

a guide to **forming your business**

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as a small business owner,

you face many decisions with regard to starting, running, and growing your business. You face endless demands on both your time and your finances.

BizFilings' Guide to Forming Your Business is designed to illustrate the options available to you as you decide what structure your business will take, the advantages and disadvantages of incorporating or forming a limited liability company, what the formation process entails, and what is required of you after formation. Business formation is an important step, and we want to help make it as easy to understand as possible.

BizFilings was founded with the goal of making incorporation easier and more affordable for small businesses. We have been helping small business owners incorporate since 1996 and understand the questions you have, the challenges you face, and your desire to succeed. We are business formation specialists. Let us focus on providing you a high-quality service at an affordable price while you focus on your specialty. . . your business.

We wish you success.

BizFilings

As a small business owner, you face a number of choices when choosing a legal structure for your business.

Keep in mind that with any business, no matter which structure you choose, you may be required to obtain business licenses and/or permits. To learn what is required for your particular business, it is best to contact both your local and state governments.

The following section on business entities and their common advantages and disadvantages is for general information purposes only. For more information regarding your particular business situation, it is best to seek the advice of an attorney or accountant.

sole proprietorship

The sole proprietorship is the simplest business form under which one can operate a business. A sole proprietorship is not a legal entity. It is simply an enterprise that is owned and operated by an individual. It is the easiest type of business to establish—no state filing or agreement with other owners is required. By default, once an individual starts selling goods or services, he or she has created a sole proprietorship.

A sole proprietorship is not legally separate from its owner. The law does not distinguish between the owner's personal assets and the business' obligations. A sole proprietor's assets can be (and often are) used to satisfy the business' debts. Consider this before selecting a sole proprietorship as your business form. Accidents happen. Businesses go out of business all the time. These unfortunate circumstances may quickly become a nightmare for its owner.

advantages

- Owners can establish a sole proprietorship instantly, easily, and inexpensively
- No state paperwork required for creation
- No separate tax filing for the business is required; instead, profits or losses of the business are reported on the owner's tax return
- Owners may freely mix business and personal assets
- A sole proprietor need not pay unemployment tax on himself or herself (although he or she must pay unemployment tax on employees)
- Sole proprietorships require few, if any, ongoing formalities

disadvantages

- Owners are subject to unlimited personal liability for the debts, losses, and liabilities of the business
- Obtaining capital, through such means as a bank loan, can be more difficult, as lending institutions often require a more formal entity structure
- Sole proprietorships rarely survive the death or incapacity of their owners and so do not retain value

general partnership

A partnership is a business form created automatically when two or more persons engage in a business enterprise for profit.

A general partnership is the simplest variety of partnership. By default, a business that begins with a verbal agreement or handshake is considered a general partnership. In a general partnership, all partners share in the management of the entity and share in the entity's profits. Matters relating to the ordinary business operations of the partners are decided by the partners. A formal, written partnership agreement that sets forth all the partners' rights and responsibilities is always highly recommended; oral partnership agreements are fertile ground for disputes among partners.

A general partnership offers no liability protection to its owners—the general partners are all liable for the debts and obligations of the general partnership. This means that a general partner's personal assets can be used to satisfy the business debts of a general partnership.

advantages

- Owners can start partnerships relatively easily and inexpensively
- No state paperwork required for creation
- Most states do not impose a fee for the privilege of existing

disadvantages

- All owners are subject to unlimited personal liability for the debts, losses, and liabilities of the business
- Individual partners bear responsibility for the actions of other partners
- Obtaining capital, through such means as a bank loan, can be more difficult, as lending institutions often require a more formal entity structure
- Poorly-organized partnerships and oral partnerships can lead to disputes among owners

limited partnership

A limited partnership (LP) is a variety of partnership owned by two classes of partners: general partners and limited partners. General partners manage the enterprise and are personally liable for its debts. Limited partners contribute capital and share in the profits, but typically do not participate in the management of the enterprise. Another notable distinction between the two classes of partners is that limited partners incur no personal liability for partnership debts beyond their capital contributions.

In an LP, at least one partner must be a general partner with unlimited liability, and at least one partner must be a limited partner whose liability is limited to the amount of his or her investment. Limited partners enjoy liability protection much like the shareholders of a corporation or the members of a limited liability company (LLC).

An LP allows for pass-through taxation, as its income is not taxed at the entity level. Limited partners can use losses to offset other passive income on their tax returns. General partners' losses can be used to shelter other income up to the value of their investment in the partnership, since their losses are not usually considered passive. LPs have been largely eclipsed by the development of the more versatile LLC.

To form an LP, the LP's organizers must file appropriate formation documents with their state's business chartering agency and must pay a required filing fee. The LP organization is especially appealing to types of businesses where a single, limited-term project is the focus (such as real estate or the film industry). LPs can be used as a form of estate planning in that parents can retain control of their business while transferring shares to their children.

advantages

- LPs allow for pass-through taxation
- Limited partners are not held personally responsible for the debts and liabilities of the business
- The general partner(s) have full control over all business decisions
- Partners have more flexibility in structuring the management with less formal requirements and annual paperwork

disadvantages

- The general partner(s) face unlimited liability
- Limited partners are prohibited from participating in the management of the business
- LPs are limited to 35 partners

limited liability partnership

A limited liability partnership (LLP) is a hybrid business form that shares attributes of partnerships and limited liability companies (LLCs). An LLP is an entity comprised of licensed professionals, such as attorneys, accountants, and architects. The partners in an LLP may enjoy personal liability protection for the acts of other partners (but each partner remains liable for his or her own actions). State laws generally require LLPs to maintain generous insurance policies or cash reserves to pay claims brought against the LLP.

The LLP form is appealing to licensed professionals that are prohibited from operating under an LLC or corporation—professionals such as accountants, attorneys, and architects. An LLP also allows for pass-through taxation, as its income is not taxed at the entity level.

