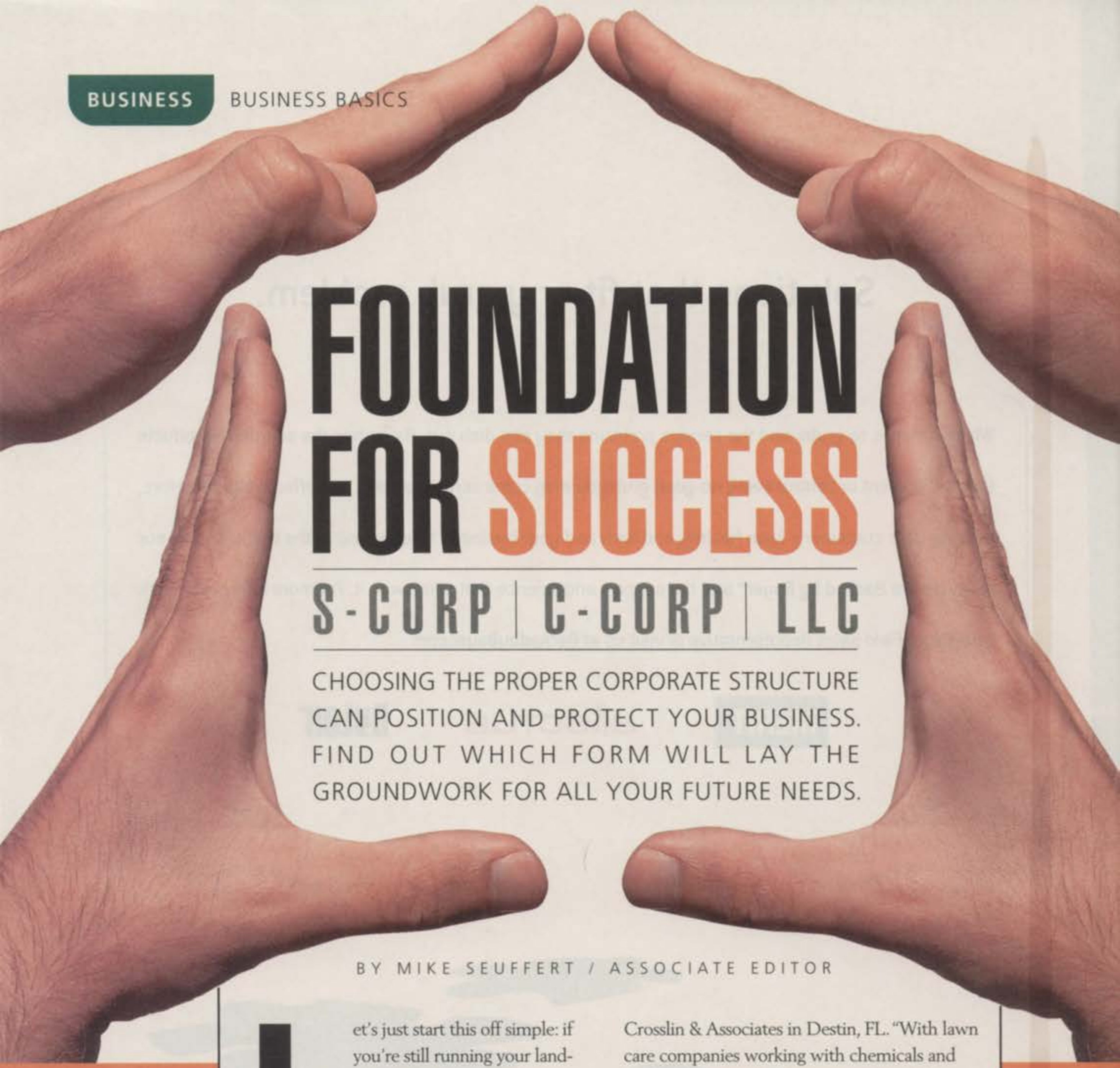


FOUNDATION FOR SUCCESS

S-CORP | C-CORP | LLC

CHOOSING THE PROPER CORPORATE STRUCTURE CAN POSITION AND PROTECT YOUR BUSINESS. FIND OUT WHICH FORM WILL LAY THE GROUNDWORK FOR ALL YOUR FUTURE NEEDS.

