

# Disaster & Estate Planning for Small Businesses





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# **Part One: Estate Planning**

# Overview: Preparing for Death

- AppalReD Legal Aid
- Business Succession and Estate Planning
  - Business Structure Matters
- Key Person Insurance
- Special Considerations
- Resources & Support

## 5



# Why Planning for Death and Disaster is Important

- **Life is unpredictable** — every business owner will eventually face transitions, whether due to death, incapacity, or unexpected events.
- **Natural disasters can be devastating** — according to the Small Business Administration (SBA), up to **25% of small businesses** impacted by a disaster **never reopen**.
- **Proactive planning is essential** — having a clear succession and disaster recovery plan protects your business, your employees, and your legacy.

# Business Succession Plan

- A business succession plan helps to determine who will take over the ownership and management of a business should the owner(s) become incapacitated or pass away.
- Should be included as part of your Continuity of Operations Plan (COOP).

# Business Succession Planning: Where to Begin

- **Start with your goals:**
  - Do *you* want your business to continue after you're gone — or is closure the right path?
- **Assess continuity potential:**
  - Can your business operate without you?
  - Do your employees or heirs have the necessary skills or licenses?
- **Understand successor readiness:**
  - Are your potential successors willing and prepared to take over?
- **Know your structure:**
  - Your business type (sole proprietorship, partnership, LLC) will shape your succession options and legal requirements.



# Business Structure

- **Sole Proprietorship**
- **Partnership**
- **Limited Liability Company (LLC) & Limited Liability Partnership (LLP)**

# Sole Proprietorship

- Business = personal assets
- Estate planning is crucial, regardless of business structure!
  - Assets passes through a will and [maybe] probate
  - Power of Attorney (POA) can help during incapacity

# Sole Proprietorship & Estate Planning

- **Last Will & Testament**

- Goal: Distribute testator's assets  
(and ideally avoid probate)

- Requirements:

- Testator Competency: KRS 394.020

- Other Requisites: KRS 394.040

- Writing
- 2 Witnesses
- Signature
- Holographic Will = completely handwritten by testator

## **394.020 Persons competent to make -- What may be disposed of.**

Any person of sound mind and eighteen (18) years of age or over may by will dispose of any estate, right, or interest in real or personal estate that he may be entitled to at his death, which would otherwise descend to his heirs or pass to his personal representatives, even though he becomes so entitled after the execution of his will.

**History:** Amended 1964 Ky. Acts ch. 21, sec. 4, effective January 1, 1965. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 2147, 4825, 4827.

## **394.040 Requisites of a valid will.**

No will is valid unless it is in writing with the name of the testator subscribed thereto by himself, or by some other person in his presence and by his direction. If the will is not wholly written by the testator, the subscription shall be made or the will acknowledged by him in the presence of at least two (2) credible witnesses, who shall subscribe the will with their names in the presence of the testator, and in the presence of each other.

**Effective:** June 17, 1978

**History:** Amended 1978 Ky. Acts ch. 85, sec. 1, effective June 17, 1978. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4828.

## Sole Proprietorship & Estate Planning

Approximate cost of simple Will  
prepared by a private attorney:

\$150 - \$200

# Sole Proprietorship & Estate Planning

- **Probate**
  - Testate = with a will
    - Appoint Executor/Executrix
    - Record will at county clerk's office: \$47+
  - Intestate = without a will
    - Appoint Administrator/Administratrix
    - Record affidavit of descent at county clerk's office: \$50

# Sole Proprietorship & Estate Planning

- **Probate**
  - Usually takes 6+ months due to creditors and distribution of assets
  - Approximately \$173 court filing fee
  - At least 2 court hearings
  - File multiple documents throughout
- Certain conditions and estate worth less than \$30,000:
  - Approximately \$87 court filing fee
  - One-and-done court hearing

## Sole Proprietorship & Estate Planning

Approximate cost of probate case  
handled by a private attorney:

up to 5% of the estate

*or*

\$1,500+

# Sole Proprietorship & Estate Planning

## Probate Example

If the total value of your estate (including business assets/interest) is \$1,000,000, the potential cost of administration could be around \$50,000 PLUS court filing fees and county clerk recording fees.