To form an LLP, the LLP's organizers must file appropriate formation documents with their state's business chartering agency and must pay a required filing fee.

advantages

- LLPs allow for pass-through taxation
- All partners are not held personally responsible for the debts and liabilities of the business
- Partners have more flexibility in structuring the management with less formal requirements and annual paperwork
- The LLP form is the only choice for a professional association in a state that does not allow Professional Limited Liability Companies (PLLCs)

disadvantages

- Owners receive less liability coverage than an LLC
- Many states impose mandatory insurance requirements
- LLP status is limited to professionals in nearly all states
- LLPs have been eclipsed by PLLC statutes in some states

C corporation

The standard corporation, also called a C corporation, is the most common and reliable business structure. A corporation is a separate legal entity owned by its shareholders. As a result, it protects its owners from personal liability for corporate debts and obligations.

A corporation's shareholders, directors, officers, and managers must observe particular formalities in a corporation's operation and administration. For example, decisions regarding a corporation's management must often be made by formal vote and must be recorded in the corporate minutes. Meetings of shareholders and directors must be properly noticed and must meet quorum requirements. Finally, corporations must meet annual reporting requirements in their state of incorporation and in states where they do significant business.

Taxation is a significant consideration when choosing a business structure. A C corporation is taxed as a separate legal entity (i.e., no "pass-through" taxation like a partnership). If the corporation distributes profits to the shareholders in the form of dividends, shareholders pay income tax on those distributions; thus, commentators criticize C corporations as imposing "double taxation."

As with any business entity that offers liability protection to its owners, a corporation must file a charter in its home state. A corporation begins its life by filing articles of incorporation (sometimes called a certificate of incorporation) in the appropriate state and paying the necessary filing fee.

advantages

- Shareholders are typically not personally responsible for the debts and liabilities of the business
- C corporations can have an unlimited number of shareholders
- Ownership is easily transferable through the sale of stock
- Corporations have unlimited life extending beyond the illness or death of the owners
- Certain business expenses may be tax-deductible
- Additional capital can be raised by selling shares of the corporation's stock

disadvantages

- C corporations may incur double taxation
- Corporations are more expensive to form than sole proprietorships and partnerships
- Corporations face ongoing state-imposed filing requirements and fees
- Corporations face ongoing corporate formalities, such as holding and properly documenting annual meetings of directors and shareholders

S corporation

An S corporation is a standard corporation that has filed for S corporation status with the Internal Revenue Service (IRS). The S corporation's tax election adopts pass-through taxation—thereby sidestepping the double taxation burden borne by C corporations. S corporations file an informational tax return (much like a partnership) but the entity pays no tax. The shareholders report their share of the S corporation's profit or loss on their individual tax returns.

advantages

- S corporations are not taxed at the entity level—profits pass through to owners
- Shareholders are typically not personally responsible for the debts and liabilities of the business
- S corporations have unlimited life extending beyond the illness or death of owners
- Certain business expenses may be tax-deductible
- Additional capital can be raised by selling shares of the corporation's stock

disadvantages

- The IRS imposes restrictions on S corporation shareholders: shareholders must number fewer than 100; must be individuals, estates, or certain qualified trusts; and cannot be non-resident aliens
- S corporations can have only one class of stock (disregarding voting rights)
- All shareholders must consent in writing to the S corporation election
- S corporations are more expensive to form than sole proprietorships, and general partnerships and face ongoing, state-imposed filing requirements and fees
- A few states do require a state-level filing in order for the entity's S corporation status to be recognized by the state
- S corporations face ongoing corporate formalities, such as holding and properly documenting annual meetings of directors and shareholders

limited liability company

The limited liability company (LLC) is often described as a hybrid business form. It combines the liability protection of a corporation with the tax treatment and ease of administration of a partnership. The LLC is America's newest form of business organization; the great bulk of laws authorizing LLCs in the United States were passed in the 1980s and 1990s. The watershed event in the rise of the LLC was a 1988 IRS ruling that recognized partnership tax treatment for LLCs. Within 6 years, 46 states authorized LLCs as a business form. By 1996, Vermont, the last state to recognize LLCs, had an LLC statute in place.

LLCs enjoy pass-through taxation—thereby sidestepping the double taxation burden borne by C corporations. LLCs file an informational tax return (much like a partnership) but the entity pays no tax. The members (owners) report their share of the LLC's profit or loss on their individual tax returns.

LLCs can be formed only through filing a charter document (typically called articles of organization) in the appropriate state and paying the required filing fee.

advantages

- LLCs enjoy pass-through taxation
- Members are not personally responsible for the debts and liabilities of the business
- LLCs generally have no restrictions on the number of members allowed
- Members have flexibility in structuring the management of the company
- The LLC does not require as much annual paperwork or have as many formalities as C corporations and S corporations

disadvantages

- LLCs are more expensive to form than sole proprietorships and general partnerships
- Ownership is typically harder to transfer than with a corporation
- Because the LLC is a newer business structure, there is not as much case law to rely on for determining precedent

nonprofit corporation

A nonprofit corporation is an entity formed for purposes of pursuing a matter of public concern for non-commercial purposes. Nonprofit corporations are authorized by different statutes than standard for-profit corporations; however, the process of forming a nonprofit is closely parallel. Nonprofit corporation organizers must file nonprofit articles of incorporation or a certificate of incorporation with the appropriate state agency and pay the required filing fee. The formation documents must include certain clauses and information, such as a very detailed business purpose statement, in order for the entity to qualify for tax-exempt status.

To pursue tax-exempt status, nonprofits must apply for federal and state (if applicable) tax-exempt status. Tax-exempt status is not automatically granted upon formation. To apply for federal tax-exempt status, a nonprofit must file Form 1023 with the IRS. For state requirements, it is best to contact the department responsible for taxation in the nonprofit's state of formation.

Like standard for-profit corporations, nonprofits provide limited liability protection. The personal assets of the directors, officers and members typically cannot be used to satisfy the debts and liabilities of the nonprofit.