BY MIKE SEUFFERT / ASSOCIATE EDITOR

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?

	SOLE PROPRIETORSHIP	PARTNERSHIP	LLC (Limited Liability Company)	S CORP (Small Business Corporation)	C CORP (C-Corporation)
Formation	Owner's discretion. No state filing required.	By agreement of two or more partners. May require state state filing.	State filing required (articles of of organization.)	State filing required (articles of incorporation.) Must elect S Corp status with the IRS.	State filing required (articles of incorporation).
Duration	Terminated if business ceases or upon owner's death.	Dissolves upon partner's death or withdrawal.	Perpetual, unless otherwise stated in articles of organization.	Perpetual.	Perpetual.
Ownership	One owner.	Two or more partners.	Unlimited number; ownership divided as members see fit.	Unlimited number; only one class of stock allowed (no preferred.)	No more than 100 shareholders; no limit on stock classes.
Liability	Owner liable for all debts.	Partners equally liable for all debts.	Generally not liable.	Not liable.	Not liable.
Management	100-percent controlled by owner.	Each partner has equal authority.	Member-managed or manager-managed.	Shareholders elect directors who manage the company's affairs; officers manage day-to -day business activities.	Shareholders elect directors who manage the company's affairs; officers manage day-to -day business activities.
Ease of operation	Easiest; no state requirements.	Easy; few state requirements.	Easy; some states require annual report to be filed.	Formal recordkeeping, annual meetings and annual reports required.	Formal recordkeeping, annual meetings and annual reports required.
Taxes	Pass-through taxation; subject to self-employment tax.	Pass-through taxation; subject to self-employment tax.	Entity is not taxed unless chosen to be; profits and losses are passed to members.	File IRS Form 2553 to be taxed as S Corp; profits and losses passed through to shareholders.	Taxed at corporate income tax rates; profits also taxed when paid as dividends to shareholders.
Fundraising	Owner provides all capital.	Partners provide capital.	Members contribute money or services to the LLC and receive an interest in profits and losses.	Corporate stock may be purchased; some share holder limitations.	Corporate stock may be sold subject to securities laws.

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

PHOTO BY: ISTOCK INTERNATIONAL INC.

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 COST OF INCORPORATING

There are various costs and fees involved in incorporating or becoming a limited liability company. These include:

Attorney fees — These can typically range from $500-$700. The attorney will help you file the correct paperwork and set up your first shareholder meeting. These fees will go higher if there is more than one partner, as a shareholder agreement will be required. There are also businesses that specialize in incorporating that can be found online, though an attorney is still advised.

Filing fees — Secretary of State offices charge fees ranging from $100 to $250 for filing your Articles of Incorporation, depending on the state in which you incorporate. You also may have to pay $50 to $200 in other government filing fees.

First-year franchise tax payment — Most states impose these taxes for the privilege of doing business in the state as a corporation. Expect to pay anywhere from $800 to $1,000.

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

continued from page 44

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 subject to a self-employment tax of 15.3% which goes toward Social Security and Medicare," Bergerson says. "In an S-Corp, only the salary paid to the employee-owner is subject to employment tax. You are only required to give yourself what is considered a 'fair and reasonable' pay as an employee. The rest can be withdrawn 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

ASKING AN EXPERT

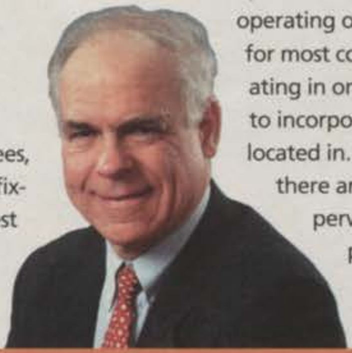
Landscape Management's Legal Columnist Ken Morris shares his expertise with us, answering a few questions about incorporating.

