Forming a Business Corporation in New York

New York recognizes many business forms including corporations, limited liability companies, limited partnerships, sole proprietorships, general partnerships, and other less familiar forms. Each has its advantages and disadvantages. For any particular venture, personal and business circumstances will dictate the business form of choice. The Department of State cannot offer advice about the choice of business form and strongly recommends consulting with legal and financial advisors before making this decision. Forming a corporation should only be done after careful analysis. This brochure has been developed to answer your questions regarding formation of a business corporation and to assist in the filing of a certificate of incorporation. This brochure contains:

- Answers to frequently asked questions;
- The Certificate of Incorporation form and instructions for its completion and filing;
- A form for the reservation of a name (optional); and
- Information about fees.

The staff of the Department of State is dedicated to providing quality service. Although we cannot provide legal advice, we are available to assist in answering questions about filing corporate documents. Please contact the Department of State, Division of Corporations, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231 or one of our representatives at (518) 473-2492 with any questions you have.

What is a Corporation?

A corporation is a legal entity separate and distinct from the individual(s) who compose the business. It has rights and abilities similar to those of a natural person. Principal features are perpetual duration, limited liability and easy transferability of interests.

How Do I Form a Corporation?

One or more persons, called "incorporators" may form a corporation. Incorporators are natural persons who are 18 or older. The incorporator(s) signs the Certificate of Incorporation. The completed Certificate of Incorporation is filed with the Department of State pursuant to Section 402 of the Business Corporation Law. Please see Section 102(a)(4) of the Business Corporation Law for the definition of corporation.

A form for filing the Certificate of Incorporation is included in the brochure. The form contains only the basic requirements. A Certificate of Incorporation could include other provisions consistent with law.

What is a Professional Service Corporation?

One or more professionals may form, or cause to be formed, a professional service corporation (P.C.) for pecuniary profit for the purpose of rendering the professional service or services that the professionals are authorized to practice. A P.C. is formed by filing a Certificate of Incorporation pursuant to Section 1503 of the Business Corporation Law. "Profession," as defined in Section 1501(b) of the Business Corporation Law, includes the occupations regulated by Title VIII of the Education Law plus...
any practice as an attorney and counselor-at-law, or as a licensed physician.

A form and instructions for filing the Certificate of Incorporation for a P.C. may be obtained from the Department of State Website or by calling (518) 473-2492.

Are There Any Special Responsibilities Associated With Forming a Corporation?

The existence of the corporation begins upon the filing of the Certificate of Incorporation with the Department of State. After the corporate existence has begun, an organization meeting of the incorporator or incorporators must be held for the purpose of adopting by-laws, electing directors and transacting any other business. (See Section 404 of the Business Corporation Law.) The initial by-laws of a corporation are adopted by its incorporator or incorporators at the organization meeting. (See Section 601 of the Business Corporation Law.)

The corporation is required to keep correct and complete books and records of account and must keep minutes of the proceedings of its shareholders, board of directors and executive committee, if any. The corporation must also keep a record containing the names and addresses of all shareholders, the number and class of shares held by each and the dates when they respectively became the owners of record thereof. (See Section 624 of the Business Corporation Law.)

In addition, a meeting of shareholders must be held annually for the election of directors and the transaction of other business on a date fixed by or under the by-laws. (See Section 602 of the Business Corporation Law.)

Please note by-laws and corporate books and records are not filed with the Department of State or any other state agency. These are internal documents maintained by the corporation. The Department of State cannot provide legal advice regarding the preparation of these documents.

Do I Need a Lawyer?

A Certificate of Incorporation has legal effect and enforceable rights and responsibilities. The Department of State recommends that a lawyer guide the preparation of these and other legal documents. However, there is no requirement that a lawyer prepare the documents when forming a corporation.

When I File a Certificate of Incorporation, What Will I Receive From the Department of State?

The Department of State issues an official filing receipt to the filer of the Certificate of Incorporation. The filing receipt reflects the date of filing, the name of the corporation, an extract of information provided in the Certificate of Incorporation and an accounting of fees paid. Filers should verify that this information is correct.

The filing receipt is your proof of filing. The Department of State does not issue duplicate filing receipts to replace those lost or destroyed.

Where Do I Get a Seal and Corporate Kit?