The most common type of nonprofit is the 501(c)(3), meaning it is formed in compliance with Section 501(c)(3) of the Internal Revenue Code. These nonprofits are organized and operate for a religious, educational, charitable, scientific, literary, testing for public safety, fostering of national or international amateur sports, or prevention of cruelty to animals or children purpose as permitted under this section of the Internal Revenue Code. Nonprofits may also be formed for other purposes pursuant to different sections of the Internal Revenue Code. For example, business leagues, chambers of commerce, and real estate boards are formed under Section 501(c)(6) of the Internal Revenue Code, and a cooperative hospital service organization is formed under Section 501(e).

advantages

- Nonprofits have the ability to apply for both federal and state tax-exempt status
- Certain nonprofits are eligible to receive public and private grants, making the obtainment of operating capital easier
- With 501(c)(3) nonprofits, donations made by individuals to the nonprofit are tax-deductible
- The nonprofit entity affords limited liability protection to the nonprofit's directors, officers, and members

disadvantages

- Nonprofits incur formation expenses and face ongoing state filing requirements and fees
- Nonprofits face ongoing formalities, such as holding and properly documenting regular meetings of directors

professional corporation

Professional corporations (PCs) are specialized entities organized and operated solely by licensed professionals such as attorneys, accountants, and architects. The shareholders of a PC may enjoy personal liability protection from the acts of other shareholders, but each shareholder remains liable for his or her own professional misconduct. Not all states recognize the PC business form.

State laws generally require PCs to maintain generous insurance policies or cash reserves to pay claims brought against the corporation.

PCs are formed in a similar manner to standard corporations and LLCs, by filing formation papers with the appropriate state agency and paying the necessary filing fee.

professional limited liability company

Professional limited liability companies (PLLCs) are specialized entities organized and operated solely by licensed professionals such as attorneys, accountants, and architects. The members (owners) of a PLLC may enjoy personal liability protection from the acts of other members, but each member remains liable for his or her own professional misconduct. Not all states recognize the PLLC business form.

State laws generally require PLLCs to maintain generous insurance policies or cash reserves to pay claims brought against the corporation.

PLLCs are formed in a similar manner to standard corporations and LLCs by filing formation papers with the appropriate state agency and paying the necessary filing fee.

formation assistant

Deciding what type of structure your business will take is complex. The Formation Assistant is an on-line tool that helps business owners select the formation package that best fits their business needs. Upon answering a series of business-related questions, the Formation Assistant ranks each entity type in order of relevance and explains advantages and disadvantages of forming in each state selected. After you decide on the entity type and state, the tool suggests the formation package that best fits your needs. To find the Formation Assistant, go to www.bizfilings.com and look for the listing under 'useful tools.'

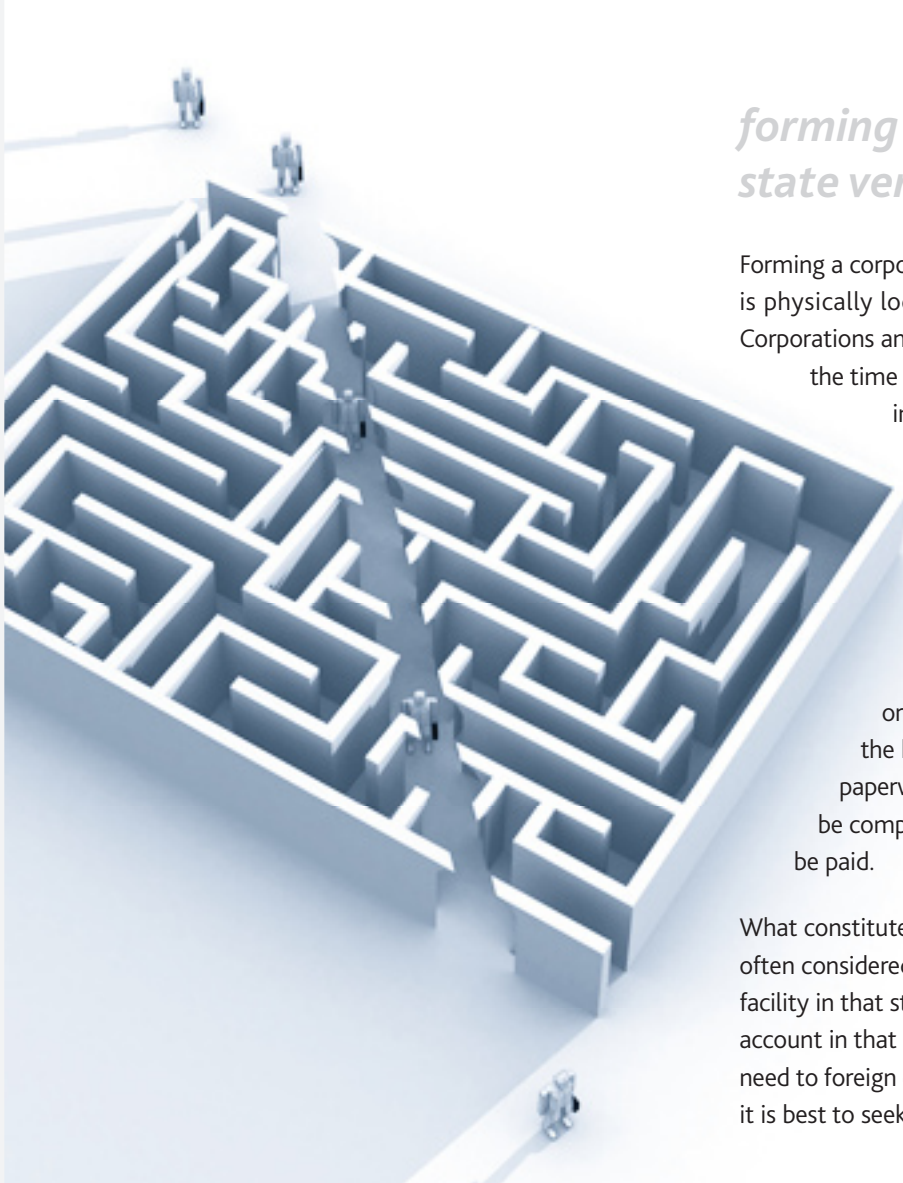
business entity

characteristics	sole proprietorship
formation	No state filing required.
duration of existence	Dissolved if entity ceases doing business or upon death of the sole proprietor.
liability	Sole proprietor has unlimited liability.
operational requirements	Relatively few legal requirements.
management	Sole proprietor has full control of management and operations.
taxation	Not a taxable entity. Sole proprietor pays all taxes.
pass-through income/loss	Yes
double taxation	No
cost of creation	None
raising capital	Often difficult unless individual contributes funds.
transferability of interest	No

comparison table

This table provides an at-a-glance reference to how the most common business entity types—sole proprietorship, general partnership, C corporation, S corporation, and LLC—compare in a number of key characteristics.

