

A GUIDE TO INCORPORATING YOUR BUSINESS



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As a business owner, you face many decisions when it comes to starting, running, and growing your business. BizFilings' Guide to Incorporating Your Business is designed to illustrate your options and help you decide what structure your business will take. It explains the advantages and disadvantages of incorporation, what the incorporation process entails, and your post-incorporation requirements—such as filing annual statements with your state of incorporation. [Technically, the term “incorporation” means creating a corporation while the term “formation” or “organization” means creating any kind of business entity. However, in this guide we will use all three terms interchangeably.]

We are business incorporation experts, and our goal is to help you understand incorporation and your options and to make incorporation easier and more affordable. We've been helping small business owners incorporate since 1996 and understand the questions you have, the challenges you face, and your desire to succeed. We're committed to delivering high-quality, high-value service at an affordable price and supporting you across the life of your business. The following section on business types is for general information purposes only. For more help regarding your particular business, talk with an attorney or accountant.

SOLE PROPRIETORSHIP

The sole proprietorship is the simplest business form and not a legal entity. It is the easiest type of business to establish—no state filing or agreement with other owners is required.

It is simply an enterprise owned and operated by an individual. 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. In fact, a sole proprietor's assets can be (and often are) used to satisfy the debts and liabilities of the business. Remember: accidents happen, and businesses end all the time. Such circumstances may quickly become a nightmare for a business owner who operates as a sole proprietor.

Advantages

- ▶ The owner can establish a sole proprietorship instantly, easily and inexpensively.
- ▶ No state paperwork is required for creation.
- ▶ No separate tax filing is required; profits or losses are reported on the owner's tax return.
- ▶ A sole proprietor need not pay unemployment tax on himself or herself (but must pay employee unemployment tax).
- ▶ Few, if any, ongoing formalities.

Disadvantages

- ▶ The owner is subject to unlimited personal liability for business debts, losses and liabilities.
- ▶ Obtaining capital, such as a bank loan, can be more difficult; lenders often require a more formal entity structure.

- ▶ Sole proprietorships rarely survive an owner's death or incapacity, so they do not retain value.
- ▶ Sole proprietorships by definition can only have one owner.

GENERAL PARTNERSHIP

A general partnership is the simplest variety of partnership, and is created automatically when two or more persons engage in a business enterprise for profit.

By default, a business that begins with a verbal agreement or handshake is considered a general partnership. All partners share in both the day-to-day management and business profits. A formal, written partnership agreement that sets forth all the partners' rights and responsibilities is highly recommended; oral agreements are fertile ground for disputes.

A general partnership offers owners no liability protection—partners are all liable for business debts and obligations, and their personal assets can be used to satisfy those debts.

Advantages

- ▶ Owners can start partnerships relatively easily and inexpensively.
- ▶ No state paperwork is 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 business debts, losses and liabilities.
- ▶ Individual partners bear responsibility for the actions of other partners.

- Obtaining capital, such as a bank loan, can be more difficult, as lenders 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 owned by two classes of partners: general and limited. General partners manage the enterprise and are personally liable for its debts. Limited partners contribute capital and share profits, but typically do not participate in management. Limited partners also incur no personal liability for partnership debts beyond their capital contributions. At least one partner must be a general partner with unlimited liability, and one must be a limited partner whose liability is limited to the amount of his or her investment. Limited partners enjoy liability protection much like a corporation's shareholders or an LLC's members.

An LP allows for pass-through taxation, as income is not taxed at the business level. Limited partners can use losses to offset other passive income on their tax returns. An informational tax return is filed, but profits or losses are reported on the partners' personal tax returns and any tax due is paid at the individual level. General partner losses can be used to shelter other income up to the value of their investment, since losses are not usually considered passive. LPs are especially appealing to businesses focused on a single, limited-term project (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.

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

Advantages

- LPs enjoy pass-through taxation.
- Limited partners are not held personally responsible for business debts and liabilities.
- General partner(s) have full control over all business decisions.
- Partners have flexibility in management structure with few formal requirements and annual paperwork.

Disadvantages

- The general partner(s) face unlimited liability.
- Limited partners are prohibited from participating in business management.

- Ongoing compliance requirements such as the need to file annual reports.
- If the LP transacts business in states other than the formation state it will have to qualify to do business in those "foreign" states.