That's \$50,000 not going to your family, friends, or charitable organization



# Sole Proprietorship & Estate Planning

## Best Practice:

To avoid the lengthy, expensive, and confusing headache of probate for your loved ones, develop a simple document to outline your plans and explore insurance options\* to cover the costs.

# Sole Proprietorship & Estate Planning

- **Funeral Planning Declaration**
  - Goal: Communicate post-death preferences
  - Requirements: KRS 367.93103
    - Competent & Voluntary
    - Separate Writing
    - Choose Designee
    - 2 Witnesses
    - Signature
    - Notarized

## **367.93103 Funeral planning declarations.**

- (1) A person who is of sound mind and is at least eighteen (18) years of age may execute a declaration.
- (2) (a) A declaration shall not be included in:
  1. A will;
  2. A power of attorney; or
  3. A similar document.(b) If a declaration is included in any of the documents listed in paragraph (a) of this subsection, it shall not invalidate the document but the declaration contained therein is not enforceable.
- (3) A declaration shall designate an individual to serve as the designee, or if no designee is designated shall provide instruction concerning funeral services, ceremonies, and the disposition of remains after death.
- (4) A declaration, at a minimum, shall be:
  - (a) Voluntary;
  - (b) In writing;
  - (c) Signed by the declarant or by another person in the declarant's presence and at the direction of the declarant;
  - (d) Dated;
  - (e) Signed in the presence of at least two (2) competent witnesses who are at least eighteen (18) years of age at the time they sign the declaration; and
  - (f) Acknowledged before a notary public or other person authorized to administer oaths.
- (5) A declaration is not binding upon a funeral home, a cemetery, or any person engaged in the business of providing funeral services, selling merchandise or grave markers, or providing a service or other property subject to the declaration until the funeral home, cemetery, or person receives full payment for the service, merchandise, or other property.
- (6) A person is not considered to be entitled to any part of the declarant's estate solely by virtue of being designated by the declarant to serve as his or her designee.
- (7) Unless an individual is related to the declarant by birth, marriage, or adoption, a declarant shall not designate an individual to be his or her designee or alternate designee who is:
  - (a) A provider of funeral or cemetery services; or
  - (b) Employed by any entity that is responsible for providing funeral or cemetery services or disposing of the declarant's remains.
- (8) The following shall not be a witness to a declaration:
  - (a) The person who signed the declaration on behalf of and at the direction of the declarant; or
  - (b) The person identified as the designee.

## Sole Proprietorship & Estate Planning

Approximate cost of funeral planning declaration  
prepared by a private attorney:

Free - \$150

# Sole Proprietorship & Estate Planning

- **Living Will Directive & Health Care Surrogate Designation**
  - Goal: Communicate medical preferences if you're incapacitated
  - What a Living Will allows you to do:
    - **Appoint a Health Care Surrogate** - Someone you trust to make medical decisions on your behalf
    - **Accept or Refuse Life-Prolonging Treatment** - Including ventilators, resuscitation, and other interventions
    - **Make Choices About Artificial Nutrition & Hydration** - Such as feeding tubes or IV fluids.
    - **Express Organ Donation Wishes** - Specify if and how you want to donate organs after death.

# Sole Proprietorship & Estate Planning

- **Living Will Directive & Health Care Surrogate Designation**
  - Requirements: KRS 311.625
    - Competent & Voluntary
    - Follow the form
    - Separate Writing
    - Choose Appropriate Designee
    - 2 Witnesses
    - Signatures
    - Notarized

## Sole Proprietorship & Estate Planning

Approximate cost of living will  
prepared by a private attorney:

\$150 - \$200

# Sole Proprietorship & Estate Planning

- **Power of Attorney**
  - Goal: To ensure someone you trust can manage your business if you're *alive* but unavailable or unable to make decisions.
  - What a POA Does:
    - Authorizes an agent (or attorney-in-fact) to act on your behalf during incapacity or unavailability
      - Possibly avoid guardianship appointment through court
    - Can be tailored to grant broad or limited authority
    - Allows the agent to make business-related decisions

# Sole Proprietorship & Estate Planning

- **Power of Attorney**
  - Requirements:
    - Principal Competent & Voluntary
    - Choose someone you deeply trust
    - Follow the statutory form: KRS 457.420
    - POA must be legally valid and clearly written
    - Signatures
    - Notarized
    - Witnesses are a good idea, but not required



