

How to Run the Elective or Appointed Office of Constable Like a Small Business

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In 1991, the Pennsylvania Supreme Court found that constables are private contractors. This ruling requires constables to approach the job like a business in order to fulfill legal and managerial requirements, hold down costs, and increase profitability. Starting and managing a business takes motivation, desire, talent, research, and planning. This handout provides ideas on increasing your efficiency and awareness of potential pitfalls.

Small business success is like a chess game: it starts with opening moves that are decisive and correct. Initial mistakes are common and not fatal. To establish and maintain an advantage requires skill, discipline, and hard work. To increase your chance of success, take the time up front to explore and evaluate your business and personal goals; this information will be used to build a comprehensive and well-thought-out business plan—a valuable tool that provides milestones to gauge your success. When structuring your business, consult with both an accountant and an attorney to determine the most suitable form of ownership. NOTE: This handout should not be treated as a substitute for such professional guidance.

Factors to Consider in Structuring Your Business

1. Legal Restrictions
2. Liabilities Assumed
3. Tax Advantages or Disadvantages
4. Length of Business Operation

Required Insurance

1. Professional Liability Insurance (average cost is \$400 to \$800/year)
2. Automobile Insurance (if use of a vehicle)

Finding the Most Affordable Liability Insurance



Shop for liability insurance coverage every year or at the end of the policy expiration date. Begin shopping for liability insurance coverage 60 days before your insurance policy is due. Find insurance agents through constable associations across the state (these negotiate the best rates for constables). Do not use the yellow pages. Get quotes from three to four carriers. Create a short outline of your basic coverage and requests for identical coverage. (Compare apples to apples.) In order to maintain a strong negotiating position, give an agent a copy of your policy but don't reveal your current premium or other quotes. However, to increase competition for your business, tell an agent that you are seeking bids.

Methods of Accounting

The accounting method should be determined before starting your business. The cash method recognizes income when you receive the cash and recognizes expenses when you receive the bill. Check expenses! The accrual method matches revenue with expenses, regardless of when the cash is actually collected (if at all). *Example:* The fee charged for a levy is recorded on the day of the levy, even if the county doesn't pay for 30 days, when the account (invoice to the county) is paid, the "accounts receivable" account is turned into cash. Most service businesses operate on the cash basis method because it is simpler to understand and account for. If a constable sold products and had to deal with inventory, then the IRS generally requires the accrual method.

Selecting an Accountant

Consult an accountant before starting your business. A certified public accountant (CPA) follows national certification standards and may be a sole practitioner or in a larger accounting firm. The advantage is more diverse expertise; the disadvantage is higher fees. An enrolled agent (EA) has passed a taxation test administered by the IRS and follows national certification standards. The services of a bookkeeper may be bill paying, receipt processing, or summarizing bookkeeping activity for tax return preparation; there are NO national certification standards.

Equipment Deduction and Miscellaneous Deduction

The IRS allows a business owner to treat all or part of the costs of certain items as an expense rather than a capital expenditure. Because these regulations continually change and tax benefits vary greatly among businesses, always consult a qualified tax advisor about the best method for you. The IRS also allows a home office tax deduction; your accountant or tax attorney will advise as to your eligibility.

Bank Account Reconciliation

Set up separate business accounts to more easily track constable expenses and related income.

Bank statement reconciliation should be completed once a month (when you receive your bank statement)—ask an accountant if you don't know how. Bank reconciliation is the process of taking the balance in your checkbook and reconciling (or mathematically comparing) it to the bank balance on your monthly statement.

If your bank statement and checkbook do not balance, you may have (1) made a mathematical error (addition or subtraction) or (2) have not considered previously written checks that have not cleared. If checks have not cleared, your checkbook balance will be lower than the bank statement. Subtract these outstanding checks from the bank balance and compare the resulting figure to your checkbook balance. When the bank statement (including adjustments for checks that have not cleared) and checkbook match, then the account has been reconciled.

Getting Bonded

Pennsylvania constable bonds ensure that a constable is accountable for his/her business decisions. They protect against financial losses from poor financial decisions, damages, unethical decisions, or failure to follow state or local laws.

Pennsylvania Title 44, Subchapter B §7114 (c) states the following: "The bond given by a constable in a township shall be in a sum not less than \$500 nor more than \$3,000."

While Title 44 provides parameters for constables being bonded, each constable should defer to his/her own local rules on bonding to ensure that the constable is bonded for the appropriate amount.

Local insurers are able to assist you in getting bonded as a constable.

Necessary Equipment

Under the provisions of the Pennsylvania Unified Judicial System, the following equipment is required of each Pennsylvania constable:

- Identification that identifies him/her as a constable
- Clothing that clearly identifies him/her as a constable
- Handcuffs
- It is *optional* to carry a firearm. However, if a constable chooses to carry a firearm, he/she must be firearms certified and use a Level 2 (or higher) security holster



Constable vehicles used for transporting prisoners must adhere to the following:

- Comply with applicable law and regulations
- Comply with the Pennsylvania Motor Vehicle Code (Title 75)
- Be maintained in roadworthy condition to ensure the safety of its occupants and the public
- Include functioning window and child safety door locks
- Include a secure and permanent police-quality cage behind the driver's seat and in front of the back passenger seat to create separate and secure areas for the constable and the defendant(s)

Business Structures

Sole Proprietorship

- Used by the vast majority of small businesses when they start out and used by most constables
- Owns 100% of the liabilities and debts of the business
- Responsible for 100% of the liabilities and debts of the business
- Legally, you and the business are considered the same

