will need to obtain a business license from the city or county where you plan to do business. Your local [Chamber of Commerce](#) can assist you in finding the contact information for the business license division in your area.

Business Taxes

As previously noted, each business structure has its own unique tax implications. More information can be obtained by visiting the relevant [Georgia Department of Revenue](#) and the [Internal Revenue Service](#) websites.

Employment Considerations

Private Contractors

Who is an Independent Contractor? A general rule is that you, the payer, have the right to control or direct only the result of the work done by an independent contractor, and not the means and methods of accomplishing the result. Generally speaking, a private contractor is not entitled to the same benefits as an employee. Example: Vera Elm, an electrician, submitted a job estimate to a housing complex for electrical work at \$16 per hour for 400 hours. She is to receive \$1,280 every 2 weeks for the next 10 weeks. This is not considered payment by the hour. Even if she works more or less than 400 hours to complete the work, Vera Elm will receive \$6,400. She also performs additional electrical installations under contracts with other companies that she obtained through advertisements. Vera is an independent contractor. You may be required to file information returns to report certain types of payments made to independent contractors during the year. For example, you must file Form 1099-MISC, Miscellaneous Income, to report payments of \$600 or more to persons not treated as employees (e.g. independent contractors) for services performed for your trade or business.

Employees

A general rule is that anyone who performs services for you is your employee if you can control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed. Employees are protected by several federal and Georgia laws, such as COBRA, Child Labor Laws, and Discrimination Laws. A good website for employers in Georgia is [What Employers Need to Know](#) provided by the Secretary of State of Georgia. Federal taxation guidelines for employees can be found [here](#).

Corporation

Forming a corporation requires more work and organization but limits the personal liability of the owners. The main disadvantage of a corporation is double taxation, as the corporation must pay taxes on its income and the owners (shareholders) must pay taxes on dividends paid to them by the corporation. Your corporation must be registered with the Secretary of State of Georgia. Filing an article of incorporation in Georgia can be done [online](#). First, the State of Georgia will require a Corporate Name that complies with

[O.C.G.A. § 14-2-401](#). Corporate names can be reserved ahead of time [here](#). Second, articles of incorporation must comply with [O.C.G.A. § 14-2-202](#). This section will require you to name officers, declare the number of shares, and register an address with the state.

Limited Liability Corporation

A limited liability company, commonly called an "LLC," is a business structure that combines the pass-through taxation of a partnership or sole proprietorship with the limited liability of a corporation. Like owners of partnerships or sole proprietorships, LLC owners report business profits or losses on their personal income tax returns; the LLC itself is not a separate taxable entity. Like owners of a corporation, however, all LLC owners are protected from personal liability for business debts and claims -- a feature known as "limited liability." This means that if the business owes money or faces a lawsuit for some other reason; only the assets of the business itself are at risk. Creditors usually can't reach the personal assets of the LLC owners, such as a house or car. (Both LLC owners and corporate shareholders can lose this protection by acting illegally, unethically, or irresponsibly.) Like corporations, a LLC must be registered with the Secretary of State of Georgia. Filing a LLC in Georgia can be done [online](#). Your LLC name must comply with [O.C.G.A. § 14-11-207](#). Corporate names can be reserved ahead of time [here](#). Rules for the articles of incorporation are outlined in [O.C.G.A. § 14-11-204](#). The articles of organization for an LLC are much simpler than those of a corporation, requiring merely the name of the company.

[Back to Top](#)

Financial Information

Trusts

Every lawyer who practices in Georgia is required to maintain a trust account in order to keep the firms finances isolated from client funds. This is per [GEORGIA RULES OF PROFESSIONAL CONDUCT RULE 1.15\(II\)\(a\)](#) which states "Every lawyer who practices law in Georgia, whether said lawyer practices as a sole practitioner, or as a member of a firm, association, or professional corporation, and who receives money or property on behalf of a client or in any other fiduciary capacity, shall maintain or have available a trust account as required by these Rules. All funds held by a lawyer for a client and all funds held by a lawyer in any other fiduciary capacity shall be deposited in and administered from such account."

Interest Bearing Accounts

Per [GEORGIA RULES OF PROFESSION CONDUCT RULE 1.15\(II\)\(c\)](#), all client's funds shall be placed in either an interest-bearing account with the interest being paid to the client or an interest-bearing (IOLTA) account with the interest being paid to the Georgia Bar Foundation as hereinafter provided. Accrued interest on funds that are not nominal or not held for a short amount of time must be paid back to the client. Funds that are nominal or held for a short time can be placed in an IOLTA account. Under no circumstances may interest be paid to the attorney or his firm.