LIMITED LIABILITY PARTNERSHIP

A limited liability partnership (LLP) is a special kind of general partnership. LLP partners participate in the management of the business, as in regular general partnerships, but the personal assets of the partners typically cannot be used to satisfy business debts and liabilities. LLP partners may also enjoy personal liability protection from the acts of other partners (but each partner remains liable for his or her own actions). State laws may require LLPs to maintain insurance policies or cash reserves to pay claims brought against the LLP.

The LLP is appealing to licensed professionals, such as accountants, attorneys and architects, when they are prohibited from operating as an LLC or corporation. In fact, in some states only licensed professionals can form LLPs. An LLP also allows for pass-through taxation, as its income is not taxed at the entity level. An informational tax return is filed, but profits or losses are reported on the partners' personal tax returns and any tax due is paid at the individual level.

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

Advantages

- LLPs enjoy pass-through taxation.
- All partners are not held personally responsible for business debts and liabilities.
- Partners have flexibility in how they manage the company with few formal requirements and annual paperwork.
- The LLP form may be the only choice for a professional services business that wishes to have pass-through taxation in states that do not allow professional limited liability companies (PLLCs).

Disadvantages

- Ongoing compliance requirements such as the need to file annual reports.
- If the LLP transacts business in states other than the state in which it registered, it will have to qualify to do business in those "foreign" states.

C CORPORATION

The corporation is a very common business structure.

A corporation is a separate legal entity owned by its shareholders, thereby protecting owners from personal liability for corporate debts and obligations. The corporation is liable for its own debts and obligations.

A corporation's shareholders, directors, and officers must observe particular formalities in a corporation's operation and administration. For example, management decisions must often be made by formal vote and recorded in corporate minutes. Director and shareholder meetings must be properly noticed and documented. Finally, corporations must meet annual reporting requirements and pay ongoing fees in their state of incorporation and in states where they are registered to transact business.

Taxation is a significant consideration when choosing a business entity type. For income tax purposes there are two types of corporations. A C corporation (so named because it is taxed under Subchapter C of the Internal Revenue Code) is taxed as a separate legal entity (i.e., no pass-through taxation as with a partnership). A corporate income tax return is filed and taxes are paid on the corporation's profits. If the corporation distributes profits to the shareholders in the form of dividends, shareholders pay income tax on those distributions. This creates a double taxation of corporate profits.

As with any business entity type that offers liability protection to owners, a corporation must be created at the state level. Articles of Incorporation (sometimes called a Certificate of Incorporation) in the appropriate state must be filed and filing fees paid.

Advantages

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

Disadvantages

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

S CORPORATION

The other type of corporation for income tax purposes is an S corporation (so called because it is taxed under Subchapter S of the Internal Revenue Code). S corporations have pass-through taxation—thereby sidestepping the double taxation of corporate profits borne by C corporations. Income taxation is the only the distinction between C and S corporations. They are identical under the state corporation laws.

S corporations file an informational tax return (much like a partnership) but pay no tax at the business entity level. Corporate profit or loss is reported on shareholders' personal tax returns, and any tax due is paid at the individual level.

You don't really create an S corporation. You create a corporation. You do this by filing a document generally called Articles of Incorporation (sometimes called a Certificate of Incorporation) in the appropriate state and then filing Form 2553 with the IRS to elect S corporation status.

Advantages

- ▶ S corporations enjoy pass-through taxation.
- ▶ Shareholders are typically not personally responsible for business debts and liabilities.
- ▶ S corporations have unlimited life extending beyond owner illness or death.
- ▶ Additional capital can be raised by selling shares of the corporation's stock.

Disadvantages

- ▶ The IRS imposes restrictions on S corporation shareholders: they must number 100 or fewer; be individuals, estates or certain qualified trusts; and cannot be non-resident aliens.

- ▶ Another IRS restriction is that S corporations can have only one class of stock (disregarding voting rights).
- ▶ The IRS also requires that all shareholders must consent in writing to the S corporation election.
- ▶ Corporations are more expensive to form than sole proprietorships and general partnerships, and face ongoing, state-imposed filing requirements and fees.
- ▶ A few states' tax laws require a state-level filing with the state's tax department for the entity's S corporation status to be recognized.
- ▶ Corporations face ongoing corporate formalities, such as holding and properly documenting annual director and shareholder meetings.
- ▶ Corporations face ongoing compliance requirements like filing annual reports and paying franchise taxes.
- ▶ If the corporation does business in states other than the state of incorporation it will have to qualify to do business in those "foreign" states.