general partnership	limited partnership (LP)	limited liability partnership (LLP)	c corporation	s corporation	limited liability company (LLC)
Agreement between two or more parties. No state filing required.	State filing required.	State filing required. In California the use of LLP is limited to accountants & lawyers.	State filing required.	State filing required.	State filing required.
Dissolves upon death or withdrawal of a partner, unless safeguards are specified in a partnership agreement.	Perpetual	Dependent on the requirements imposed by the state of formation.	Perpetual	Perpetual	Dependent on the requirements imposed by the state of formation.
Partners have unlimited liability.	At least one general partner has unlimited liability.	Partners are not typically responsible for the debts of the LLP.	Shareholders are typically not responsible for the debts of the corporation.	Shareholders are typically not responsible for the debts of the corporation.	Members are not typically responsible for the debts of the LLC.
Relatively few legal requirements.	Some formal requirements, but less formal than corporations.	Delaware, Georgia, Pennsylvania, Texas, and Virginia require an LLP to carry insurance or an escrow account to cover liabilities.	Board of directors, annual meetings, and annual reporting.	Board of directors, annual meetings, and annual reporting.	Some formal requirements, but less formal than corporations.
Typically each partner has an equal voice, unless otherwise arranged.	Limited partners are excluded from management unless they serve on the board of directors.	All partners have the right to manage the business directly.	Managed by directors who are elected by shareholders.	Managed by directors who are elected by s shareholders.	Members have an operating agreement that outlines management.
Not a taxable entity. Each partner pays tax on his/her share of income and can deduct losses against other sources of income.	Files taxes as a separate entity, and must meet certain criteria to avoid being taxed as a corporation.	Files taxes as a separate entity, must meet certain criteria to avoid being taxed as a corporation.	Taxed at the entity level. If dividends are distributed to shareholders, dividends are also taxed at the individual level.	No tax at the entity level. Income/loss is passed through to shareholders.	If properly structured, there is no tax at the entity level. Income/loss is passed through to members.
Yes	Yes, if requirements are fulfilled.	Yes, if requirements are fulfilled.	No	Yes	Yes
No	No	No	Yes, if income distributed to shareholders as dividends.	No	No
None	State filing fee required.	State filing fee required.	State filing fee required.	State filing fee required.	State filing fee required.
Contributions can be made from partners, and more partners can be added.	Contributions can be made from partners, and more partners can be added.	Contributions can be made from partners, and more partners can be added.	Shares of stock are sold to raise capital.	Shares of stock are sold to raise capital.	Possible to sell interests, though subject to operating agreement restrictions.
No	Yes, pending approval of other limited partners and the general partners.	Possible, dependent on operating agreement restrictions.	Shares of stock are easily transferred.	Yes, observing IRS regulations on who can own stock.	Possible, dependent on operating agreement restrictions.



forming in the home state versus another state

Forming a corporation or LLC in the state where the business is physically located is called home state formation. Corporations and LLCs must pay filing fees to the state at the time of formation and are then subject to state-imposed ongoing requirements and fees. If the company is formed in another state but transacts business primarily in the home state, it may need to "foreign qualify" in the home state. Corporations and LLCs are considered "foreign" in every state other than their state of formation. Foreign qualification registers a corporation or LLC to transact business in a state other than the home state. To foreign qualify, the proper paperwork, called a certificate of authority, must be completed and additional state filing fees must be paid.

What constitutes transacting business varies by state. Factors often considered are whether the company has a physical facility in that state, has employees in that state, or has a bank account in that state. To learn whether your company may need to foreign qualify to transact business in another state(s), it is best to seek the advice of an attorney.

Once a business owner has decided to incorporate a business or form an LLC, the next step is to choose a state of formation. You are free to form your entity in any of the 50 states. However, an owner should consider several factors when making the choice.

For small businesses, two major factors impact the choice of the state of formation. The first factor is the cost of forming in your home state versus the cost of forming in a foreign state, especially if the company will need to qualify to transact business in the home state. The second (and more important) factor is each state's taxation and corporate law environment.

home state vs. another state *points to consider*

- State filing fees for forming a corporation or LLC in each state under consideration
- State filing fees to foreign qualify in the home state
- Ongoing fees imposed on corporations and LLCs by each state under consideration
- Ongoing fees imposed on foreign corporations and LLCs by the home state

state statutes and taxation requirements

When evaluating multiple states as possible states of formation, it is advisable to research each state's corporation and LLC statutes. For example, pro-business corporation laws are one reason why Delaware is such a common and popular choice for large corporations, but those same laws may not be as beneficial to corporations with only one or a few shareholders.

Business owners should also understand how corporations and LLCs are taxed by each state under consideration, and also the taxation requirements imposed by the home state on foreign corporations and LLCs. Does a state impose an income tax on corporations and LLCs? Does the state impose a minimum tax or a franchise tax? It is often beneficial to calculate the company's projected revenue for its first years of existence and then evaluate the states in terms of the amount of taxes the company would be required to pay.

Delaware

Why has Delaware historically been one of America's most popular corporate and LLC destinations? Delaware was America's first corporate haven, and its laws are intentionally pro-business and pro-privacy. More than 50 percent of all U.S. publicly-traded companies and 60 percent of Fortune 500 companies (for example, General Motors Corporation) call Delaware home. However, keep in mind that these same advantages may not always apply to smaller businesses.