# Sole Proprietorship & Estate Planning

Approximate cost of POA  
prepared by a private attorney:

\$150 - \$200

## **Sole Proprietorship & Estate Planning**

Total approximate cost of estate planning documents  
prepared by a private attorney:

**\$750**

Total cost of estate planning documents prepared by an  
AppalReD attorney (if eligible for services):

**FREE**

# Sole Proprietorship & Estate Planning

## Best Practice:

Consult an attorney to ensure your estate planning documents reflect your wishes and comply with state law

No matter what, estate planning documents are worth the time and money investment

# Partnership

- A partnership is owned by two or more individuals who share ownership and responsibilities.
- It is **not** a separate legal entity — partners are personally liable for business debts and obligations (unless formed as a Limited Liability Partnership (LLP)\*).
- A partnership agreement is essential. It should clearly outline:
  - What happens if a partner passes away
  - Buyout terms, successor roles, and liability handling
- \*In Kentucky, LLPs are limited to certain licensed professions (e.g., doctors, lawyers, accountants).

# Partnership Succession Planning: Key Questions

## 1. Should the Partnership Continue?

- If yes, designate a **successor** to take your place.
- If no, consider a **buyout** or dissolution plan.

## 2. Should Your Partner Buy Your Share?

- This can be arranged through a **cross-purchase agreement**.
- Ensures a smooth transition and fair valuation.

## 3. What About Your Heirs?

- You may leave your share to heirs **without giving them management control**.
- They would still receive **profits (and liabilities)**.

# Partnership Agreement Essentials

To avoid confusion or conflict, your agreement should clearly address:

- Debt & Liability Handling
  - Can the estate be released from future obligations?
- Valuation of Your Share
  - Will it be based on a set formula or a post-death appraisal?
- Successor Rights & Roles
  - Define who steps in and what authority they have.

# What Happens If There's No Partnership Succession Plan?

- If your partnership agreement doesn't specify what happens after a partner's death, Kentucky's Uniform Partnership Act (KRS Chapter 362) applies.
- Default Rules:
  - The partnership enters a “winding up” process — settling debts and distributing assets — with the goal of dissolving the business.
  - Heirs receive the deceased partner's share of assets after debts are paid, if the partnership dissolves.
  - If remaining partners choose to continue the business:
    - Heirs are entitled to the deceased's share of profits
    - The estate may still be liable for the deceased partner's share of debts

# Partnership

Best Practice:  
Avoid uncertainty by clearly outlining  
succession terms in your partnership  
agreement.



# Limited Liability Company (LLC)

- An LLC (Limited Liability Company):
  - Can be formed by one or more individuals
  - Is a separate legal entity established through Articles of Organization
  - Protects members' personal assets from business liabilities
- Planning for a Member's Death:
  - Create a written agreement that outlines:
- Whether remaining members can buy out the deceased's share (via cross- or entity-purchase agreements)
- Whether heirs can become members or are limited to profit rights
- A valuation method for the deceased's ownership interest
- A continuity plan for who will take over the deceased's responsibilities

# Limited Liability Company (LLC) Succession Planning

- Plan for a Member's death
- Create a written agreement that outlines:
  - Whether remaining members can buy out the deceased's share (via cross- or entity-purchase agreements)
  - Whether heirs can become members or are limited to profit rights
  - A valuation method for the deceased's ownership interest
  - A continuity plan for who will take over the deceased's responsibilities

## LLC Succession: What Happens Without a Plan?

- If there's no written agreement among LLC members, Kentucky law (KRS Chapter 275) provides default rules:
  - A majority of remaining members must approve any successor joining the LLC.
  - The estate of the deceased member is entitled to receive profit distributions.
  - Heirs are not personally liable for the deceased's business debts.
    - However, the deceased's ownership interest may be used to settle their share of debts.
  - For a single-member LLC, the business will automatically dissolve unless the articles of organization specify otherwise.

## Limited Liability Company (LLC)

Best Practice:

Proactive planning ensures smooth transitions  
and protects the business.

Avoid uncertainty by creating a clear  
operating agreement.