NONPROFIT CORPORATION

A nonprofit corporation is formed to pursue a matter of public concern for non-commercial purposes. Nonprofits are authorized by different statutes than standard for-profit corporations, but the process is similar. Nonprofit organizers must file nonprofit Articles of Incorporation or a Certificate of Incorporation with the appropriate state agency and pay a filing fee.

To pursue tax-exempt status, nonprofits must apply at the federal and state (if applicable) level—it is not automatically granted when the nonprofit is incorporated. 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 your state of incorporation to determine whether a separate state-level tax-exemption filing is required.

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

The most common type of nonprofit is the 501(c)(3), 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. Nonprofits may also be formed for other purposes. For example, business leagues, chambers of commerce, and real estate boards are formed under Section 501(c)(6), and a cooperative hospital service organization is formed under Section 501(e).

Advantages

- ▶ Nonprofits can apply for both federal and state tax-exempt status.
- ▶ Some are eligible for 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 affords limited liability protection to directors and officers.

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.
- ▶ If the nonprofit corporation does business in states other than the state of incorporation, it will have to qualify to do business in those "foreign" states.

LIMITED LIABILITY COMPANY

The limited liability company (LLC) is the most common form of business entity in the United States. It is a hybrid business form, combining the liability protection of a corporation with the tax treatment and ease of administration of a partnership. The LLC is a relatively new form of business organization; the great bulk of laws authorizing LLCs in the United States were passed in the 1980s and 1990s.

LLCs enjoy pass-through taxation—sidestepping the double taxation of company profits borne by C corporations (although LLCs can elect with the IRS to be taxed as a corporation). Multi-owner LLCs file an informational tax return but pay no tax on company profits. The members (owners) report their share of the LLC's profit or loss on their individual tax returns, and any tax due is paid at the individual level. Single-member LLCs report company profits on Schedule C, and any tax due is also paid at the individual level.

LLCs are created by filing formation documents, typically called Articles of Organization or Certificate of Organization, at the state level and paying the required state filing fee.

Advantages

- › LLCs enjoy pass-through taxation.
- › Members (owners) are not personally responsible for business debts and liabilities.
- › LLCs have no restrictions on the number of members allowed.
- › Members have flexibility in structuring the company management.
- › The LLC does not require as much annual paperwork or have as many management formalities as 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 type, there is not as much case law to rely on for determining precedent.
- › LLCs face ongoing compliance requirements like filing annual reports and paying franchise taxes
- › If the LLC does business in states other than the state of formation, it will have to qualify to do business in those “foreign” states.

PROFESSIONAL ENTITIES

Professional corporation

Professional corporations (PCs) are specialized entities organized and operated solely by licensed professionals such as attorneys, accountants and doctors. Shareholders (owners) may enjoy personal liability protection from the acts of other shareholders, but each remains liable for his or her own professional misconduct.

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, by filing formation papers with the appropriate state agency and paying filing fees.

Professional limited liability company

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

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 LLCs by filing formation papers with the appropriate state agency and paying filing fees.

Incorporation Wizard

Deciding which structure your business will take can be complex. BizFilings' Incorporation Wizard is an online tool that helps you evaluate business forms according to your specific business needs. As you answer business-related questions, the Wizard ranks each entity type according to how well each may suit your needs. Use the Incorporation Wizard at www.BizFilings.com/wizard.

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BUSINESS TYPE COMPARISON TABLE

This table provides an at-a-glance reference for comparing the most common business entity types.

	Sole Proprietorship	General Partnership	C Corporation	S Corporation	Limited Liability Company	Limited Partnership	Limited Liability Partnership
State filing (& filing fee) required for creation			✓	✓	✓	✓	✓
Ongoing state filings and fees			✓	✓	✓	✓	✓
Limited liability protection			✓	✓	✓	maybe	✓
Perpetual duration of the business			✓	✓	✓	✓	maybe
Strict ongoing corporate formalities			✓	✓			
Flexibility in who manages the business					✓		✓
Business taxed at entity level			✓		maybe		
Pass-through income/loss	✓	✓		✓	✓	✓	✓
Double taxation			✓				
Ease of raising capital			✓	✓	maybe		
Ease of adding owners/transferring ownership interest			✓	✓	maybe	maybe	maybe

WHERE TO INCORPORATE

Once a business owner has decided to incorporate a business or form an LLC, the next step is to choose a state of incorporation (also called your home state or domestic state). You are free to form your business in any state, but there are factors to consider when choosing, such as: forming in the state where the business is located versus another state, state statutes, and state taxation requirements.

