

Filing a Registration for a New Business

In the United States, corporations and limited liability businesses are governed by individual states. In other words, there are 51 separate systems (including the District of Columbia) that form and regulate limited liability businesses in the US.

Despite the variety found within these numerous state governing bodies, the basics of business formation are fairly uniform in principle. However, to paraphrase an old saying, the devil tends to be in the details, and small differences in state laws can sometimes make a big difference. For this reason, it is often advisable for an individual or group to consult a business or corporate lawyer when forming a new business, particularly if the new business has multiple owners and involves large investments. Only in cases in which a person is forming a single-owner limited liability company (an LLC), with little money invested, is it likely that the owner can handle the required filings without assistance (or with the help of someone other than an attorney).

Study the following guidelines on registering corporations and LLCs. Note that the registration requirements for other limited liability entities, such as limited partnerships (LPs) and limited liability partnerships (LLPs), are very similar to those of LLCs.

Corporations

In registering a corporation with a state, you will be required to file *articles of incorporation*. For corporations involving multiple shareholders or large amounts of funds invested prior to the formal organization of the business, articles of incorporation often comprise a complex agreement with many provisions that must be drafted and overseen by an attorney.

The basics of articles of incorporation include the following commonly required types of information:

- The name of the corporation. It's easy to see why a corporation must have a name. However, there may be limitations on the use of certain names. For example, if the name of the corporation you are forming is identical to or very similar to the name of another corporation, your articles may be rejected until an alternative name is chosen in order to protect the other company's copyright. In addition, a business name must not be deemed misleading to the public.
- The purpose of the corporation. While you may want to designate a specific purpose or purposes for the corporation, most articles of incorporation state a more general purpose, such as, "To engage in any lawful act or activity for which a corporation may be organized under the law." This broad language allows a corporation maximum flexibility in carrying out its business.
- The name and address of an agent for service of process. Functionally, a corporation is a legal "person" and can be sued. To ensure that residents of a state can serve papers on the corporation in the event of a lawsuit, the corporation is

required to appoint an agent to accept service of process. This means that, if there is any difficulty serving the corporation directly with papers initiating a lawsuit, the agent can be served. Almost any person except a minor or other individual deemed to be without legal capacity may be an agent, including other business entities. Oftentimes, a lawyer involved in the organization of the corporation will act as the agent.

- The address of the corporation. A common-sense requirement for a business!
- The number of shares of stock that the corporation is authorized to issue. As you have learned in your coursework so far, the ownership of a corporation is represented by shares of stock. A corporation must designate the number of shares that are authorized to be issued – but not necessarily already issued – at the time of organization. This number may be anywhere from one share to any whole number of shares that can be written down. Practically, the average corporation will generally authorize no more than 10 million shares at the time of its organization.
- Signatures. Generally, the state will require that every incorporator of a corporation must sign the articles of incorporation.

Finally, in addition to the articles of incorporation, each state requires a filing fee for the registration of a corporation. Some states charge a flat fee, while others charge based on the number of shares of stock that have been authorized.

Limited Liability Companies (LLCs)

LLCs are formed by the submission to the state of a *certificate of formation*. As with corporations, depending on the complexity of the relationships and the financing of the organization, a certificate of formation for an LLC may be an extensive document created with the assistance of legal counsel. However, many people forming single-owner or single-manager LLCs do not necessarily need the assistance of a lawyer and may get by with filling out and filing the certificate of formation form themselves.

Like articles of incorporation, the certificate of formation will need to provide the name of the LLC, the purpose of the LLC, and the name and address of an agent for service of process. As with corporations, LLCs cannot adopt a name that is very similar to another registered business name or one that is misleading. States may also require the listing of a specific purpose for the LLC. In addition to these components, state certificates of formation may also require the following:

- A date on which the LLC is set to dissolve, if any. If the LLC has been set up for a specific period of time or has a deadline by which it must be dissolved (usually by the agreement of the members forming the LLC), a specified end date may be required on the certificate of formation.

- Whether or not the management of the LLC is to be vested in a manager or managers.
- A signature. In most instances, one member or manager of the LLC must sign the certificate of formation.

Practicing a Filing

With the information you have learned above in hand, make a visit to two or three state websites in order to familiarize yourself with the forms required for creating both a corporation and an LLC. You can find these forms by running a Web search using the keywords “state” and “corporations.” Reviewing individual state instructions and business formation documents will help prepare you in the event that your career at some point involves the filing of state business registration forms. As you review your chosen websites, consider the following questions and jot down your thoughts below.

- 1) Do you notice any differences between different states in terms of registration requirements?
- 2) Do you notice any differences between the requirements stipulated on the state websites and the requirements outlined in the paragraphs above?
- 3) Why do you think there might be some slight differences between registering a corporation and registering an LLC?

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