



Shaun, Inc.

In which the author, enticed by Delaware's renowned business laws, incorporates himself.

Yesterday I was Shaun Gallagher, meager party of one.

But today I am Shaun Gallagher, Inc., an unstoppable, colossal corporation — soon to be nationally franchised, although I haven't exactly figured out what industry I am.

Who needs harder-to-get suffixes like "Ph.D." or "D.D.S." when good old "Inc." set me back only \$74?

I'm among good company (and good companies). Small-business people and corporate monoliths alike have flocked to the First State for years, thanks to its favorable business laws and fluid corporate process. For tiny upstarts, it's an ideal petri dish, since so many business resources are available to help them grow; for larger companies, incorporating in Delaware offers significant financial and legal benefits.

Now all I have to do is get me up and running.

The Board

First, I decided I would need a board of directors. I asked a few of my closest friends if they'd serve as board members for a company that does, well, absolutely nothing.

I imagined the possibilities: Maybe they'd institute a me-wide "casual Friday" policy. Or perhaps they'd facilitate a merger between me and another company, preferably one with nice eyes and a good sense of humor (she'll need it).

We agreed to skip the snooty executive boardroom setting and convene for our first official board meeting at my favorite 24-hour diner, Tom Jones Fami-

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by Shaun Gallagher

illustration by Nancy Harrison

Shaun, Inc.

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ly Restaurant in Brookhaven, Pa. (“Home of the Blue Ribbon Special”).

I named my roommate Jon the Secretary of the Board and dubbed our waitress Carmela an “Honorary Trustee.”

Our first order of business was ratifying my bylaws — the constitution by which Shaun Gallagher, Inc. would be governed. In addition to the typical standing committees, like the executive committee and the finance committee, my bylaws specify the following special committees: the Personal Care and Apparel Committee, which will make decisions about my hair style and outfits; the Professional Career Committee, whose duty is to help advance my career (and salary); and the Social Life Committee, with a Romance Subcommittee — they’re the ones in charge of potential mergers.

I sought out my friends Larisa and Jane, widely known for their senses of style, to serve as co-chairs of the Personal Care and Apparel Committee. And fortunately, every single one of the board

members agreed to serve on the Romance Subcommittee.

Once we’d elected the chairmen and chairwomen of each committee, we got down to the business on our agenda. One order of business: What should the corporation do about its hairstyle?

The Secretary moved that I dye my hair blond and spike it straight up. I promptly vetoed that motion.

The more heated discussion began with our next order of business: What the corporation should get his mother for Mother’s Day. Tempers flared as motions were enthusiastically brought up and swiftly denied. Nobody liked the gift certificate idea. The board split down the middle about whether to purchase a photo scrapbook or a journal. In the end, an amended motion passed that melded the two ideas together. The ruling from Shaun Gallagher, Inc.’s parent company? She loved it.

At our next board meeting, the Romance Subcommittee reconvened with a few new ideas for advancement of my corporation’s personal life. One board member suggested posting a com-

pany profile on HotOrNot.com. Another suggested a motivational device: Impose sanctions on me, the president, for every day the company stays single.

The Professional Career committee had also been hard at work. My secretary, acting as a representative of the committee, cold-called my boss and argued that I should be given a raise.

“I just told her your virtues,” he later reported. “She giggled a lot.”

But did I get the raise?

“She said that she would pass along the request.”

The Process

I make incorporated life seem so simple — but before I became a corporate body, I knew I’d have to do some research. My decision to become Shaun Gallagher, Inc. led me to Robert L. Symonds Jr. and Matthew J. O’Toole, two Wilmington lawyers with concentrations in business law. They’re both partners with Morris, James, Hitchens and Williams LLP.

That “LLP” at the end of their firm’s name caught my eye. It stands for “limit-

ed liability partnership,” and it’s one of several types of business entities in Delaware. Other types, the lawyers explained, include limited liability companies, which use the suffix “LLC”; general partnerships, which use “GP”; and straight-up corporations, which can use suffixes like “Corp.,” “Inc.,” or “Ltd.”

“Appendix 1”

All corporations in Delaware must have a corporate designation appended to their formal business names. Businesses can choose from the following words: “Association,” “Club,” “Company,” “Corporation,” “Foundation,” “Fund,” “Incorporated,” “Institute,” “Limited,” “Society,” “Union,” or “Syndicate.”

Source: 6 Del. C., 8-1, § 102(a)(1)

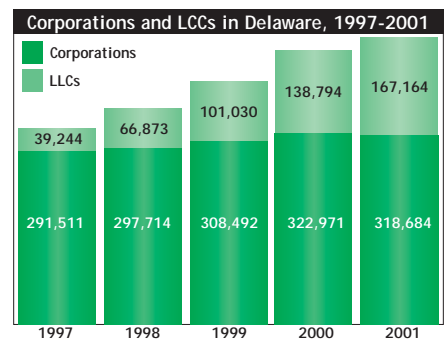
Symonds and O’Toole said one of the main advantages of incorporating a business is that it limits investors’ personal liability for business debts.

That was too much lawyer-speak for me, so I asked them to break it down.

O’Toole gave this example: The owner of an unincorporated mom-and-pop shop can be held responsible for any business debt. “If something goes wrong — say somebody walks in and slips on a soda bottle on the floor — they can take your house.” In contrast, the shareholders of an incorporated business can’t lose any more money than what they’ve invested.