Incorporating in the state where your business is located versus another state

Many business owners forming a corporation or LLC choose the state where their business is physically located. Corporations and LLCs must pay state filing fees at the time of formation, and are also subject to ongoing requirements and fees.

If the company is incorporated in one state but transacts business primarily in another state, it may need to “foreign qualify” in the state it’s transacting business. Foreign qualification registers a corporation or LLC to transact business in a state other than the state of incorporation. To foreign qualify, the proper paperwork, usually called an Application for Certificate of Authority, must be completed and filed and additional state filing fees paid. Foreign qualified businesses are subject to ongoing requirements and fees both in the state of incorporation and also the state(s) of qualification.

What constitutes transacting business varies by state. Common factors are whether the company has a physical facility, employees or a bank account in that state. To learn whether your company may need to foreign qualify, talk with an attorney.

State where business is located vs. another state

Points to consider:

- ▶ State filing fees for forming a corporation or LLC in each state under consideration.
- ▶ State filing fees to register to transact business (foreign qualify) outside your home state.
- ▶ Ongoing fees imposed on corporations and LLCs by each state under consideration.
- ▶ Ongoing fees imposed on foreign-qualified corporations and LLCs by the state(s) of qualification.

State statutes & taxation requirements

When evaluating states for incorporation, be sure to research each state’s corporation and LLC statutes. For example, the

corporation statute is one reason why Delaware is such a common and popular choice for publicly held and other large corporations. But that same law may not be as beneficial to corporations with only one or a few shareholders (owners).

Business owners should also understand how corporations and LLCs are taxed by each state under consideration, and the taxation requirements for foreign-qualified corporations and LLCs in the state(s) of qualification. Consider the following:

- **Does a state impose an income tax on corporations and LLCs?**
- **Does the state impose a minimum tax or a franchise tax?**
- **Try calculating your company’s projected revenue for its first years of existence and then evaluate the states in terms of the amount of taxes your company would be required to pay.**

Delaware

Why has Delaware been one of America’s most popular corporate and LLC destinations? More than 50 percent of all U.S. publicly-traded companies and 60 percent of Fortune 500 companies call Delaware home. But these same advantages may not always apply to smaller businesses. For questions on which state is best for the formation of your business, talk with an attorney or accountant.

Common advantages of forming in Delaware

- ▶ Delaware’s corporation and LLC laws are very flexible.
- ▶ Delaware’s legislature reviews and updates the corporation and LLC laws every year.
- ▶ Delaware has a specialized court that hears cases interpreting the corporation and LLC laws and that decides cases involving management and owner rights and liabilities.
- ▶ The filing office is considered modern and helpful.
- ▶ 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 and serve as the sole director of the corporation or sole member/manager of the LLC.
- ▶ 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.

While incorporating in Delaware holds potential advantages, one disadvantage is that if you operate your business in another state or states, you may need to “foreign qualify” your business in the state(s) where you are doing business. Foreign qualification is the process of registering a company to transact business in states other than its state of incorporation. When you foreign qualify your company, you must file paperwork with the states in which you’ll be transacting business and pay the necessary filing fees. You will also be subject to ongoing filings and fees (such as annual reports and/or franchise taxes) in your state of incorporation and state(s) of qualification.

THE INCORPORATION PROCESS

To form a corporation or LLC, formation paperwork must be filed with the appropriate state agency, usually the Secretary of State, and filing fees paid. This section describes the process 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

- ▶ Information included in the incorporation documents, such as names and addresses, become a matter of public record; in the Internet age, they are easily searchable by individuals, regulatory and tax authorities and data mining services.
- ▶ Some states require public announcement of new business formations. 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.

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. Incorporation documents advise the state and the public of certain details concerning the company. Incorporation documents become a formal record of the corporation’s or LLC’s existence.

State corporation and LLC filing fees range widely.

The typical time frame to have incorporation documents approved also varies.

Standard (non-expedited) incorporation filings can take four-to-six weeks to be approved and returned to the business

owner. Most states offer expedited filing services for an additional fee, reducing the turnaround time for filing documents to a few days or even a few hours.

Mandatory corporation & LLC disclosures

LLCs and corporations must disclose certain information in their incorporation documents.