# Key Person Insurance & Succession Planning

## What is Key Person Insurance?

- A life insurance policy that a business purchases on the life of a key employee, such as the owner, a top executive, or any other individual whose death would significantly affect the company's operations, with the written consent of the employee.
- The business pays the premiums and is the beneficiary of the policy.
- In the event of the key employee's death, the business receives the death benefit, which can be used to cover a variety of expenses, including recruitment, training a replacement, or even settling debts.

# Why Consider Key Person Insurance?

- Protect Your Reputation & Expertise
  - If your business relies on a key individual (like the owner or top salesperson), their loss could significantly impact operations. Insurance provides a financial buffer during the transition.
- Secure Business Loans
  - Lenders and investors often require Key Person Insurance as collateral. It reassures them that the business can recover from the loss of a critical team member.
- Offset Financial Strain
  - Losing a key contributor can lead to revenue loss. Insurance helps cover expenses and maintain operations while you recruit or train a replacement.

# Key Person Insurance & Succession Planning

## Why Consider Key Person Insurance?

- Support Partnerships & Buyouts
  - In multi-owner businesses, the policy's death benefit can fund a buyout of the deceased partner's share, ensuring continuity and control for surviving partners.
- Plan for Sole Proprietorships
  - For sole owners, the policy can help heirs settle debts or close the business in an orderly way, reducing stress during a difficult time.

# Key Person Insurance & Succession Planning

## Cross-Purchase Agreement

- Each owner takes out a life insurance policy on the others.
- When one passes away, the surviving owners receive the payout.
- Funds are used to **buy the deceased's share** at the agreed value.

## Entity-Purchase Agreement

- The **business** owns life insurance policies on each owner.
- The business receives the payout and **buys back the deceased's share**.
- Often preferred by **larger businesses** for simplicity and tax reasons.



# Key Person Insurance & Succession Planning

Best Practice:

Consider key person insurance to help ensure a smooth ownership transition

Provides liquidity when it's needed most

# Resources

A lawyer can assist with business succession planning:

- Business formation
- Estate planning
  - Will
  - Funeral Planning Declaration:  
<https://kbefd.ky.gov/New%20Forms/Updated%20Funeral%20Planning%20Declaration.pdf>
  - Living Will: <https://www.ag.ky.gov/AG%20Publications/livingwillpacket.pdf>
  - Power of Attorney:  
<https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=50172>

**Sign-up today for free one-on-one support after this training!**

# Part Two: Preparing for Disaster

# Overview: Preparing for Disaster

Four key sections of a disaster preparedness plan:

- Identify
- Plan
- Implement
- Recover



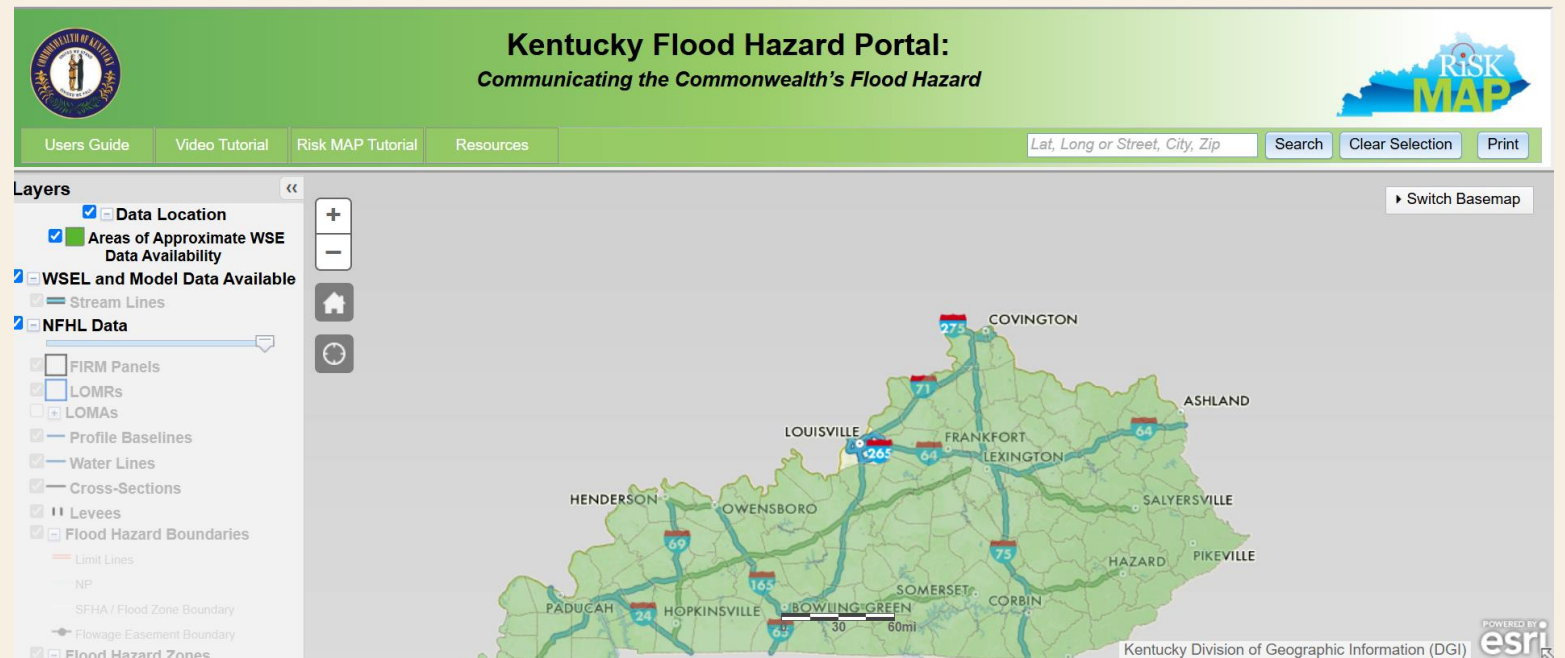
# Identify

- What are risk assessments and how do we identify our risk hazards?
- What are flood zones, and are we in one?
- Do we know our suppliers and distributors, and have backups prepared?

Natural Hazards	Man-Made Hazards
Floods	Cyber-Attacks
Severe Thunderstorms/Hail	Arson/Accidental Fire
Tornadoes	Civil Disorder
Winter Storms	Terrorism
Landslides	War
Wildfire	Crime
Drought	Biological/Chemical Threats
Extreme Temperature	Active Shooter
Earthquakes	Supply Chain Halt/Supplier Strikes
Dam/Levee Breaks	Chemical Spills
Heavy Debris Flow	Structure Damage

# Exercise 1: Flood Zones

<https://watermaps.ky.gov/RiskPortal/>



# Exercise 2: Risk Assessment

RISK ASSESSMENT MATRIX						
Type of Event / Hazard	Impact to Critical Business Assets					
	People 1=Negligible 2=Marginal 3=Critical 4=Catastrophic	Building 1=Negligible 2=Marginal 3=Critical 4=Catastrophic	Equipment 1=Negligible 2=Marginal 3=Critical 4=Catastrophic	Data 1=Negligible 2=Marginal 3=Critical 4=Catastrophic	Inventory/Product 1=Negligible 2=Marginal 3=Critical 4=Catastrophic	Operations 1=Negligible 2=Marginal 3=Critical 4=Catastrophic
EXTERNAL HAZARDS						
Flooding	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4
Wildfires	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4
Landslides	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4
Severe Winter Storms	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4
Tornadoes	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4
Earthquakes	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4
	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4
	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4
	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4
INTERNAL HAZARDS						
Fire	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4
Theft	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4
Loss of Data Management	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4
Power Outage	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4
Utility Loss (gas, water)	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4	1 2 3 4

# Exercise 3: Suppliers & Distributors

Primary Supplier:	
Address:	
Contact Name:	Phone #:
E-mail:	Account #:
Materials Supplied:	
Primary Supplier:	
Address:	
Contact Name:	Phone #:
E-mail:	Account #:
Materials Supplied:	
Primary Distributer:	
Address:	
Contact Name:	Phone #:
E-mail:	Account #:
Materials Distributed:	
Primary Distributor:	
Address:	
Contact Name:	Phone #:
E-mail:	Account #:
Materials Distributed:	



# Plan

- How do you begin creating a response plan for natural disasters?
- Do you have a communication plan in place?