Advantages

- **COST.** Easiest and least expensive form of ownership to organize
- **CONTROL.** Sole proprietors are in complete control; within the parameters of the law, they make decisions as they see fit
- **INCOME.** Receive all income generated by the business to keep or reinvest
- **PROFIT FLOW.** Flows directly to owner's personal tax return
- **DISSOLUTION.** Easy to dissolve, if desired

Disadvantages

- **LIABILITY.** Unlimited liability PLUS legal responsibility for all debts against the business. Business + personal assets at risk
- **RAISING FUNDS.** Often limited to personal savings or consumer loans
- **BENEFITS ARE NOT DIRECTLY DEDUCTIBLE FROM BUSINESS INCOME.** Only partially deductible as an adjustment to income. Example: Medical insurance

Income Taxes

Sole proprietors report business activity on a Schedule C, which is attached to your IRS form 1040. Sole proprietors pay income tax on business income as well as social security tax, which is reported as a separate item on the income tax return. Social security is roughly 15% of net income; it is paid in addition to income tax.

Partners or shareholders in a limited liability company (LLC) must pay self-employment tax. Estimated tax payments lessen the burn of your final tax bills as well as avoid penalties for not paying taxes during the year.

Partnership

- Ownership of a single business is shared by two or more people
- Legally, you, your partner(s) and the business are considered the same
- Constables should notify district justice of this structure

Legal Agreement

Problems occur without a defined process:

- How decisions will be made
- How profits will be shared
- How disputes will be resolved
- How future partners will be admitted to the partnership
- How partners can be bought out
- What steps will be taken for dissolution

Advantages

- **EASE.** Relatively easy to organize BUT invest time in partnership agreement
- **RAISING FUNDS.** Ability may increase
- **PROFIT FLOW.** Flows directly to partners' personal tax returns
- **GREATER SKILLS.** Especially if complementary skills

Disadvantages

- **LIABILITY.** Jointly and individually liable for actions of other partners
- **SHARED PROFITS.** Profits must be shared
- **SHARED DECISION-MAKING.** May cause disagreements
- **LIMITED LIFE.** May end upon withdrawal or death of a partner

Types

- A **general partnership** is one in which the partners divide responsibility for management and liability as well as the shares of profit or loss, according to their internal agreement
- A partnership with limited liability (or a **limited partnership**) limits partners' liability to the extent of their investment as well as limiting their input regarding management decisions
- A **joint venture** acts like a general partnership but is only a limited period of time or a single project

Forming a Limited Liability Company (LLC)

The Pennsylvania Department of State provides the following information regarding forming an LLC:

A Limited Liability Company (LLC) is a hybrid between a partnership and a corporation. It may be thought of as a limited partnership without a general partner. It provides the liability protection of a corporation with the advantage of being treated as a partnership. A Certificate of Organization is required to be filed with the Bureau of Corporations and Charitable Organizations, accompanied by a docketing statement.

- The limited liability name must be available for use
- An actual street or rural route box number must be used as an address. A P.O. Box alone is not acceptable. A Commercial Registered Office Provider's address is acceptable
- The name and address, including street and number, if any, of each organizer must be listed
- If the company is a restricted professional company organized to render restricted professional service(s) they are required to be indicated. Chiropractic, dentistry, law, medicine & surgery, optometry, osteopathic medicine and surgery, podiatric medicine, public accounting, psychology, veterinary medicine
- The application must be signed by all organizers listed, with their addresses

Pursuant to Section 8998(f) of the Limited Liability Company Law of 1994, 15 Pa. C.S., as amended by Act 34 of 2001 (effective August 21, 2001), any domestic or foreign registered restricted professional company in existence on December 31 of any year is required to file a Certificate of Annual Registration. This form and the corresponding annual registration fee must be filed on or before April 15.

Failure to file the Annual Registration will result in additional fees, penalties and interest. A Uniform Commercial Code lien will also be placed against the business until all fees have been satisfied.

Information can be found at:
www.dos.pa.gov/BusinessCharities/Business/Resources/Pages/Pennsylvania-Limited-Liability-Company.aspx#.VtSCcPrkKbg.

Partial List of Sole Proprietor Tax Forms:

1. Form 1040: Individual Income Tax Return
2. Schedule C: Profit or Loss from Business (or Schedule C-EZ)
3. Schedule SE: Self-Employment Tax
4. Form 1040-ES: Estimated Tax for Individuals
5. Form 4562: Depreciation and Amortization
6. Form 8829: Expenses for Business Use of Your Home

Partial List of Partnership Tax Forms:

1. Form 1065: Partnership Return of Income
2. Form 1065 K-1: Partner's Share of Income, Credit, Deductions
3. Form 4562: Depreciation
4. Form 1040: Individual Income Tax Return
5. Schedule E: Supplemental Income and Loss
6. Schedule SE: Self-Employment Tax Form 1040-ES: Estimated Tax for Individuals

Partial List of LLC Tax Forms

1. Form 1040: Individual Income Tax Return with Schedule, C, E, or F (filing as individual)
2. Form 8832: Entity Classification Election (filing as corporation)
3. Form 1120 or 1120S: U.S. Corporation Income Tax Return
4. Form 1065: U.S. Return of Partnership Income

Health Care Information Forms for Individuals

1. 1095-A: Health Insurance Marketplace Statement
2. 1095-B: Health Coverage
3. 1095-C: Employer-Provided Health Insurance Offer and Coverage



NOTE: Some of these forms may not apply; check with your accountant. Tax forms can be downloaded at: <http://www.irs.gov>.

In addition to federal tax obligations, you must also pay state and local taxes. These forms are obtained from each government entity.