The mandatory disclosures vary slightly by state.

Company name

The desired name of the corporation or LLC must be included. For corporations, it must typically include an identifier, such as “Corporation,” “Incorporated,” “Company” or an abbreviation of those terms. For LLCs, it must typically include the term “Limited Liability Company” or “LLC.” The state holds final approval rights on the desired name to ensure it is not already on the filing office’s records as being the name of another domestic or foreign business entity or that it is not “deceptively similar” to a name already on record.

Business purpose

A corporation’s incorporation document typically must include a brief statement of its business purpose, declaring the proposed scope of its operations. This may be required for LLCs in some states too. Business purpose clauses are either of two types, general or specific.

General business purpose — Most states allow a general purpose clause, indicating 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

Most states require domestic and foreign corporations, nonprofits, LLCs, LP, and LLPs to name a registered agent, which is the party that receives and forwards important legal and tax documents on behalf of the company. The registered agent must have a physical address (no P.O. boxes) in the states of incorporation, and must be available at that address 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 person or company who initiates the company’s formation filing is the incorporator.

Most states require that the name, signature and address of the incorporator (or organizer for LLCs) be included in the incorporation documents.

Registered Agent

The registered agent warrants additional discussion. The majority of states require corporations and LLCs to appoint and continually maintain 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 and is available during normal business hours. There are many professional registered agent service providers that typically charge an annual fee. Many small business owners find their services advantageous, for reasons such as the registered agent's name and address are included on the incorporation documents (instead of the owner's) and are matters of public record, and ensuring someone is always present during normal business hours to facilitate receipt of documents delivered to the registered agent. Many professional registered agents also provide other compliance services as part of their fee, including software to keep track of important corporate information and provide alerts for upcoming compliance events. Some may also assist you with filing your company's annual report, DBA filings, and business licenses, and monitor the status of your company with your state of incorporation.

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 and pay necessary state filing fees to update the registered agent address on record for the company. If a registered agent provider is used, the provider will take care of that for you.

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, giving anonymity to company owners and managers. This is also a benefit for home-based businesses, since the registered agent address will be made public, not the owner's home address.

Reliability: Registered agent service providers maintain fully staffed offices to receive documents served on them. They treat the receipt of these documents and prompt delivery to you with utmost professionalism.

Compliance assistance: Many registered agent service providers offer tools and services to help business owners keep their companies in compliance with both internal formalities and the ongoing filing and fee requirements imposed by the state of incorporation. Companies that do not meet their compliance requirements face the possibility of monetary fines, losing the limited liability protection offered to owners, and/or administrative dissolution of the business by the state.

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 opt to withhold 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

Par value is the minimum stated value of a share of stock. It typically doesn't correlate to the actual value of a share. Common par values are \$0.01, \$1 or no par. The actual value is 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. It often makes sense to establish a low par value for shares, as a number of states use par value to calculate a corporation's franchise tax obligations.

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 end operations. Many small business owners choose to only authorize shares of common stock. For details on preferred shares and voting rights, talk with an attorney.

Directors

Many states require the names and addresses of the corporation's initial directors be included in the incorporation documents. Directors are responsible for overseeing and directing corporate affairs, including making major corporate decisions. They are not responsible for the daily business activities, attended to by the officers. Directors are elected by the shareholders, and are responsible for appointing officers.

Officers

Some states require names and addresses of officers to be included in the incorporation documents. Officers are responsible for the day-to-day activities of the corporation. Common officer titles include president, vice president, secretary, and treasurer. In most states, one person can fulfill all roles.

Disclosure information required for LLCs

The following disclosures are generally required for LLCs:

Management structure

LLCs must typically specify whether the company will be managed by its members (owners) or by managers. When an LLC is managed by members, owners oversee daily business operations.

When managed by appointed managers, the LLC resembles a corporation, where business management is the responsibility of the directors and officers rather than the owners (shareholders).

Members/Managers

Many states require the names and addresses of the initial member(s) or manager(s) be set forth in the formation documents.

Dissolution date

All states allow (but not all require) the LLC to list a dissolution date in the Articles of Organization, dictating the maximum duration of an LLC's existence. Every state allows for perpetual existence.

Common information required for nonprofits

A nonprofit corporation's Articles of Incorporation or Certificate of Incorporation resemble for-profit Articles of Incorporation, but with a few key differences:

- ▶ Nonprofits do not issue stock, so 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. It is also evaluated by the IRS, if the nonprofit applies for federal tax-exempt status.
- ▶ The state-approved Articles of Incorporation must be provided to the IRS when the nonprofit applies for a federal tax-exempt status.