Delaware offers nearly absolute privacy to owners of corporations and LLCs chartered there. Members of Delaware LLCs and shareholders of Delaware corporations need not identify themselves in any public records. The Delaware Secretary of State does not maintain shareholder or member information in any form, and transfers of ownership need not be reported or disclosed to any Delaware agency. This makes it very difficult for creditors, business competitors, data collection services, state tax authorities, the IRS, police, or other third parties to determine who a Delaware entity's owners are.

For questions on which state is best for the formation of your business, please seek the advice of an attorney or accountant.

common advantages of forming in Delaware

- The cost to form a corporation or LLC in Delaware is among the lowest in the country
- Delaware's corporate law is one of the most flexible in the country
- The taxation requirements are often favorable to companies with complex capitalization structures and/or a large number of authorized shares of stock
- There is no state corporate income tax for corporations and LLCs that are formed in Delaware but do not transact business there (there is a franchise tax, however)
- One person can hold all officer positions in the company and serve as the sole director of the corporation or sole member/manager of the LLC
- Delaware does not require director, member, manager, or officer names to be listed in the formation documents, thereby providing a level of anonymity
- Shareholders, directors, and officers of a corporation and members or managers of an LLC need not be residents of Delaware
- Shares of stock owned by persons outside of Delaware are not subject to Delaware taxes

the incorporation process

In order to form a corporation or LLC, formation paperwork must be filed with the appropriate state agency, most often the Secretary of State, and the required filing fee paid. This section sets forth the documentation and information typically required to form a corporation or LLC in any state, as well as typical costs and time frames.

matters of public record and publication requirements

- Keep in mind that formation document disclosures, such as names and addresses, become a matter of public record; in the internet age, such disclosures are easily searchable by individuals, regulatory and tax authorities, and data mining services.
- Some states require public announcement of new business formations. For example, a state may require that notice of the formation be published in a legal journal or specific, local newspaper for a designated amount of time in order to provide public notification.

documentation, fees and typical timeframes

A corporation's formation document is typically called the articles of incorporation or certificate of incorporation, depending on the state. An LLC's formation document is typically called the articles of organization or certificate of organization. Formation documents advise the state and the public of certain details concerning the entity. Formation documents become a formal record of the corporation's or LLC's existence.

State corporation and LLC filing fees range widely—from less than \$40 to more than \$500.

The typical time frame to have formation documents approved by the state also varies by state. Standard (non-expedited) entity formation filings can take four to six weeks to be approved and returned to the business owner. Most states, including the pro-incorporation states like Delaware, Nevada, and Wyoming, offer expedited filing services for an additional fee. Expedited services can reduce the turnaround time for filing documents to a few days or even a few hours.

mandatory corporation and llc disclosures

LLCs and corporations must disclose certain information in their formation documents. The mandatory disclosures vary slightly by state.

Company Name: The desired name of the corporation or LLC must set forth in the articles. The name must typically include a corporate or LLC identifier, such as "Corporation," "Incorporated," "Company," or an abbreviation of those terms. LLCs must include the term "Limited Liability Company" or "LLC." The state holds final approval rights on the desired name to ensure it is not already in use by another company in that state, or is not "deceptively similar" to a name already in use.

Business Purpose: An entity's formation document typically must include a brief statement of the entity's business purpose. The business purpose is a declaration of the proposed scope of an entity's operations. Business purpose clauses are either of two types, general or specific.

General business purpose — some states require a general purpose clause, which basically states that the company is formed to engage in "all lawful business."

Specific business purpose — some states require a more complete explanation of exactly what type of business the company will undertake.

Registered Agent: The registered agent is the party responsible for the receipt of important legal and tax documents on behalf of the corporation or LLC. The registered agent must have a physical address (no P.O. boxes) in the state of formation, and must be accessible during normal business hours.

Examples of important documents typically delivered to the registered agent include service of process (notice of litigation), tax notices, and annual filing notices.

Incorporator: The incorporator is the person or company who initiates an entity's initial filing with the state. Most states require that the name and signature of the incorporator be included in the formation documents, and a growing number of states also require that the incorporator's address be included.

registered agent

The registered agent warrants additional discussion. The majority of states require corporations and LLCs to appoint a registered agent in the state where the company is formed.

A business owner has the option of serving as the company's registered agent as long as he or she maintains a physical address in the state in which the corporation or LLC is formed. There are a number of professional registered agent service providers that typically charge an annual fee to serve as agent for corporations and LLCs. Many small business owners find it advantageous to use a registered agent service provider for their businesses, for reasons ranging from the registered agent's name and address are included on the formation documents and are matters of public record, to wanting to ensure someone is always present during normal business hours to facilitate receipt of the documents delivered to the registered agent.

advantages of using a registered agent service provider

- **Stability:** The registered agent address must be kept updated with the state. If a business owner serves as the company's registered agent and moves, he or she must file an amendment with the state and pay the necessary state filing fees to update the registered agent address on record for the company. If a registered agent provider is used, the provider is responsible for filing the amendment if its address changes and for paying the necessary state fees.
- **Anonymity:** In states that do not mandate disclosure of the company's legal address, the registered agent's address is often the only address disclosed to the public. A professional registered agent bestows anonymity upon an entity's owners and managers.
- **Reliability:** The primary responsibility of registered agent providers is to provide in a timely manner the documents received for their clients' companies. This includes operating a location that is staffed during normal business hours to receive documents delivered to the agent, recording such documents, and promptly shipping them to the client.
- **Professionalism:** If a company is sued, and the business owner is acting as its registered agent, the service of process is often served by a law enforcement official to the owner. Whether the owner listed a home or business address as the registered agent address, having law enforcement show up to serve the documents is not ideal. By using a registered agent provider, the provider is served and then sends the service of process to the corporation or LLC discretely and in a timely fashion.

disclosure information required for corporations

The information required in corporate formation documents varies from that required for LLCs. The following disclosures are generally required:

Number of Authorized Shares of Stock: Corporations must set forth the number of shares of stock they wish to authorize and the par value, if any, associated with those shares. A corporation need not issue the total number of authorized shares. Some corporations opt to withhold a certain number of unissued shares in order to add additional owners at a later date or to increase the ownership percentage for a current shareholder.