IRS Form 8300

If you receive more than \$10,000 in cash you are required to file a [Form 8300](#) with the IRS. Cash includes the currency and coins of the United States and any other country. Cash is also certain monetary instruments - a cashier's check, bank draft, traveler's check, or money order. Personal checks are not considered cash. [A more detailed explanation is provided in a FAQ provided by the Internal Revenue Service.](#)

IOLTA

Interest on Lawyer Trust Accounts is a way to provide a cost free way to do public good. IOLTA programs provide funding critical to maintaining and improving access to the justice system in communities across the United States. IOLTA dollars go to support civil legal assistance for poor people, efforts to improve the administration of justice by our courts, initiatives to educate the public about legal issues, and scholarships and clinical instruction for law students. [Here is a list of IOLTA approved banks for Georgia.](#)

[Back to Top](#)

Money Laundering

MONEY LAUNDERING

In 1986, Congress passed two separate money laundering statutes 18 U.S.C. § 1956 and 18 U.S.C § 1957. Attorneys who receive money from criminal or other illegal activity could possibly be prosecuted under these statutes. In short, the elements of 18 U.S.C § 1956 are: (1) the defendant must engage in a monetary transaction;(2) with more than \$ 10,000 in tainted funds; (3) knowing that the funds are derived from some type of criminal activity; and (4) in fact, the funds are derived from specified unlawful activity.

The elements of 18 U.S.C. § 1957 are more complicate but are as follows: (1) the defendant must engage in a financial transaction;(2) with money or property derived from specified unlawful activity;(3) knowing that the funds are derived from some sort of felonious criminal activity; either:(4) for the purpose of:(a) promoting, or carrying on, specified unlawful activity; or (b) engaging in conduct constituting a violation of 26 U.S.C. § 7201 (tax evasion); or § 7206 (filing a false tax return);or:(4) knowing the transaction was designed:(a) to conceal the nature, location, source, ownership, or control of the proceeds; or(b) to avoid a currency transaction reporting requirement. A more detailed explanation

can be found in the [Eleventh Circuit Criminal Handbook § 65](#).

[Back to Top](#)

Leasing Information

Types of Leases

As you head out on your own, you may need to lease commercial space in order to do business. Leases for rental properties come in three basic forms. As you head out on your own, you may need to lease commercial space in order to do business. Leases for rental properties come in three basic forms.

Gross lease: In a gross lease, the landlord pays for almost all of the operating expenses of the property.

Modified gross lease: Some of the expenses of owning and operating the building are passed through directly to the tenants. Examples of modified gross leases include leases where the landlord pays all operating expenses except for certain items such as utilities, parking, or janitorial expenses.

Net lease: These provide for the tenant to pay for the majority of the costs of operating the building, including property taxes, insurance, and maintenance costs. Those leases in which the tenant pays virtually all costs associated with operating the building are called triple net leases.

The leases for a commercial property can be gross leases, modified gross leases, or net leases, but residential properties are almost always leased on a gross basis, except utilities.

Common Area Maintenance Charges (CAM)

Costs in multi-tenant commercial buildings that are passed on to the tenant are called *common area maintenance charges* or *CAM charges*. CAM charges are paid proportionately by each tenant for the upkeep of areas designated for the use and benefit of all tenants, and include items such as parking lot maintenance, security, snow removal, and common area utilities. Some tenants negotiate that they won't have CAM charges. But, for those tenants whose rent includes CAM, they're handled pursuant to the lease in a variety of ways and can be due in advance or paid in arrears. For accounting purposes, CAM charges are typically reflected in the cash flow as "CAM reimbursement." Although they're indicated as an income item, they're essentially offsetting the corresponding expense items included in the operating expenses for the property.

As the potential purchaser or leaser of a commercial property, carefully evaluate the leases and determine what operating expenses, if any, are paid by the tenants. You need to understand whether the property is using gross or net leases. Otherwise, you may be deceived regarding the cash flow or expenses associated with the property.

[Back to Top](#)

Low Cost Research Resources

Resources

Because controlling expenses is even more important in a small beginning law firm, here are some of the lower cost legal research sources that I've found useful.

[Lexis One](#) - A scaled down version of lexisnexis. Aimed at smaller firms.

[MyFindLaw](#) - Good source of legal news and topics, some federal dockets, SEC information.

[The Virtual Chase](#) - Useful for finding information regarding researching personal information, criminal records, etc.

[Law.com](#) - News and industry information.

[Loislaw.com](#) - Reference site for cases, statutes, rules and regulations.

[Back to Top](#)

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