Let's just start this off simple: if you're still running your landscape or lawn care business as a sole proprietorship or partnership, call an attorney immediately. Yes, it may cost you some money — up to several thousand dollars in some cases. But with the kind of business risks and legal liabilities business owners face every day, the cost of losing your business, your savings, your home and your livelihood will be much, much more expensive.

"I cannot imagine a scenario where still maintaining a private ownership as a sole proprietorship or partnership would give an advantage to a business owner any longer," says Greg Crosslin, president of the law firm Crosslin & Associates in Destin, FL. "With lawn care companies working with chemicals and landscapers using heavy equipment on their clients’ property, the daily routine involves litigation risk. It’s part of doing business, and you have to protect yourself from the risks."

That said, finding the right structure for your business isn’t quite so simple. You need to know both your immediate business goals and your long-term strategy. The type of corporate structure you choose affects the way your business deals with taxes, growth, acquisitions, lawsuits and retirement.

"You have to take everything into consideration: how many employees you have, your revenues, how long you’ve been in business, the assets you have or whether you will be selling
### CORPORATE STRUCTURES: IS IT TIME TO MAKE A MOVE?

<table>
<thead>
<tr>
<th>SOLE PROPRIETORSHIP</th>
<th>PARTNERSHIP</th>
<th>LLC (Limited Liability Company)</th>
<th>S CORP (Small Business Corporation)</th>
<th>C CORP (C-Corporation)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Formation</strong></td>
<td>By agreement of two or more partners. May require state state filing.</td>
<td>State filing required (articles of organization.)</td>
<td>State filing required (articles of incorporation.)</td>
<td>State filing required (articles of incorporation.)</td>
</tr>
<tr>
<td><strong>Duration</strong></td>
<td>Terminated if business ceases or upon owner's death.</td>
<td>Dissolves upon partner's death or withdrawal.</td>
<td>Perpetual, unless otherwise stated in articles of organization.</td>
<td>Perpetual.</td>
</tr>
<tr>
<td><strong>Ownership</strong></td>
<td>One owner.</td>
<td>Two or more partners.</td>
<td>Unlimited number; ownership divided as members see fit.</td>
<td>Unlimited number; only one class of stock allowed (no preferred.)</td>
</tr>
<tr>
<td><strong>Management</strong></td>
<td>100-percent controlled by owner.</td>
<td>Each partner has equal authority.</td>
<td>Member-managed or manager-managed.</td>
<td>Shareholders elect directors who manage the company's affairs; officers manage day-to-day business activities.</td>
</tr>
<tr>
<td><strong>Ease of operation</strong></td>
<td>Easiest; no state requirements.</td>
<td>Easy; few state requirements.</td>
<td>Easy; some states require annual report to be filed.</td>
<td>Formal recordkeeping, annual meetings and annual reports required.</td>
</tr>
<tr>
<td><strong>Taxes</strong></td>
<td>Pass-through taxation; subject to self-employment tax.</td>
<td>Pass-through taxation; subject to self-employment tax.</td>
<td>Entity is not taxed unless chosen to be; profits and losses are passed to members.</td>
<td>File IRS Form 2553 to be taxed as S Corp; profits and losses passed through to shareholders.</td>
</tr>
<tr>
<td><strong>Fundraising</strong></td>
<td>Owner provides all capital.</td>
<td>Partners provide capital.</td>
<td>Members contribute money or services to the LLC and receive an interest in profits and losses.</td>
<td>Corporate stock may be purchased; some shareholder limitations.</td>
</tr>
</tbody>
</table>

**SOURCES:** CHART BASED ON RESEARCH FROM THE COMPANY CORP., MYNEWVENTURE.COM AND OTHER BUSINESS SOURCES.

the business in the next five years," says Nancy W. Stabell, a lawyer with Waller, Lansden, Dortch & Davis in Nashville, TN.

What it comes down to is that you need the right business structure to get the most out of your money now, and to prepare for any changes in the future.

**Know your options**

To choose the right structure for your business, you must know all available options. Under any circumstances, you should consult with both an attorney and a certified public accountant (CPA) before making a decision.