Share Par Value: The par value of a share of stock is its minimum stated value. Par value typically doesn't correlate to the actual value of a share. Common par values are \$0.01, \$1, or no par. The actual value of a share is its fair market value, or what someone is willing to pay for a share of stock. For public companies, actual value is determined by the price investors are willing to pay for each share on the national exchange. For private companies, the actual value of a share is typically determined by the overall value of the corporation or the book value.

Preferred Shares: If a corporation plans to authorize both common and preferred shares, this information, along with any information on voting rights, must be included in the articles of incorporation. Preferred shares typically provide those shareholders preferential payments of dividends or distribution of assets should the company cease operations. Many small business owners choose to only authorize shares of common stock. For additional information on preferred shares and voting rights, it is best to seek the advice of an attorney.

Directors: Many states require the names and addresses of the initial directors of the corporation to be included on the formation documents. The directors are the individuals responsible for overseeing and directing the affairs of the corporation, including making major corporate decisions. They are not responsible for the day-to-day activities of the business, which are attended to by the officers. Directors are elected by the shareholders and are also responsible for appointing the officers.

Officers: The officers are responsible for the day-to-day activities of the corporation. While inclusion of the officer information is optional in many states, a few states do require it. Common officer titles include president, vice president, secretary, and treasurer.

disclosure information required for llcs

LLCs require articles of organization or a certificate of organization that includes the information outlined below.

Management Structure: LLCs must typically specify whether the company will be managed by a member(s) or by a manager(s). When an LLC is managed by members, the owners oversee the day-to-day operations of the business. When an LLC is managed by appointed managers, it more closely resembles a corporation in which the management of the business is the responsibility of the directors and officers rather than the shareholders.



Members/Managers: Many states require that the names and addresses of the initial members or managers be set forth in the formation documents.

Dissolution Date: Some states still require the LLC to list a dissolution date in the articles of organization. Some states dictate the maximum duration of an LLC's existence, such as 40 years. Other states allow for perpetual existence.

common information required for nonprofits

A nonprofit corporation's articles of incorporation or certificate of incorporation bear some resemblance to for-profit articles of incorporation. However, a few key differences are worth noting. Nonprofits do not issue stock, which means the nonprofit articles of incorporation will not require information on shares of stock or par value. Nonprofits must include very specific and detailed business purpose clauses. This information is used by the state to ensure the company fits within the nonprofit guidelines. Additionally, the state-approved articles of incorporation must be provided to the IRS when the nonprofit applies for a federal tax-exempt status. The IRS evaluates the business purpose information to ensure the nonprofit does indeed qualify for this special status.

post-formation and compliance requirements

The requirements imposed on corporations and LLCs do not cease once the formation documents have been approved by the state. These entities face both internal and external state-imposed requirements these entities face on an ongoing basis. Because the benefits that corporations and LLCs afford their owners are advantages specific to these entity types, the owners must perform certain responsibilities in order to ensure these benefits. Failing to follow the imposed requirements can result in dire consequences, including the potential loss of the limited liability afforded to the owners.

The **Bylaws** are the second most important corporate document following the articles of incorporation. The Bylaws set forth the corporation's internal governance rules and address a wide range of internal procedures and rules—from establishing a corporation's fiscal year, to what corporate actions require shareholder approval, to how many officers a corporation will have. Another item of business often addressed during the initial meeting of directors is the authorization for the corporation to open a bank account. Some banks require a copy of the directors' resolution approving the opening of a bank account and assigning which officers will have signature authority on the account.

internal requirements

Corporations and LLCs must observe certain formalities in their internal governance. The ongoing formalities imposed upon corporations are the strictest. Corporations are required to hold and properly document initial and annual meetings of the directors and shareholders. The importance of faithfully undertaking and properly documenting each cannot be overstated. There are a number of tools available today, many specifically geared towards small business owners, to help make the process of complying with internal formalities as easy and convenient as possible for business owners.

Internal corporate requirements: Ownership interest in a corporation is measured in shares of stock. At the organizational meeting, the directors issue shares of stock to the initial shareholders in order to formally document their ownership of the corporation. The issuance of shares should be formally recorded in a stock transfer ledger, which is updated any time shares are issued to or bought back from shareholders.

As previously mentioned, the officers are responsible for managing the corporation's day-to-day operations. A corporation's officers are appointed by the directors, and the initial officers are typically officially appointed during the organizational meeting.

Corporations should also conduct an initial meeting of the shareholders. While the directors undertake the first major corporate actions, the shareholders typically formally approve the formation of the corporation, approve the initial board of directors, and also approve all steps undertaken by the directors at their initial meeting.

Directors and shareholders must conduct annual meetings. At an annual meeting of directors, directors typically undertake the approval or rejection of major business decisions, renewal of the officers' terms, and/or the appointment of new officers. At an annual meeting of shareholders, shareholders typically undertake the renewal of directors' terms and/or appointment of new directors. Management should always endeavor to properly document all director and shareholder meetings and actions. Also, all director or shareholder resolutions approving certain corporate actions should be documented and kept with the minutes of the meeting during which those resolutions were approved.



Internal LLC Recommendations: LLCs are not required to hold an initial meeting or annual meetings of the members or managers; however doing so is strongly recommended. It could be advantageous for the LLC to have formal records and documentation of all business decisions, particularly if a management or ownership dispute should ever arise.

Ownership of an LLC is measured by membership interest, much in the manner of a partnership. Having the LLC issue membership interest certificates to all members and recording all transactions in a membership interest ledger is also advised. Providing certificates to members provides a formal record of their LLC ownership status. It also helps the LLC keep accurate records. Other items of business such as authorizing the opening of a bank account for the LLC can also be completed during an initial meeting.

It is also recommended that LLCs hold annual meetings of the members or managers. As with corporations, major business decisions can be addressed during these meetings. Properly documenting any business decisions made during member and manager meetings is important, and minutes and resolutions from all meetings should be kept with the LLC's records.

It is recommended to hold an **initial meeting of the members or managers** to formally undertake the initial actions of the LLC. At this meeting, the operating agreement, which outlines the internal governance of the LLC, should be adopted. Even if an initial meeting of members or managers is not held, it is highly recommended for LLCs to have a comprehensive operating agreement in place.

external requirements

External requirements are requirements imposed by the states upon corporations and LLCs. These requirements often include an annual or biennial state filing and payment of a corresponding state fee.