POST-INCORPORATION AND COMPLIANCE REQUIREMENTS

Requirements imposed on corporations and LLCs do not end when incorporation documents are approved by the state—they are ongoing. Owners enjoy certain benefits from corporations and LLCs, and must fulfill responsibilities to maintain those benefits. Failing to follow requirements can result in dire consequences, including the potential loss of the limited liability protection provided to the owners.

Internal requirements

Corporations are required to undertake certain ongoing formalities in their internal governance, and while LLCs do not face the same requirements, similar steps are recommended. The importance of faithfully undertaking and properly documenting each cannot be overstated, as failing to do so can result in loss of limited liability protection for the company's owners.

There are many tools available today, specifically geared towards small business owners, to make complying with internal formalities as easy and convenient as possible.

A corporation's bylaws are second only to its Articles of Incorporation in importance. Bylaws outline the corporation's internal governance rules, and address a wide range of internal policies and procedures—from establishing a corporation's fiscal year and what corporate actions require shareholder approval, to outlining how many officers a corporation will have. Bylaws are adopted by a corporation's directors at their organizational meeting. Another item often addressed during the organizational meeting is corporate authorization to open a bank account. Some banks require a copy of a directors' resolution approving the bank account and assigning which officers will have signature authority on it.

Internal corporate requirements

Corporations face the strictest requirements of any business type. The following ongoing steps are required of corporations:

- ▶ Create and regularly update bylaws.
- ▶ Hold an initial meeting of directors (organizational meeting) where bylaws are adopted, officers are appointed, shares of stock are issued to initial shareholders and initial business decisions or steps (such as authorizing the corporation to open a bank account) are approved. Minutes outlining all actions taken at the organizational meeting should be taken and kept in the company record book.
- ▶ Hold an initial meeting of shareholders to approve the incorporation, the initial board of directors and the steps taken by directors at the organizational meeting. Minutes outlining all actions taken should be taken and kept in the company record book.
- ▶ Hold and properly document annual meetings of directors and shareholders. At the 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 their annual meeting, shareholders typically undertake the renewal of directors' terms and/or appointment of new directors. They also get an update on the status of the corporation (if the shareholders are not involved in the daily operation of the business).
- ▶ Record changes in company ownership in a stock transfer book or ledger.

Internal LLC recommendations

While LLCs are not required to follow ongoing formalities, undertaking the following steps is typically recommended:

- ▶ Create and regularly update an operating agreement. Like a corporation's bylaws, an LLC's operating agreement outlines the internal governance of the LLC.
- ▶ Hold an initial meeting of the members or managers to approve the operating agreement, issue membership interest to members and undertake initial company decisions, such as authorizing the LLC to open a bank account. It is also recommended that the actions taken at this meeting be documented and kept in a company record book.
- ▶ Hold and properly document the actions taken at annual meetings of members or managers.
- ▶ Record any changes in ownership (membership) interest in a transfer book or ledger.

External requirements

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

Nearly all corporations and LLCs must file periodic reports with the Secretary of State's office or its equivalent department. Annual statements are the norm—but some states have relaxed their rules and require only a biennial statement. In either case, states typically impose a fee along with the filing. The fees vary widely by state and by entity type.

Some states also impose a franchise tax—levied for the privilege of existing as a corporation or LLC that is incorporated or registered to transact business in that state. A franchise tax may be based upon income, assets, outstanding shares, or a combination. It might also be a flat fee.

The due dates for annual statements and franchise taxes vary by state. Some states connect these dates to the anniversary of the company's incorporation (or date it registered to transact business in the state, if applicable). Others 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 incorporating.

Additional external requirements

Here are some other potential state and federally imposed requirements that may apply to your company:

- ▶ Filing a federal income tax return and paying necessary taxes.
- ▶ Filing a state income tax return and paying necessary taxes.
- ▶ 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 state and/or local business permits and/or licenses.
- ▶ Registering assumed names (DBA) if the company will be doing business under a name other than its legal name.

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 having to pay additional fees and penalties, losing corporate or LLC entity status and loss of the limited liability protection provided to the company's owners.