***Landscape Management*: Is it necessary for every landscape or lawn care company to incorporate?**

Ken Morris: Everyone should form some sort of legal entity to protect themselves. It's not just for liability protection but also because of tax implications. There can be substantial tax savings in choosing an S-Corp (Small Business Corporation) or LLC (limited liability company). Let's say Joe Landscaper is not incorporated and makes $60,000. He takes a personal income of $40,000 and puts $20,000 back into business. With a sole proprietorship, he owes self-employment tax of 15.3% on the entire $60,000. That's $9,180. But with an LLC, he only pays the self-employment tax on the $40,000 salary, about $6,120.

***LM*: When should a company incorporate?**

Morris: When you are operating a business, you have enough on your plate. Growing your market, employees, satisfying customers, fixing equipment. It's best to form that corporation and take care of all those legal things before you get that first customer. If you've already have started your business, don't wait until something goes wrong and it's too late to protect yourself.

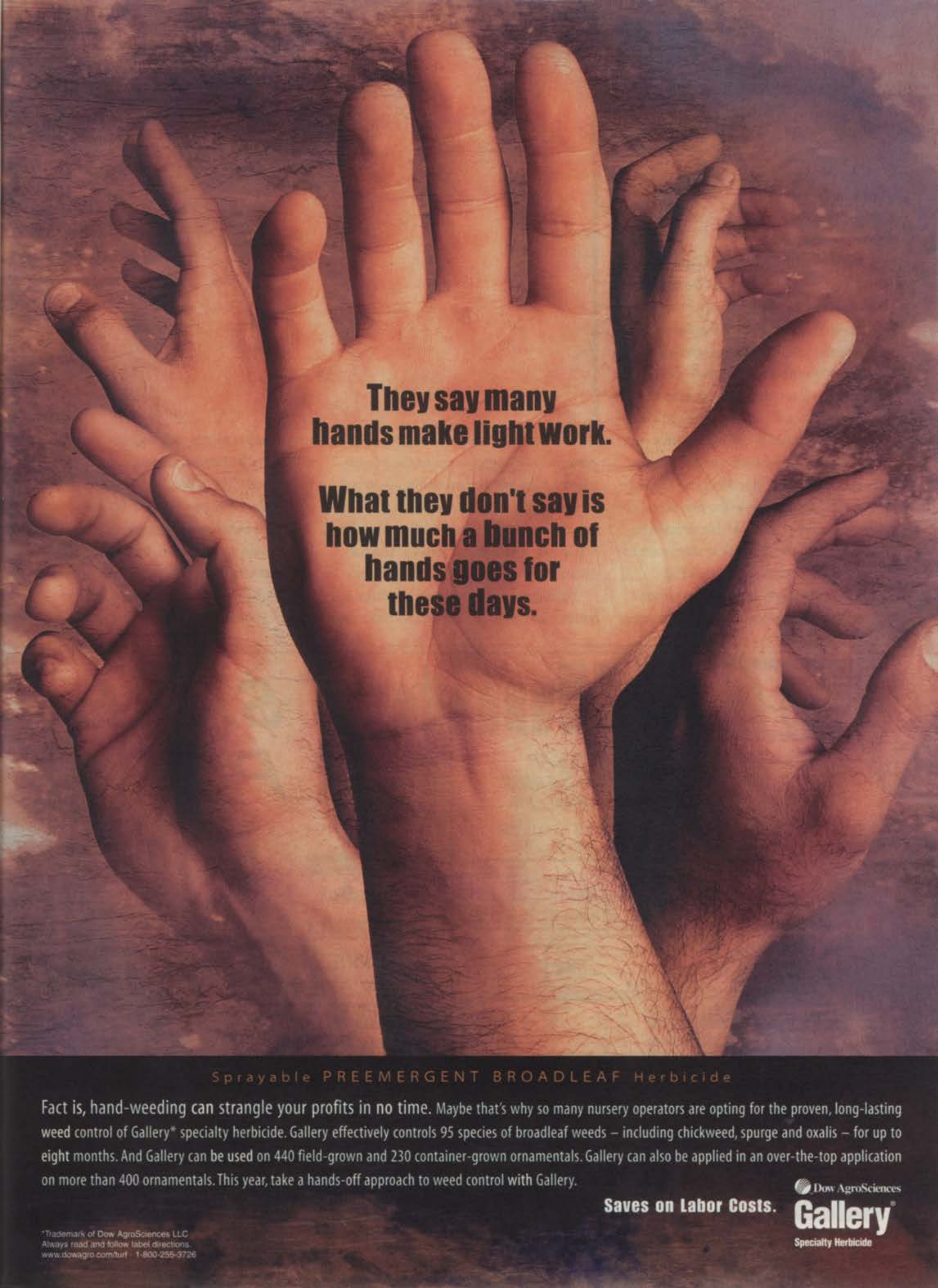


***LM*: Which business structure do most companies lean toward?**

Morris: More people tend toward LLCs, but everyone really needs to consult with their attorneys or CPA's to find what works best for them.

***LM*: Where should you incorporate?**

Morris: You hear a lot about companies incorporating in the State of Delaware. That's a good venue for a large, publicly traded company or one that's doing business in more than one state. Delaware is a corporation-friendly jurisdiction. They have low incorporation costs and don't charge corporate income taxes for business operating outside of the state. But for most companies that are operating in one state, it's just easiest to incorporate in the state you're located in. Even in Delaware, there are extra costs and paperwork involved that you probably don't want to deal with if you don't have to.