Nearly all states require corporations and LLCs to file periodic reports with the Secretary of State's office or its equivalent department. Periodic statements allow states to maintain current information on corporations and LLCs formed or qualified to transact business there. Annual statements are the norm—but some states have relaxed their rules and require only a biennial statement. In either case, the states typically impose a filing fee along with the periodic statement. The fees vary widely by state and by entity type, from \$1 to more than \$200.

Some states also impose a franchise tax. A franchise tax is a tax levied in consideration for the privilege of either forming or qualifying to do business in a state. A franchise tax may be based upon income, assets, outstanding shares, or a combination. Put another way, a franchise tax is a tax one pays for "just being there."

The due dates for annual statements and franchise taxes vary by state. Some states connect these due dates to the anniversary of the corporation's or LLC's formation or qualification. Other states set a particular due date for all corporation annual statements and another for all LLCs. Because the periodic filing requirement and annual franchise tax can represent a significant burden and expense, business owners should research these requirements prior to organizing.



additional external requirements

What follows is a list of other potential state and federally imposed requirements that may apply to an entity:

- Filing a federal income tax return and paying necessary taxes
- Filing a state income tax return and paying necessary taxes
- State franchise taxes
- State annual statements
- Payroll tax obligations (such as Social Security, Medicare, and unemployment)
- Property tax obligations
- State sales and use tax obligations
- County, city or municipality tax obligations
- Obtaining and renewing any necessary business permits and/or licenses

consequences of non-compliance

Small business owners often mistakenly believe that ongoing corporate and LLC requirements do not apply to them, or perhaps they feel too busy to properly satisfy these requirements. Failing to observe internal and external requirements can yield dire consequences, such as losing the corporate or LLC entity status recognized by the state and subsequent loss of the limited liability protection afforded to the owners.

If a corporation or LLC is sued and is unable to show that it faithfully followed all corporate or LLC formalities, a judge might rule that the company was operating more in the manner of a sole proprietorship or general partnership. In such a case, the court might sidestep the corporate or LLC status and extend liability to the entity's owners.

There are also consequences on the state level that can happen prior to piercing the corporate veil. When a corporation or LLC does not comply with a state's annual or ongoing requirements, that company is no longer in "good standing" with the state. Each state has different parameters for what is required before a company falls out of good standing and also how the states handle it. For example, many states impose late fees and interest payments on the outstanding annual statement and/or franchise tax fees. Being out of good standing long enough may lead to administrative dissolution by the state. When the state administratively dissolves a corporation or LLC, all of the benefits of being a corporation or LLC are lost.

piercing the corporate veil

Liability protection for corporation and LLC owners is not absolute. The term **piercing the corporate veil** refers to the legal theory by which a court will sidestep the liability protection normally afforded by a corporation or LLC and impose liability upon the owners or an entity. A close corollary rule is the alter ego theory. The alter ego theory says, in effect, that if the shareholders of a corporation disregard the legal separateness of the corporation or disregard proper formalities, then the law will also disregard the corporate or LLC form if required to protect individual creditors. Courts have long recognized the distinct legal status of liability shielding entities, and courts are reluctant to disregard the corporate or LLC status—though they will pierce the corporate (or LLC) veil in appropriate circumstances.

BizComply

It's imperative to keep the "corporate veil" intact by meeting all ongoing external and internal compliance requirements. With BizComply, a web-based application, business owners are notified before critical compliance events need to happen, even when a company transacts business in multiple states. It also provides access to important forms and houses a company's essential information in one convenient location.

for more information

www.bizfilings.com/products/bizcomply.asp

using an incorporation service provider

As the prevalence of the Internet has grown, so has the method of using an incorporation service provider to form a corporation or an LLC. An incorporation service provider is a company that prepares and files the formation documents with the state on behalf of a business.

Incorporation service providers are not law firms and cannot provide legal advice. They can, however, provide general information on the business entities, the incorporation process, and state requirements.

benefits of using an incorporation service provider

An incorporation service provider is an ideal option, as many small business owners and new business owners are often both cost-conscious and pressed for time.

When business owners personally prepare and file their formation documents with the state, they often spend more time than originally anticipated or desired on the process of researching state requirements and fees and obtaining, completing, and submitting the appropriate documents.

When using an incorporation service provider, business owners can typically research on the provider's Website and then place an order by answering approximately 10 to 15 questions. Incorporation service providers can often navigate the bureaucratic complexities of various states and provide prompt service and tested documents.

Using an attorney or an accountant for the preparation and filing of the formation documents is another option, but can often be quite expensive, particularly for new business owners who need all of their spare capital to start operations. Attorney fees vary, but incorporating with an attorney can cost between \$1,500 and \$3,000. If a business owner needs the advice of an attorney on which entity is best for his/her particular situation or where to incorporate, a provider can still be used for the actual preparation and filing of the formation documents. This helps save money, since the owner is only paying the attorney's hourly fee for the advice provided and not for the time required to facilitate the incorporation process.

Incorporation service providers typically charge a service fee plus the state filing fee. When researching incorporation providers, business owners should understand what is included in the service. For example, is shipping included or must standard shipping be added to the advertised service fee? When choosing an incorporation service provider, ensure that the company's contact information is easy to find. Look for customer testimonials, and also membership seals demonstrating that the company belongs to organizations that promote good business practices. Also, because most incorporation service providers offer online ordering, check for a privacy policy and ensure that the online order form is secure.

about BizFilings

BizFilings professionally forms corporations, limited liability companies (LLCs), nonprofits, limited partnerships, and limited liability partnerships faster than anyone else. The rush service makes it possible to file a corporation or LLC in as little as 24 hours. The company has grown rapidly in the past decade, helping more than 150,000 domestic and international business owners with their formation needs. The company is headquartered in Madison, Wisconsin, with satellite operations around the country.

BizFilings is committed to helping entrepreneurs and small business owners learn about business formation and its benefits, as well as helping them easily and affordably undertake this important business step without sacrificing quality.

