

WG
WB

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▶ **Attorneys At Law**



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Starting Your Business Right

Types of Businesses Operating In New York

- 1) Solo Proprietorship – Social Security Number
 - A)DBA (Doing Business As)
- 2) Unincorporated Partnership – Social Security Number
- 3) Corporation – Employment Identification Number (EIN)
- 4) Limited Liability Company (LLC) – EIN

Protecting your Assets

1) Personal Liability (Full)

a) Solo Proprietorship

b) Unregistered Partnership

2) Company/Corporate Liability (*limited personal liability)

a) Corporation

b) Limited Liability Company (LLC)

*Maintain the corporate veil

Eligible Ownership

S Corp

US Citizens/ Residents

LLC

No citizenship restrictions

IRS Code

S Corp

Subchapter S of Chapter 1 of
the IRC BCL

LLC

No new class for LLC,

It can either fall under
partnership or corporation code
depending on operating
agreement

Type of Taxation

S Corp

Pass through to shareholders

LLC

Pass through to members;
may also elect to be taxed as
a corporation

Personal Liability

S Corp

Shareholders are not typically liable

LLC

Members cannot be held liable for more than their investment in the LLC

Administration Requirements

S Corp

Election of board of directors/officers;

Annual meetings and annual report filing

LLC

Must file an operating agreement

File an annual report and re-list corporate report with Secretary of State at the time of paying the annual renewal fees

Stock

S Corp

One class of stock,
no stock ownership by
corporations

LLC

No stocks, but can sell interests
in the form of Membership
Certificates (aka, Units of
Membership or Units of
Ownership)

Profit Loss Share

S Corp

Profits and losses are proportionate

LLC

Profits and losses are proportionate unless otherwise stated in the operating agreement

Filing Fees

S Corp

Filing with DOS

LLC

Filing with DOS plus
publication fees

Necessary Paper Work

S Corp

Certificate of Incorporation

Request for EIN

Form 2553 for Federal

CT-6 for NYS

15th Day of the Third Month of
Incorporation

By Laws

LLC

Articles of Organization

Request for EIN

Certificate of Publication

Operating Agreement

Maintaining the Corp Veil

S Corp

Shareholder and Director's
Meetings

Minutes of Meetings

Maintain Separation

Financial Records

LLC

Maintain Separation

Financial Records

Publication

Navigating the Department of State Website – (due diligence and leg work)

Checking Company Name

Search the Business Entity Database

a) Check Corporate Name Availability

b) Reserving Your Company Name (Sixty (60) days)

http://appsext8.dos.state.ny.us/corp_public/CORPSEARCH.SELECT_ENTITY

Forming A Business Corporation – Section 402 NYS Business Corporation Law

- 1) **File Certificate of Incorporation with the Department of State plus filing fee (about \$120)**
http://www.dos.state.ny.us/corps/dom_busfile.html
- 2) **An Organizational Meeting of the incorporators or incorporator after the Certificate of Incorporation is filed and the company is in existence**
- 3) **Adopt the By-Laws**
- 4) **Elect the Directors**

Responsibilities of the Corporation

- 1) Corporation must keep correct and complete books and records of account**
- 2) Keep minutes of proceedings of the its shareholders**
- 3) Keep Records of the names and addresses of the shareholders**
- 4) Annual meeting of the shareholders to elect directors and handle other corporate businesses**
- 5) By-laws and corporate books are internal documents to the corporation and are not filed with the DOS**

Forming A Limited Liability Company

- 1) **File Articles of Organization with DOS - Section 203 of the LLC law - Plus Filing Fees (About \$200)**

http://www.dos.state.ny.us/corps/dom_llcfile.html

- 2) **File Certificate of Publication with DOS within 120 days of filing articles of organization - Plus Filing Fee of \$50**

Certificate of Publication

- 1) LLC must publish in two newspapers (\$500-\$1,500)**
 - a) Copy of Articles of Organization or a notice related to the formation of the LLC**
 - b) Newspaper is designated by the County Clerk of the County of where the LLC is located (ex. Kings, Queens, Richmond, Bronx, or New York County)**
 - c) Newspaper will provide an affidavit of publication**

Obtaining Employee Identification Number (EIN)

- 1) On-line
- 2) Slow mail

<http://www.irs.gov/businesses/small/article/0,,id=98350,00.html>

Contact Us



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