If a corporation or LLC is sued and is unable to show that it faithfully followed all formalities, a judge might rule that the company was operating more as a sole proprietorship or general partnership, and extend full personal liability to company owners (called "piercing the corporate veil"). Although a failure to follow formalities will rarely be a basis, in and of itself, for veil piercing, it is a factor courts will look at.

There are also state-level consequences 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, it 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, as a first step, 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 of the company by the state. When the state administratively dissolves a corporation or LLC, all corporate or LLC benefits are lost as the corporation or LLC is not allowed to conduct its usual business and must wind up its affairs and eventually liquidate. If the owners decide they don't want to wind up and want to continue in business, they may be able to file an application for reinstatement. This requires the payment of all back taxes, filing reports that are due and paying interest and penalties.

Piercing the corporate veil

Liability protection is not absolute. The term "piercing the corporate veil" refers to a court's decision to sidestep liability protection normally afforded by a corporation or LLC and impose full personal liability upon the owners. A close corollary rule is the alter ego theory, which essentially says that if corporate shareholders disregard the legal separateness of the corporation, the law will also disregard the corporate or LLC form 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.

USING AN INCORPORATION SERVICE PROVIDER

Using an attorney to incorporate a business is not a legal requirement. Business owners can use an online incorporation service provider or incorporate on their own directly with the appropriate state agency. Using an incorporation service provider has become the incorporation method of choice for many small business owners. They are less expensive than using an attorney and typically less time consuming and less confusing than preparing and filing one's own incorporation documents.

Keep in mind, incorporation service providers are not law firms and cannot provide legal advice. They can, however, provide general information on business structures and state requirements, and walk you through the incorporation process step-by-step.

Benefits of using an incorporation service provider

Save time: When business owners personally prepare and file their formation documents, they often spend more time than anticipated or desired to research state requirements and fees and obtain, complete and submit appropriate documents.

Save money: Using an attorney or an accountant to prepare and file formation documents is another option. But it 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 can cost between \$1,500 and \$3,000. If a business owner needs the advice of an attorney on an entity type or where to incorporate, a provider can still be used for the actual preparation and filing of the incorporation documents. This helps save money, since the owner is only paying the attorney's hourly fee for advice, and not for time facilitating the incorporation process.

Make incorporation understandable: Many incorporation service providers want to help business owners understand the business type choices available to them, the process of incorporation, and ongoing requirements. Look for a provider with articles and tools to help make learning easy.

Comprehensive offerings: Incorporation service providers typically charge a service fee plus the state filing fee in order to prepare and file your incorporation documents, but many offer additional products and services (often as part of incorporation packages) that business owners typically need

when starting and/or incorporating a business. Additionally, many offer filings and other services business owners often need throughout and/or later in the life of their business, such as ongoing compliance assistance, registered agent service and doing business as (DBA) filings.

Professionalism: As you can imagine there are some not-so-reputable incorporation service providers. When choosing an incorporation service provider, ensure that the company's contact information and customer service hours are easy to find. Look for customer testimonials and 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 checkout process is secure.

About BizFilings

Headquartered in Madison, Wisconsin, BizFilings is the online incorporation provider of choice for more than 500,000 entrepreneurs. Since our founding in 1996, our knowledgeable Incorporation Specialists, step-by-step processes, and no hidden fees policy have allowed small business owners to form a corporation, limited liability company (LLC) or other business structure with confidence. We also offer a full range of business filing and compliance products and tools, including registered agent service in all 50 states and D.C., to help businesses remain in compliance with state regulations.

Unlike many online incorporators, BizFilings has a staff of attorneys who monitor state business law and incorporation requirements to make sure our filing services are always up-to-date and accurate. Moreover, we guarantee our filing services.

Benefits of choosing BizFilings

97% customer satisfaction: We regularly survey our customers on their satisfaction with our service. Some 97% (per our 2018 customer survey results) said they would use us again or recommend us to their family or friends.

Outstanding value: Our pricing is highly competitive. We offer exceptional value and service in all we do. Our formation packages are comprehensive. Our services, such as our registered agent service, contain value-adds you won't find from any other company. We can assure you that you will receive higher quality, better service, and more for your money with BizFilings.

No hidden fees: Unlike other incorporation providers, we make sure our pricing is very clear throughout the incorporation process. You won't find any hidden items in your shopping cart at checkout. We publish our pricing and

any associated state fees right on our product pages and make sure we clearly explain what you are paying for when you do business with us.

