

STRUCTURAL BUILDING COMPONENTS MAGAZINE

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Our Legal Reality



Getting Paid—Understanding Types of Entities/Business Structures by Kent J. Pagel

It is essential for component manufacturers to improve their understanding of the different types of entities and business structures. It is also essential to obtain written contracts and properly secure signatures in the manner required to make that entity or business structure legally responsible under the contract. The primary reason that this is important is to ensure that you get paid.

Let's try an example. Stick-It Homes has been your customer for years. They operate under two names and entities: Stick-It Homes Company, and Stick-It Homes, L.P.

Stick-It Homes Company, a corporation, becomes insolvent, leaving many suppliers unpaid and mechanics and materialmen liens filed against its inventory of unsold homes. The primary investor for Stick-It Homes Company has himself filed for bankruptcy and the company's capital is essentially gone. On the other hand, Stick-It Homes, L.P., a limited partnership, has many well-to-do investors and operates through a general partner, Safeco, L.L.C., a limited liability company with a strong operating history and favorable trade references. If you have contracted with Stick-It Homes Company, you are left with little to collect, whereas a contract with Stick-It Homes, L.P. leaves you a lot to collect. A contract with "Stick-It Homes" by itself leaves it unclear as to whether you have contracted with the entity that has little or the one that has a lot.

Remember, a customer of the component manufacturer may be any type of legal entity, from an individual to a corporation to a trust organized under state law to transact business. And, depending on the type of business structure, the manner in which a customer contract should be executed is different. Below, I have discussed those types of business structures that component manufacturers are likely to encounter.

Individuals are responsible for all debts that they, as individuals, accumulate. An individual need only sign his/her name.

Sole Ownership (Sole Proprietorship) is a business that is owned by a single person and is not a partnership or a corporation. Commonly, an individual will file an assumed name certificate, using a d/b/a (doing business as) which reflects the name in which he/she is conducting business. An owner may sign a contract as shown below:

John Jones d/b/a: Forget About It Construction

By: _____

John Jones, Owner

Partnerships are of two types.

- **General Partnerships**

- Each general partner shares in the profits, losses, assets and liabilities with all other general partners. There is no limit to the number of general partners.
- All general partners are responsible for all debts of the partnership. A creditor may look to any or all general partners' personal assets to pay a debt if the partnership's assets are insufficient.
- Any general partner has the right to manage the business and enter into contractual arrangements to the extent that a sole owner would, including debt obligations.
- Signature Requirements are shown in the format below:

Forget About It Construction, a General Partnership

By: _____

John Jones, General Partner

- **Limited Partnerships**

- One or more general partners and one or more limited partners form such a partnership. Limited partners invest a certain amount of capital and their liability is limited to that amount.
- General partners control the operations of the limited partnership and have the same type of general liability to creditors as in a general partnership. Oftentimes, the general partner will be either a corporation or limited liability company.
- General partners may obligate the limited partnership in their role of managing the business. Limited partners may not.
- A limited partnership is called an "L.P." or "Ltd."
- Signature Requirements are shown in the format below:

Forget About It Construction, Ltd.

By: Forget About It, L.L.C., Its General Partner

By: _____

John Jones, Manager

Corporations are legal entities organized by a group of persons. Stockholders or shareholders own the corporation. The business is run through its officers and board of directors.

- Stockholders participate in electing members to the board of directors but, as stockholders, do not direct business activities and have no authority to obligate the company. A stockholder is not liable for the debts of the corporation.
- Officers of the corporation who manage the business are authorized to act on its behalf through the corporation's bylaws and at the direction of the board of directors.
- The corporation's name will be followed by either "Inc.," "Incorporated," or possibly "Co." or "Company."

- With regard to signature requirements, signatures of the president, vice president, treasurer or secretary are preferable. Depending usually on the size of the corporation, a general manager, project superintendent or project manager may also be authorized to sign contracts. The following format should be used:

Forget About It Construction, Inc.

By: _____
John Jones, Exec. Vice President

Limited Liability Companies resemble in some respects a partnership and in other respects a corporation. A limited liability company is denoted as either an "L.C." or an "L.L.C." Members own the limited liability company. The business is operated through managers (similar to the director in a corporation) and officers.

- Officers of the limited liability company who manage the business are authorized to act on its behalf at the direction of managers.
- Following the practice utilized for a corporation, the following format should be used:

Forget About It Construction, L.C.

By: _____
John Jones, Manager

Based on what we have learned, let's take our example from above one step further. Remember that Stick-It Homes Company has little but Stick-It Homes, L.P., with its strong general partner, Safeco, L.L.C., has a lot.

Let's assume you have been contracting only with Stick-It Homes (which makes it unclear whether you have contracted with the financially strong limited partnership or the financially weak corporation) and you decide that, instead of doing it the way you have always done it, now you want to do it right and establish good credit. Let's further assume that Stick-It Homes, L.P. has decided to abandon all affiliations with its past, and its owners and general partner form a new entity, StrongCo., L.P., which also has as its general partner, Safeco, L.L.C.

Even though StrongCo., L.P. is newly formed and has no trade references, the fact that its general partner is Safeco, L.L.C. should ensure good credit. As learned, the general partner of a limited partnership is obligated for the debts for such limited partnership.

Do not assume anything in the context of contracting. Builders have become quite sophisticated at structuring their businesses, sometimes with many layers, so find out as much as you can about each layer and determine exactly who you are contracting with, and who can actually sign contracts with you. Much of this is done in good faith and for legitimate business, financing or tax reasons. On the other hand, many others are not so well intentioned. And even those with good intentions now, in the face of many creditor calls, may still result in the component manufacturer not getting paid later.

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