# Exercise 1: Recording Basic Information

ABOUT THE ORGANIZATION	
<b>PRIMARY LOCATION</b>	
ORGANIZATION NAME	MISSION
STREET ADDRESS	
CITY, STATE, ZIP CODE	
TELEPHONE NUMBER	
<b>PRIMARY CONTACT</b>	<b>ALTERNATE CONTACT</b>
PRIMARY EMERGENCY CONTACT	ALTERNATE EMERGENCY CONTACT
TELEPHONE NUMBER	TELEPHONE NUMBER
ALTERNATE TELEPHONE NUMBER	ALTERNATE TELEPHONE NUMBER
E-MAIL ADDRESS	E-MAIL ADDRESS
<b>EMERGENCY CONTACT INFORMATION - DIAL 911 IN AN EMERGENCY</b>	
NON-EMERGENCY POLICE	ELECTRICITY PROVIDER
NON-EMERGENCY FIRE	INSURANCE PROVIDER
OTHER (E.G., PROPERTY MANAGEMENT)	WASTE REMOVAL
POISON INFORMATION CENTER	OTHER (E.G., IT SUPPORT CONTRACTOR)

# Exercise 2: Business Continuity Plan & Recovery Planning Team

## BUSINESS CONTINUITY AND RECOVERY PLANNING TEAM

The following people will participate in business continuity and recovery planning.

NAME	POSITION	EMAIL

### Coordination with Others

The following people from our building management will participate on our emergency planning team.

NAME	ORGANIZATION/BUSINESS	PHONE

### Meeting Schedule

The emergency planning team will meet on a regular basis once a disaster has been declared on a federal level or by the Mountain Associations President within an internal level.

DATE	LOCATION	TOPIC

## Exercise 3: Opportunities

Scenarios to consider:

- Infrastructure Failure
- Road Construction
- Natural Disasters

**Solutions/Ideas:**

- Back-Up Generators
- Solar Energy
- Company Vehicle

[illegible]

# Implement

- Frankly, planning is useless if the practices and procedures are not implemented and practiced routinely.
  - Review your risks once per year
  - Have staff practice scenarios once per quarter
    - Use incentives to engage!

# Recover

- Insurance reimbursements
- Loan options
- After a disaster, you should always review the process that your business followed. Was there something valuable you could have used or better steps to your emergency preparedness plan?
  - Making changes to strengthen your business and reduce future exposure is necessary to adapt to future disasters.

# What else is in my workbook?

## Appendices:

- Inventory
- Business Impact Assessment
- Contractor Checklist to Avoid Scams/Bad Actors

# Getting Your Questions Answered

That was a lot!

We can help with your next steps

Sign up for one-on-one assistance.



## Appendix A. Succession for the limited liability partnership (LLP)

- Can only be formed in KY by certain licensed professionals such as doctors, lawyers, and accountants
- Same thought process applies for contemplating what happens upon the death of a partner in the partnership agreement

**If a partner in an LLP dies and the partnership agreement does not discuss the death of a partner, KRS Chapter 362 provides default rules:**

- The partnership does not automatically begin winding up as long as, within 90 days, all other partners agree in writing to continue the partnership
- Deceased's estate is entitled to receive the value of the deceased partner's share but not a continuing ownership stake (profits)
- Estate not liable for debts and obligations of LLP

# Appendix B: Third Party Resources for Small Business Owners

## Small Business Development Centers (SBDCs)

- Can assist with aspects of business planning that lawyers generally cannot, such as:
  - market research
  - financial analysis
  - organizational structure & succession
  - strategic planning
  - business impact assessment
- Provides one on one coaching and training programs

KY SBDC Southeastern KY:

Serving the Counties of: Adair, Casey, Clay, Clinton, Cumberland, Estill, Jackson, Knox, Laurel, Lincoln, Madison, McCreary, Pulaski, Rockcastle, Russell, Wayne, Whitley

Kentucky SBDC Eastern Kentucky:

Serving the Counties of: Bell, Boyd, Breathitt, Floyd, Greenup, Harlan, Johnson, Knott, Lawrence, Lee, Leslie, Letcher, Magoffin, Martin, Owsley, Perry, Pike, Wolfe

## Kentuckiana SCORE

- Affiliated with SBA
- Mentorship programs and workshops