They say many hands make light work.
What they don't say is how much a bunch of hands goes for these days.
Sprayable PREEMERGENT BROADLEAF Herbicide
Fact is, hand-weeding can strangle your profits in no time. Maybe that's why so many nursery operators are opting for the proven, long-lasting weed control of Gallery* specialty herbicide. Gallery effectively controls 95 species of broadleaf weeds – including chickweed, spurge and oxalis – for up to eight months. And Gallery can be used on 440 field-grown and 230 container-grown ornamentals. Gallery can also be applied in an over-the-top application on more than 400 ornamentals. This year, take a hands-off approach to weed control with Gallery.
Saves on Labor Costs.
Dow AgroSciences
Gallery®
Specialty Herbicide
*Trademark of Dow AgroSciences LLC
Always read and follow label directions.
www.dowagro.com/turf · 1-800-255-3726

THE ULTIMATE PRENUPTIAL AGREEMENT

For limited liability companies (LLCs) and corporations, members and shareholders are required to create a "shareholder's agreement" as part of the articles of incorporation. The shareholder's agreement lays out the ground rules for the company for the owners, including the duration, duties, dispute resolution, sharing of assets/profits/losses and more. This protects against the business being torn apart by a disagreement between two or more joint owners. Though few expect these disagreements to ruin their business, it is a possibility, which is why it is best to use legal representation when creating the shareholder's agreement.

"The best divorce is the one that's put in place before the marriage," says Nancy Stabell, a lawyer with Waller, Lansden, Dortch & Davis in Nashville, TN.

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."