Corporate kits may be purchased from a legal stationery store. A corporate kit usually contains a corporate seal, blank stock certificates and forms for the adoption of by-laws and recording the minutes of meetings. Rather than composing their own forms, some may find it easier to use the preprinted forms provided in a corporate kit. Please note that New York State law does not require a corporation to have a seal.
How is a Corporation Taxed?

The New York State Tax Law requires a corporation to file franchise tax reports and pay franchise taxes annually even if the corporation does not conduct business or loses money. Franchise tax requirements begin the date the corporate existence begins. Tax responsibilities continue until the corporation is legally dissolved by the Secretary of State.

The corporation will need a taxpayer identification number, obtainable from the federal Internal Revenue Service. The IRS can answer questions about paying or withholding federal income tax, social security taxes and other federal taxes.

Questions concerning New York State taxes should be directed to the New York State Department of Taxation and Finance, Taxpayer Assistance Bureau, W.A. Harriman Campus, Albany, NY 12227. You may contact The Business Tax Information Center at the following toll free numbers: from the continental United States at 1-800-972-1233 or from within New York State at 1-800 CALL TAX (1-800-225-5829).

Does a Corporation Need Licenses and Permits?

Some business activities require licenses or permits from state or local governments, or both. For assistance in identifying whether your business requires any New York State licenses or permits, contact the Governor’s Office of Regulatory Reform, P.O. Box 2017, Albany, New York 12220-0107. You may call the Governor’s Office of Regulatory Reform at (518) 474-8275 or (800) 342-3464.

Contact the county clerk and the clerk of the city, town or village in which the business will operate with questions regarding local licenses or permits.

Other agencies with useful information include the New York State Department of Labor and the New York State Workers’ Compensation Board.

Instructions for Completing the Certificate of Incorporation

A Certificate of Incorporation form has been developed to meet the basic requirements of the Business Corporation Law. The form does not include any optional provisions permitted by law. A Certificate of Incorporation may include other provisions consistent with law. You are not required to use this form. You may draft your own form or use forms available from legal stationery stores.

The Department of State must make an official record of the completed Certificate of Incorporation presented for filing. The Department will not accept papers incompatible with its recording technology. All entries and signatures should be typewritten or legibly printed in black ink on white paper. Avoid dark paper, small or light type, outline or condensed fonts, colored inks, etc.

**Paragraph First - Corporation Name**

Enter the name of the corporation on the line in the certificate’s title. Also enter the name of the corporation in **Paragraph First** and in the title of the certificate on the last page of the form. The name of the corporation must be exactly the same in all three places, including spacing and punctuation.

**Choosing the Name of the Corporation**

First, Section 301(a)(1) of the Business Corporation Law requires that the name of the corporation contain one of the following words: Incorporated, Corporation or Limited, or one of the following abbreviations: Inc., Corp. or Ltd.
Second, the name of the corporation must be distinguishable from the names of other corporations, limited liability companies and limited partnerships already on file with the Department of State.

Third, Section 301 of the Business Corporation Law prohibits or restricts the use of certain words and phrases in the name of the corporation. Generally, the name of a corporation may not include a word or phrase restricted by another statute unless the conditions of the restriction have been complied with. In addition, certain words and phrases in the name of a corporation require consent or approval from another agency prior to filing the Certificate of Incorporation with the Department of State.

Prior to submitting the Certificate of Incorporation for filing, the proposed name of the corporation can be searched for availability by writing to the Department of State, Division of Corporations, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231. The written inquiry should state that you wish to determine the availability of a corporate name (or names) and list the name (or names) to be searched. There is a $5 fee for each corporate name to be searched for availability, which must accompany the request. Searching the availability of a corporate name does not reserve the name.

Some filers may wish to reserve the corporate name prior to filing the Certificate of Incorporation. To reserve a corporate name, file an Application for Reservation of Name. A form for that purpose is part of this brochure. The fee for filing an Application for Reservation of Name is $20. The filing of an Application for Reservation of Name is optional. An Application for Reservation of Name holds the name for 60 days and may be extended twice for additional periods of 60 days. The fee to extend the reservation of name is also $20. The filing receipt issued by the Department of State for the Application for Reservation of Name must accompany the Certificate of Incorporation when presented to the Department of State for filing. The filing receipt issued by the Department of State for an Application for Reservation of Name must also accompany any request to extend the name reservation.

**Paragraph Second - Purposes**

The Certificate of Incorporation form developed by the Department of State contains an all-purpose clause which is sufficient for filing in most cases and nothing more needs to be added.