Symonds and O’Toole showed me a chart of how the different entities comprise the whole of Delaware businesses.

“The Growth of LLCs”



They said limited liability companies have picked up speed during the past few years, leaping from 10.8 percent of the total businesses in 1997 to 31.1 percent

just four years later. They're so popular, in part, because they're less regulated than corporations, O'Toole said. There's a tax advantage too. Standard corporations get taxed twice: The company pays taxes on the corporation's income, as well as annual franchise taxes. Then shareholders must pay personal income taxes on their dividends. In contrast, the lawyers said, owners of limited liability companies and other alternative business entities only get taxed on a personal income tax level.

"Delaware's Business Entities"

Sole proprietorship — Owned by one individual; owner is personally liable for all business debts; all business income is considered personal income.

General partnership — Two or more persons operate according to a partnership agreement; partners are jointly and severally liable for business debts; \$100 filing fee, and each partner's share of the income is considered personal income.

Limited partnership — Owners can be general partners or limited partners; general partners are personally liable for business debts; limited partners are liable for the amount they've invested; \$100 filing fee, and each partner's share of the income is considered personal income.

C-Corporation — The standard type of corporation. Owned by shareholders, managed by a board of directors; shareholders are only liable for the amount they've invested; filing fee based on number of shares issued; C-corporations pay business taxes on income, shareholders pay personal income on dividends.

S-Corporation — A standard corporation with a special IRS tax status. Restrictions on stockholders and stocks issued may apply; business taxes on income are passed on to shareholders; shareholders pay personal income on dividends.

Limited liability company — One or more members operate the company; members are only liable for the amount they've invested; \$100 filing fee, and each member's share of the income is considered personal income.

Limited liability partnership — Two or more owners. Partners operate according to a partnership agreement; partners are only liable for the amount they've invested; \$100 filing fee per partner, not to exceed \$120,000, and each partner's share of the income is considered personal income.

Even though LLCs sounded alluring, I decided to become a standard corporation. Corporations are, after all, the cornerstone of Delaware business, having been around for about 200 years longer than LLCs, which Delaware introduced in 1992.

O'Toole pointed out that I might feel a little different — maybe a little tingly — once I become an incorporated entity. “Legally, now there are two people. There’s Shaun Gallagher, regular guy, and now there’s Shaun Gallagher, Inc.,” he said. “You’ve cloned yourself.”

To get my feet wet, I attended a free workshop, “Business Basics,” taught by Glenn McAllister of the Delaware U.S. Small Business Administration. The DSBA teaches this three-hour course several times a month. Twenty-six other entrepreneurs listened with me while McAllister talked about creating a business plan and other essential steps in the corporate process.

After three hours, though, I began to get a little impatient. While that prep work helps to bolster the overall success of a business, it’s not a necessary step in the application process. Eager to register my corporation as soon as possible, I put those tasks on hold and made the first big decision in the actual application process: whether to register the corporation myself or hire a third-party agent to do it for me.

Delaware’s Assistant Secretary of State Rick Geisenberg says hiring a registered agent is the least complicated option. “If you want to do it the way most people do it — they go through a registered agent.”

To incorporate in Delaware, a company must have a representative (that’s the registered agent) and a physical address located in the state. Fortunately, Delaware residents can serve as their own registered agents, and they can list their home or Delaware office address as their registered office. Many companies that aren’t based in Delaware — like AOL Time Warner, whose headquarters is in New York — hire a third-party registered agent to represent them within the state. But to save money, I chose to act as my own registered agent.

I called Shannon Velasquez, a customer service agent with the Delaware Division of Corporations (739-3073). She

referred me to the division's Web site www.state.de.us/corp, where I could download the form for the type of corporation I want to be. (The division also offers incorporation forms at its offices and by mail.) I downloaded a one-page form titled "Certificate of Incorporation."

"The Birth Certificate"

When you incorporate, says Wilmington attorney Robert Symonds, "you're giving birth to a new legal person." Certificates of incorporation are to businesses what birth certificates are to babies — they're the first legal record of identity. In Delaware, a certificate of incorporation must state the name of the corporation; the location of its registered office; the broad purpose of the business; the amount of stock to be issued; and the name and address of the incorporator.

No two Delaware corporations can share the same name, and since there are more than half a million businesses in our state, it's a good idea to pay a small fee to verify that the name is available. I forwent that step, making a leap of faith that my desired corporate name, "Shaun Gallagher, Inc." would be unique.


Once I filled out my certificate of incorporation, I mailed a check for \$74 to the Department of Corporations. The fee to incorporate includes the following:

- \$15 — Incorporation fee
- \$25 — Receiving/indexing
- \$10 — Data entry fee
- \$6 — County surcharge
- \$18 — County page assessment

(As of press time, House Bill 93 was expected to be signed into law, increasing the data entry fee to \$25.)

Ten business days after I mailed my paperwork to the Department of Corporations, I received a notice stating that my certificate had been processed and that Shaun Gallagher, Inc. was an official Delaware corporation.

Now, with my organizational board meetings out of the way, it looks as if Shaun Gallagher, Inc. is poised to become a flourishing Delaware business.

So ... who wants to buy stock? 

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