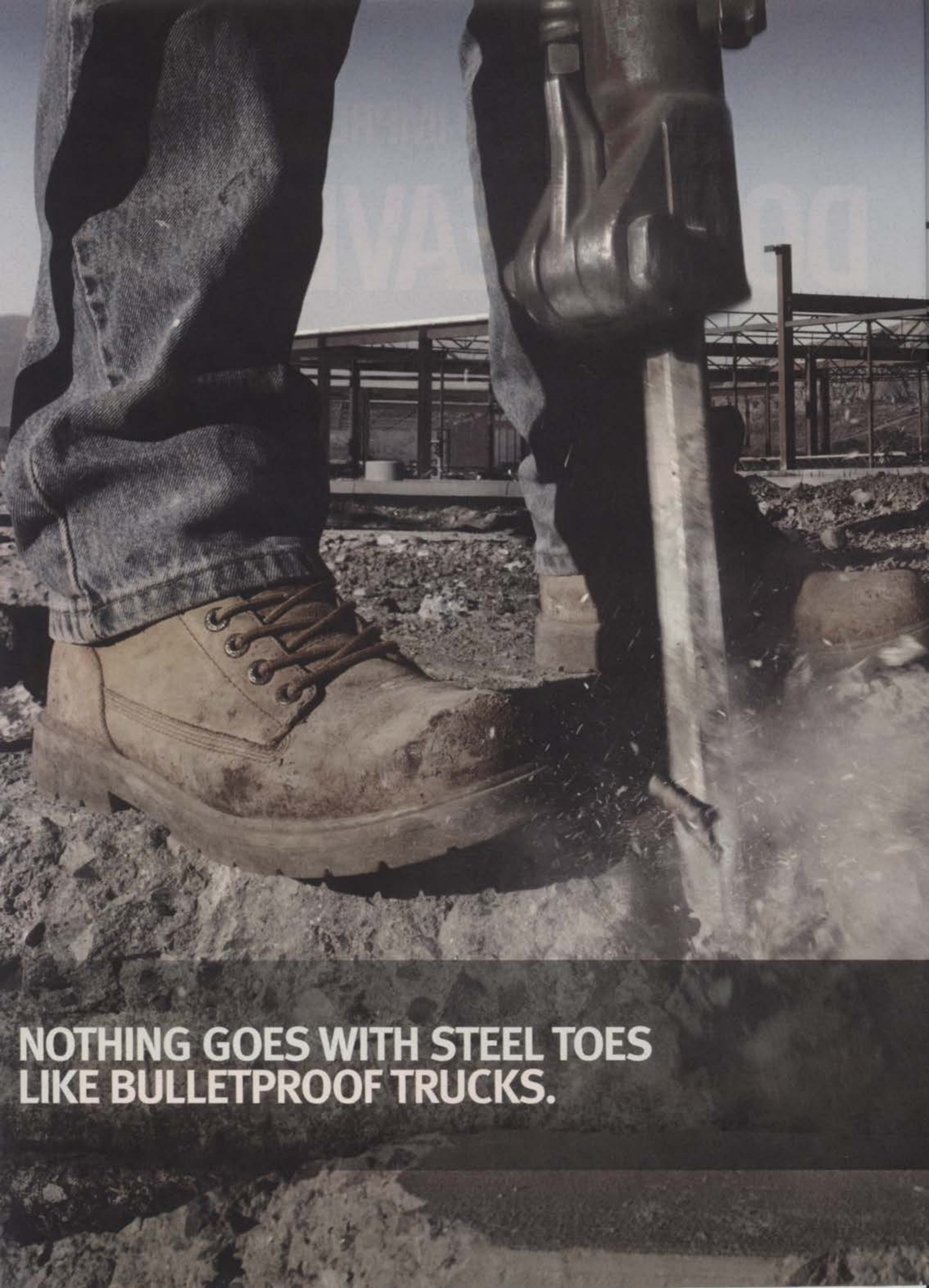
As an added bonus, in the case of real estate, you avoid possible double taxation on capital gains if the property's value increases over time when you sell the building.

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**


MAKE A GOOD IMPRESSION.
DON'T LEAVE ONE.
A300
Bobcat
Bobcat
Steerable Axles:
A Bobcat Exclusive
Protect your income, and your reputation, from annoying turf repair. The Bobcat® A300 all-wheel steer loader has four steerable axles that minimize damage to lawns. That means less ground repair work, lower job costs, more profit, and a better bottom line.
One Tough Animal.
Bobcat.
IR Ingersoll Rand
Compact Vehicle Technologies
1.866.823.7898 ext. 695
www.bobcat.com/landscape
Circle 125


NOTHING GOES WITH STEEL TOES
LIKE BULLETPROOF TRUCKS.