Certain corporate purposes, however, such as the establishment or maintenance of a hospital or facility providing health related services, and the establishment or operation of a substance abuse, substance dependence, alcohol abuse, alcoholism, chemical abuse or dependence program require the consent or approval of another state agency. In addition, a corporate purpose that promotes education in any way requires prior consent. A document indicating the consent or approval of the relevant state agency must be attached to the Certificate of Incorporation when the certificate is submitted to the Department of State for filing. Before issuing its consent or approval, the regulatory agency may require that specific purposes be stated in the Certificate of Incorporation.

The following is a partial list of agencies that must consent to, or approve, the filing of certain Certificates of Incorporation prior to filing with the Department of State. If you have any questions concerning any consent or approval that may be required, please contact the agency at the address or telephone number listed:

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<thead>
<tr>
<th>Purpose Requiring Consent or Approval</th>
<th>Agency Consent or Approval Required From</th>
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<td>Section of Law</td>
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Paragraph Third - County Location

Paragraph Third must indicate the county within New York State where the office of the corporation will be located. Enter only the name of a county in New York State. Do not include the street address. In New York City, the borough of Manhattan is New York County, the borough of Brooklyn is Kings County, and the borough of Staten Island is Richmond County. Bronx and Queens denote both the borough and the county.

Paragraph Fourth - Stock Structure

Every business corporation must designate in its certificate of incorporation the number of shares which the corporation shall have the authority to issue and must state whether the shares are with par value or without par value. Shares without par value may be issued or sold at any price. Shares with a stated par value cannot be issued or sold at a price less than the stated par value.

The form developed by the Department of State contains an authorized stock structure of 200 shares with no par value. Most corporations are formed with 200 shares no par value. Nothing more needs to be added unless you wish to have a different stock structure. If this is the case, delete the present statement and insert the desired number of shares and a statement of their par value or a statement that they are without par value.

There is a minimum tax of $10 on shares that the corporation is authorized to issue which must be paid at the time of formation of the corporation. The $10 tax authorizes the corporation to issue a maximum of 200 shares no par value or a par value of all authorized shares up to $20,000. Corporations wishing to be authorized to issue more than 200 shares no par value or par value shares totaling more than $20,000 will incur a tax of more than $10. The tax rate is 5 cents per share of no par value stock and 1/20 of one percent (.05%) of the par value of the shares that have a stated par value. (Please see Section 180 of the Tax Law.)

Paragraph Fifth - Designation for Service of Process

The corporation must designate the Secretary of State as its agent for service of process. Complete Paragraph Fifth by providing an address within the United States to which the Secretary of State may mail a copy of any process received. "Process" means the papers that acquire jurisdiction of the corporation in a legal action. To avoid a default judgment, the corporation should keep the address for service of process current by filing its Biennial Statement, or a Certificate of Change or Certificate of Amendment, as appropriate.

Signing the Certificate of Incorporation

The incorporator or incorporators, if there is more than one, must sign the Certificate of Incorporation. The incorporator(s) must type or print their name and address.

Filer

Provide the name and address of the filer of the Certificate of Incorporation. The Department of State issues the official filing receipt to the filer of the Certificate of Incorporation.

Filing Fee

The fee for filing the Certificate of Incorporation is $125 plus the applicable tax on shares required
by Section 180 of the Tax Law. The minimum tax on shares is $10. The tax on 200 no par value shares is $10 for a total of $135. The fee may be paid by cash, check, money order, MasterCard, Visa or American Express. Checks and money orders should be made payable to the "Department of State." Please do not send cash through the mail.

The Department of State's Division of Corporations accepts MasterCard, Visa and American Express for the payment of fees. Complete and sign the Credit Card/Debit Card Authorization Form and submit it to the Division of Corporations with your Certificate of Incorporation. The Credit Card/Debit Card Authorization Form is available from the Department of State's website or by calling (518) 473-2492.

Filing the Certificate of Incorporation

**By mail** - Send the completed Certificate of Incorporation with any consents and approvals you have obtained and the filing fee (or a Credit Card/Debit Card Authorization Form) to the Department of State, Division of Corporations, One Commerce Plaza, 99 Washington Avenue, Albany, New York 12231.