BizFilings is a part of Wolters Kluwer, a leading multinational publisher and information services company. Wolters Kluwer has 2006 annual revenues of €3.7 billion, employs approximately 19,900 people worldwide and maintains operations across Europe, North America, and Asia Pacific.

benefits of choosing BizFilings

- **Industry pioneers:** BizFilings pioneered the online formation industry in 1996. Since then, we've helped more than 150,000 entrepreneurs and small business owners with their formation needs.
- **Nationwide services:** BizFilings professionally forms corporation, LLCs, nonprofits, and partnerships in all 50 states faster than anyone else. BizFilings' rush services make it possible to file in as little as 24 hours.
- **Educational resources:** BizFilings' Website offers a wealth of information on business formation, including a section of objective articles on business formation and other facets of starting and running a business.
- **High customer satisfaction ratings:** BizFilings consistently receives high customer satisfaction ratings in the customer satisfaction surveys it undertakes throughout the year.
- **Guaranteed filing accuracy:** BizFilings guarantees its filing services for the life of its customers' companies. BizFilings is confident in its ability to deliver a service that exceeds customer expectations. BizFilings' services are both accurate and timely, and BizFilings prides itself on providing the highest level of service in the industry.
- **Easy ordering online or by phone:** Customers have 24/7 access to BizFilings' online order forms for formation, foreign qualification, amendments, dissolutions, registered agent, and other services, or they can place an order by phone.
- **24/7, secure, online account access:** BizFilings provides all customers with 24/7, secure, online access to their accounts. The Online Corporate Status Center allows customers to track the status of their orders, view, and download copies of their state-approved formation documents, place additional orders in a fraction of the time, access their registered agent and BizComply accounts, update contact information, and more.
- **Solutions for both new and growing businesses:** Beyond formation and related services, BizFilings offers filings and services often needed by growing businesses.
- **National network:** BizFilings operates through a company-owned, national network of registered agent offices. This allows it to deliver consistent registered agent service and provide exceptional customer service and support.
- **Free registered agent service for six months:** Customers placing a formation or foreign qualification order with BizFilings receive six months of free registered agent service.
- **Free BizComply subscription:** All registered agent customers receive free access to BizComply, an online compliance management tool.

BizFilings product listing

State filings — all 50 states

- **Formations:** Corporation, LLC, nonprofit, limited partnership and limited liability partnership formation filings.
- **Professional entity formations:** PC and PLLC filings
- **Foreign qualification filings:** Certificate of authority filings to register to transact business in another state or multiple states
- **Amendment filings:** Certificate of amendment filings to amend the formation documents
- **Dissolution filings:** Certificate of dissolution filings when a company is ceasing operations

Registered agent services in all 50 states

- **Formations/qualifications:** All formation or foreign qualification orders include six months free registered agent service
- **Change of registered agent:** BizFilings offers registered agent service in all 50 states to existing corporations and LLCs
- **Registered agent only:** BizFilings can prepare and file with the state the necessary documents to change a company's existing registered agent

IRS forms and filings

- **Federal tax identification number obtainment:** BizFilings can secure your company's federal employer identification number (EIN) from the IRS
- **S corporation election obtainment:** BizFilings will prepare and file your corporation's S corporation election with the IRS

Business planning software

- **Ultimate Business Planner:** BizFilings offers the Ultimate Business Planner which helps business owners create a business plan through a simple step-by-step approach

Business licenses

- **Federal, state, local, county, and/or regional licenses:** BizFilings will identify the permits and licenses that apply to your business and provide all of the forms you need.

Compliance offerings and corporate supplies

- **BizComply:** BizFilings offers BizComply, our proprietary online compliance management tool
- **Corporate, LLC, NP, LP, or LLP kit and seal:** BizFilings can provide a professional binder customized with your company name; corporate, LLC, NP, LP or LLP seal, 20 custom stock, membership or partnership certificates; stock/membership/partnership interest transfer ledger; sample bylaws or operating agreement; sample resolutions; and more
- **Corporate, LLC, NP, LP, or LLP seal (stand-alone):** BizFilings offers a professional custom seal with the company name for stamping official company documents
- **Stock, membership or partnership certificates (stand-alone):** BizFilings offers professional and secure stock, membership interest, or partnership certificates pre-printed with your company name
- **Company forms CD:** BizFilings offers customizable templates for bylaws or operating agreements, initial and annual meeting minutes, resolutions, and more

State and local-related services

- **DBA filing service:** BizFilings can prepare and process your company's "doing business as" (DBA) filing, also called a fictitious name filing, at the state and/or county level
- **Rush filing service:** BizFilings offers a rush filing service in participating jurisdictions reducing the entity filing time frame to 24-48 hours
- **Certified copy:** BizFilings can obtain a certified copy of the articles of incorporation or organization
- **Certificate of good standing:** BizFilings can secure your certificate of good standing, demonstrating your company is formed in a particular state and has made all necessary filings and paid the required fees
- **State name availability search:** BizFilings can undertake a preliminary search with a state to determine if a desired company name is available
- **State name reservation:** BizFilings can reserve a desired company name in a particular state to use either immediately or at a later date for a formation or foreign qualification filing
- **Apostille:** BizFilings can secure certification by apostille of formation and/or qualification documents for use in another country

helping small business owners succeed

In today's world, incorporation (or business formation) is an essential step for business owners. It secures their personal assets and provides additional benefits to the business.

Understanding business formation, however, is as important as undertaking it.

BizFilings is dedicated to helping educate entrepreneurs and small business owners on the business formation choices available, the formation process, and the ongoing requirements that corporations, LLCs, nonprofits, and partnerships face.

While this guide focuses on business formation, BizFilings offers information for all stages of business.

Providing new and growing businesses with access to both comprehensive information and easy-to-use and affordable services has helped BizFilings become the industry's leading online incorporation service provider.

It has also helped more than 150,000 small business owners start their businesses on the right foot, and has turned them into satisfied customers.

We wish you success with your business and hope you will become a satisfied BizFilings' customer, too.

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