A sole proprietorship is a business owned by one person. It is the easiest and least costly way of starting a business, giving the owner absolute authority over all business decisions.

A partnership is similar to the sole proprietorship, but with two or more owners. A partnership can be formed by oral agreement, though most companies have official agreements put together by an attorney, Crosslin says. These agreements stipulate the amount invested by each partner, duties, duration and sharing of assets/profits/losses, among other things.

Especially in the landscape market, some small or new companies may choose the sole proprietorship or partnership because of their simplicity and low cost of entry, Stabell explains. The main drawback is that the owner takes on the liability. If the business loses money or is sued, everything the owners possess is at risk.

"A sole proprietorship is a kid by the side of the road selling lemonade; that's all the protection you get," Stabell says. "Everybody needs to have a corporate veil as a liability shield. With today's litigious client, you don't know whose house you are going to."
The two corporate structures that most landscape and lawn care companies are choosing today are corporations or limited liability companies (LLCs), Crosslin says.

Corporations are businesses that exist entirely separate from their owners. This includes the owners filing a separate tax return at the end of the year for their corporations. Corporations must have at least one owner, but there is no upper limit. The ownership interests of a corporation are divided into shares of stock.

The corporate structure usually is the most complex and more costly to organize than the other two. A corporation is controlled by a board of directors, and records must be kept to document decisions made by the board. Small, closely-held corporations can operate more informally, but records cannot be eliminated entirely.

An LLC is a hybrid business entity, designed to combine the liability protection of a corporation with the tax advantages of a partnership, Stabell says. With the LLC, the business's profits and/or losses are added to the owner's personal tax returns. More so, an LLC gives the owner more flexibility in structure and has fewer formalities and stock complications than a corporation.

Benefits of Inc.

"With a corporation, you're not going to be personally disadvantaged if something happens to go wrong," says Ed Wandtke, president of Wandtke and Associates, a business consulting firm in Westerville, OH. "An employee or client gets hurt while you're working on a property. You can damage a clients' property or — you start taking down plant material and later figure out it's the wrong house.

"If these things happen, welcome to the world of litigation," Wandtke adds. "And in the worst case, a sole proprietorship owner could lose his business, his home, his car — everything. In a corporation, it's not ideal, but you can close the business and walk away intact."

Incorporating has other benefits. "When you're a small or new business, banks are going to want you to be in a traditional corporate form of business," says Stabell. "They will be confident in lending money to what they know is a legitimate business.

"Clients will also appreciate and feel safer with the added professionalism that incorporating brings," she adds.

For those interested in selling their business, it's easier to transfer ownership with a corporation, Stabell says. The stock can be sold easily, and the new owners can come in and run the business with the same name, same checking account and same structure. This is also a benefit in the event the corporation's owner dies.

"Even if you're going to keep your business, corporations are the best way to acquire capital from outside investors by selling shares of stock," says Jeff Bergerson, a tax expert with Bergerson Tax Services in St. Paul, MN. "As long as you retain 51% of the stock, you will maintain control over your company.

The downside of the corporation is that there are some additional expenses in setting it up, such as various fees that differ from state to state and the legal costs in setting up the structure. There is also added formality with a corporation, which includes holding board of directors meetings, keeping minutes and resolutions — even if there is only one person (you) on the board, says Crosslin.

There are also tax consequences to incorporating, which used to bring tax savings to business owners, though recent reductions in individual tax rates have made the difference less significant.

Here's how it works: As the owner, president, chairman of the board and any other title you can think of, your corporation pays you an annual salary. Though you pay personal income tax on this salary, your corporation receives a deduction for the salary on its tax return. If your business is highly profitable, this allows you to split business income between yourself and the corporation, keeping both sides out of the higher tax brackets. If the corporation is losing money or breaking even, however, the difference is negligible.

"Because you are paying both personal taxes (on your salary) and a corporate tax that ranges from 15% to 35%, based on your state and income, this 'double taxation' can be a drawback," Bergerson says. "On the plus side, corporations may get certain fringe benefits, like deduction on education costs, vehicle purchases, life and health insurance and more."

If the corporation has a number of stockholders, and chooses to pass along the company's income as dividends, those will also be subject to capital gains taxes, experts say. 

continued on page 46
S-Corp or C-Corp?