**In person** - Deliver the completed Certificate of Incorporation, with any consents and approvals you have obtained and the filing fee to the Department of State, Division of Corporations, One Commerce Plaza, 99 Washington Avenue, 6th Floor, Albany, NY 12231. The Division of Corporations is open from 9:00 a.m. to 4:30 p.m., Monday through Friday.

**By fax** - Fax the completed Certificate of Incorporation with any consents and approvals you have obtained and a Credit Card/Debit Card Authorization Form to the Division of Corporations at (518) 474-1418.

Expedited Filing

The Division of Corporations offers optional expedited processing of documents. The additional, non-refundable fee for expedited processing must be paid by a separate check or money order or indicated in the appropriate space on the Credit Card/Debit Card Authorization Form. Processing of your document begins when the document is received by the appropriate unit of the Division of Corporations. The fee for expedited processing is charged to the filer regardless of whether or not the document is accepted for filing by the Department of State.

A written request for the expedited processing desired must be submitted with the Certificate of Incorporation and must indicate the level of expedited processing requested. Certificates of Incorporation submitted through the mail should be marked with the notation "Expedited Handling" on the envelope and in your cover letter. Certificates of Incorporation submitted via fax with the Credit Card/Debit Card Authorization Form must specifically indicate the level of expedited processing requested.

Certified Copies

A certified copy of the filed Certificate of Incorporation may be obtained from the Department of State. A certified copy may be obtained by submitting a written request along with the Certificate of Incorporation, or at any time after the filing of the Certificate of Incorporation with the Department of State. The fee for each certified copy is $10.

Filing Receipt

The Department of State issues an official filing receipt to the filer of the Certificate of Incorporation. The filing receipt is mailed two business days after the Certificate of Incorporation is
filed by the Department of State.

You may check on the status of a filed Certificate of Incorporation by accessing our Corporation and Business Entity Database on the Department of State’s website at www.dos.state.ny.us. The Corporation and Business Entity Database is normally current through the previous business day.

Please note that the filing receipt and certified copy, if requested, are sent by first class mail. The filing receipt and certified copy, if requested, are mailed separately. We do not provide these documents by fax. You may request that your filing receipt be returned to you by overnight delivery service by: (1) completing a shipping label from your overnight delivery service provider and mailing it to the Department of State with your Certificate of Incorporation; or (2) including a written request to return your filing receipt by overnight delivery service and providing your account number with the overnight delivery service provider; or (3) including a written request to return your filing receipt by overnight delivery service and a request to charge your credit card with the shipper for these charges. A separate request may be made for overnight delivery service for certified copies. The Division is unable to utilize UPS.

Contacting the Division of Corporations

If you require technical advice or have any questions regarding the filing of your Certificate of Incorporation, please contact the Department of State, Division of Corporations, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231. The telephone number of the Division of Corporations is (518) 473-2492. The Department of State’s website address is www.dos.state.ny.us. The email address is corporations@dos.state.ny.us.
CERTIFICATE OF INCORPORATION
OF

(Insert Corporate Name)

Under Section 402 of the Business Corporation Law

FIRST: The name of the corporation is:

SECOND: This corporation is formed to engage in any lawful act or activity for which a corporation may be organized under the Business Corporation Law, provided that it is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained.

THIRD: The county, within this state, in which the office of the corporation is to be located is:

FOURTH: The total number of shares which the corporation shall have authority to issue and a statement of the par value of each share or a statement that the shares are without par value are: 200 No Par Value

FIFTH: The Secretary of State is designated as agent of the corporation upon whom process against the corporation may be served. The address to which the Secretary of State shall mail a copy of any process accepted on behalf of the corporation is:
Incorporator Information Required

X

(Signature)

__________________________

(Type or Print Name)

__________________________

(Address)

__________________________

(City, State, Zip Code)

CERTIFICATE OF INCORPORATION

OF

__________________________

(Insert Corporate Name)

Under Section 402 of the Business Corporation Law

Filed by: ________________________________

(Name)

__________________________

(Mailing Address)

__________________________

(City, State and Zip Code)

Note: This form was prepared by the New York State Department of State for filing a certificate of incorporation for a business corporation. It does not contain all optional provisions under the law. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that legal documents be prepared under the guidance of an attorney. The fee for a certificate of incorporation is $125 plus the applicable tax on shares required by Section 180 of the Tax Law. The minimum tax on shares is $10. The tax on 200 no par value shares is $10 (total $135). Checks should be made payable to the Department of State for the total amount of the filing fee and tax.

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