Service guarantee: Our filing services are both accurate and timely. Every order is carefully reviewed by BizFilings' personnel to identify potential errors before filing. Our warranties cover our services against filing defects caused by BizFilings for the life of your corporation or LLC.

Helped over 500,000 entrepreneurs: As pioneers in the online incorporation industry, BizFilings has been providing incorporation and registered agent services online since 1996. As a trusted business partner, we've helped over 500,000 entrepreneurs and business owners with their formation, registered agent, and state filing needs.

Making incorporation fast and painless: Whether they're learning about the incorporation process and available options or are ready to incorporate or form an LLC, business owners turn to BizFilings.

Our website delivers free tools and rich content to support the learning process. Our easy-to-use, step-by-step ordering process makes incorporating your business fast, easy and painless. Plus, if you have questions or need help placing an order, our knowledgeable and friendly Incorporation Specialists are just a click or a call away.

Experienced customer service: We provide our Incorporation Specialists with significant upfront and ongoing training. With an average tenure of over 4 years, each team member is regularly tested and certified on all aspects of incorporation and compliance services, and it shows.

Nationwide presence: We have a network of offices in every state and Washington, D.C. This allows us to deliver filings directly to the Secretary of State, as needed. Also, our physical presence contributes to our ability to provide superior registered agent service.

Trusted partner of CPAs and attorneys: Business owners aren't the only people who trust BizFilings to assist with the formation of their business. Our customer list includes hundreds of accountants and attorneys from across the country. In many cases, we'll work directly with the clients of our accountant and attorney partners, while other times we provide the filing support directly to attorneys and CPAs.

Family of companies with over 100 years experience: BizFilings, as a Wolters Kluwer company, has been providing state filings, registered agent service, and business compliance information and services for over 100 years. Our experience and expertise in business formation and compliance-related products and services is second to none.

Long-term partner for our customers: We understand the ongoing pressures business owners face to make their businesses succeed. You need to remain focused on your business—not worry about things like incorporation and ongoing compliance. From the breadth of our filing services to business licenses and registered agent services, we support the whole lifecycle of your business and are here to help you succeed every step of the way.

BizFilings' products listing

State filings — all 50 states and D.C.

Incorporation: Corporation, LLC, nonprofit, limited partnership (LP) and limited liability partnership (LLP) formation filings.

Professional services business formations: PC, PLLC and LLP filings.

Foreign qualification filings: Certificate of Authority filings to register a company 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.

Formations/qualifications: All formation or foreign qualification orders include six months free registered agent service.

Registered agent only: BizFilings offers registered agent service in all 50 states and D.C. to business owners who are undertaking their own state incorporation or foreign qualification filings (or using another incorporator) but would like to name BizFilings as registered agent.

Change of registered agent: BizFilings can prepare and file the necessary documents to change a company's existing registered agent to BizFilings. Additionally, BizFilings will absorb any state fee charged by the state to change your registered agent.

IRS forms and filings

Federal tax identification number obtainment: BizFilings can secure your company's federal tax identification number (also called employer identification number or EIN) from the IRS.

S corporation election obtainment: BizFilings will prepare and file your corporation's S corporation election with the IRS.

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

Compliance 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, operating agreement or partnership agreement; sample resolutions and more.

Compliance seal (stand-alone): BizFilings offers a professional custom seal with the company name for stamping official company documents.

Stock, membership or partnership certificates (standalone): BizFilings offers professional and secure stock, membership interest or partnership certificates preprinted with your company name.

Company forms CD: BizFilings offers customizable templates for bylaws, operating agreements, partnership agreements, initial and annual meeting minutes, resolutions and more.

State and local-related services

DBA filing service: BizFilings can undertake your company's "doing business as" (DBA) filing, also called a fictitious business name filing, at the state and/or county level.

Rush filing service: BizFilings offers a rush filing service in participating jurisdictions allowing for state approval of the formation filing in 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.

USING AN INCORPORATION SERVICE PROVIDER

Incorporation is an essential step for business owners; it secures personal assets and provides additional business benefits. Understanding incorporation, however, is as important as undertaking it.

BizFilings has helped over 500,000 entrepreneurs to start, run, and grow their business, and has turned them into satisfied customers. We wish you success with your business and hope you will become a satisfied BizFilings customer, too.

Connect with us

Download the guide here: <https://www.bizfilings.com/toolkit/guides/guide-to-incorporating>

Visit [bizfilings.com](https://www.bizfilings.com) or call 1-800-981-7183