Fortunately, most small business owners can avoid a portion of this double taxation by choosing S-Corp status on their tax returns. S-Corps — or Small Business Corporations — are designed to allow corporate profits and losses to pass through the entity to the shareholder. "The only difference between a regular corporation (called a C-Corp) and an S-Corp is in how they are taxed," Stabell says. "The structure and everything that goes with the corporation remains the same, but you check a different box on the tax returns. For most small businesses, there will be significant savings for S-Corps."

Though the S-Corp entity does not pay taxes, it must file an informational tax return telling what each shareholder's portion of corporate income is.

"There are a few limits to S-Corps," Bergerson says. "You can't have more than 100 different shareholders of your company's stock. You can only have shareholders that are individuals, which means that you can't get another corporation to invest in you. But these issues only come up if your company grows to a fairly significant size."

S-Corps also cannot deduct some expenses like health insurance, travel and entertainment that C-Corps can.

Inc. or LLC?

Both corporations and LLCs protect business owners from liability for business debts, and both allow the profits and losses to pass through its members for tax purposes. So what's the difference?

"If you are really small and want to keep it really simple, the LLC might be for you," Stabell says. "It's a really popular option right now. You can make your corporate structure look like anything. You don't have to follow all the formalities in place for a corporation."

As an example of flexibility, with an LLC, you can divide the company's profits any way you want. With a corporation, the profits must be divided equally, based on the percentage of stock owned. LLCs also do not have the limits on the number and kinds of investors that S-Corps do. On the other hand, S-Corps minimize self-employment and Social Security taxes.

"With LLCs, all of your profits are passed through as a dividend, which is not subject to a self-employment tax. This can save thousands of dollars in taxes each year. "However, with the S-Corp, you need to do payroll withholdings for yourself because you are an employee," Bergerson adds. "If you are not familiar with the process and the taxes involved, this can be a big issue, and people may choose LLC to avoid it despite the tax savings."

Inc. or LLC?

Both corporations and LLCs protect business owners from liability for business debts, and both allow the profits and losses to pass through its members for tax purposes. So what's the difference?

"If you are really small and want to keep it really simple, the LLC might be for you," Stabell says. "It's a really popular option right now. You can make your corporate structure look like anything. You don't have to follow all the formalities in place for a corporation."

As an example of flexibility, with an LLC, you can divide the company's profits any way you want. With a corporation, the profits must be divided equally, based on the percentage of stock owned. LLCs also do not have the limits on the number and kinds of investors that S-Corps do. On the other hand, S-Corps minimize self-employment and Social Security taxes.

"With LLCs, all of your profits are passed through as a dividend, which is not subject to a self-employment tax. This can save thousands of dollars in taxes each year. "However, with the S-Corp, you need to do payroll withholdings for yourself because you are an employee," Bergerson adds. "If you are not familiar with the process and the taxes involved, this can be a big issue, and people may choose LLC to avoid it despite the tax savings."

Continued on page 48
continued from page 46

**Extra protection?**

Setting up an S-Corp or LLC not only allows you to protect yourself from liabilities incurred by the company, but it can also help protect your business as well. "Ideally, you don't keep a whole lot of assets within the corporate shell," Bergerson says. "If you lease major capital assets that you own personally to the company, like real estate, essentially making monthly payments to yourself, should you have to close up the corporation, you don't lose all that."

As an added bonus, in the case of real estate, you avoid possible double taxation on capital gains if the property's value increases over time when you sell the building.

There are some limits to the protection of a corporation, however. Banks may require new businesses seeking funds to personally guarantee loans to their corporations. Also, one-person or family-owned business will be held personally liable for unpaid taxes on the corporation. And if you in any way commit fraud in the corporation's name, you are certainly liable.

Finding the right corporate structure is not an easy choice. Before you incorporate, start a new company, sell your company or split from the family business, consult a lawyer and CPA to decide the best fit.

"It may be cheaper on the front end to start your business by yourself, or try to incorporate on your own, but it will probably cost you three or four times as much later trying to clean up the mess you've made," Stabell says. LM