Forming a Limited Liability Company in New York

Forming a Limited Liability Company in New York State

New York recognizes many business forms including the limited liability company (LLC), corporation, limited partnership, sole proprietorship, general partnership and other less familiar forms. Each has own advantages and disadvantages. For any particular venture, personal and business circumstance 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 the choice. Forming an LLC should only be done after careful analysis. The following information has been developed to answer your questions regarding formation of an LLC and to assist in the filing of Articles of Organization.

Department of State staff cannot provide legal advice, however, they are available to assist in answering questions about filing LLC documents. Please contact the Department of State, Division of Corporations, State Records and Uniform Commercial Code, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231 or one of our business document specialists at (518) 473-2492 or email corporations@dos.state.ny.us with any questions you may have.

What is a Limited Liability Company?

An LLC is an unincorporated business organization of one or more persons who have limited liability in the contractual obligations and other liabilities of the business. The Limited Liability Company Law governs the formation and operation of an LLC. An LLC may organize for any lawful business purpose or purposes.

The LLC is a hybrid form that combines corporation-style limited liability with partnership-style flexibility. The flexible management structure allows owners to shape the LLC to meet the needs of business. The owners of an LLC are “members” rather than shareholders or partners. A member may be an individual, a corporation, a partnership, another limited liability company or any other legal entity.

How Do I Form a Limited Liability Company?

Organizers form an LLC by filing the Articles of Organization, pursuant to Section 203 of the Limited Liability Company Law, with the Department of State. Organizers prepare, sign and file the Articles of Organization that creates the LLC. Any person or business entity may be an organizer. Organizers need not be, but need not be, a member of the LLC formed.

What is a Professional Service Limited Liability Company?

One or more professionals may form, or cause to be formed, a professional service limited liability company (PLLC) for pecuniary profit for the purpose of rendering the professional service or services that the professionals are authorized to practice. A PLLC is formed by filing Articles of Organization pursuant to Section 1203 of the Limited Liability Company Law. “Profession,” as defined in Section 1201(b) of the Limited Liability Company Law, includes any practice as an attorney and counselor-at-law, or as a licensed physician, and those occupations designated in Title Eight of the Education Law. For a listing of professional services, please see NYS Department of Education, Office of the Professions.
Are There Any Special Responsibilities Associated With Forming a Limited Liability Company?

The members of an LLC are required to adopt a written Operating Agreement. See Section 417 of the Limited Liability Company Law. The Operating Agreement may be entered into before, at the time of, or within 90 days after the filing of the Articles of Organization. The Operating Agreement is the primary document that establishes the rights, powers, duties, liabilities and obligations of the members between themselves and with respect to the LLC. The Operating Agreement is an internal document of the LLC and is not filed with the Department of State. The law is silent on the consequences of not adopting an Operating Agreement. The Department of State cannot provide legal advice regarding the preparation of the Operating Agreement.

What are the Publication Requirements Associated with the Formation of an LLC?

Section 206 of the Limited Liability Company Law requires a copy of the Articles of Organization or a notice related to the formation of most limited liability companies to be published in two newspapers for six consecutive weeks. The newspapers must be designated by the county clerk of the county in which the office of the LLC is located. The newspapers charge a fee for the publication of the notice. The information in the published notice, including the name of the LLC, must match the Department of State’s records exactly as set forth in the initial articles of organization. The printer or publisher of each newspaper will provide you with an affidavit of publication. A Certificate of Publication, with the affidavits of publication of the newspapers annexed thereto, must be submitted to the Department of State, with a $50 filing fee. Failure to publish and file the Certificate of Publication with the Department of State within 120 days will result in the suspension of the LLC’s authority to carry on, conduct or transact business.

Do I Need a Lawyer?

Articles of Organization have legal effect and Operating Agreements create legally enforceable rights and responsibilities. Anyone forming an LLC should consider utilizing a lawyer. However, there is no requirement to use a lawyer when forming an LLC.

Where Do I Get a Seal?

The Limited Liability Company Law does not refer to a seal of an LLC. Nevertheless, seals are available from commercial sources and legal stationery stores. The Department of State does not supply seals.

How is a Limited Liability Company Taxed?

Federal tax regulations allow an LLC to elect to be taxed as a corporation or partnership for income tax purposes. Consult a tax adviser about these regulations and any changes. For income tax purposes, state law follows federal law. Additionally, state law imposes a tax based on the number of members of the LLC. Also, depending on the nature of the business it undertakes, the LLC may have to pay or collect sales taxes, withholding taxes and other taxes.

The LLC will need a taxpayer identification number, obtainable from the Internal Revenue Service (http://www.irs.gov/). 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 (http://www.tax.state.ny.us/), Taxpayer Assistance Bureau, W.A. Harriman Campus, Albany, NY 12227. You may also contact the Business Tax Information Center at the following toll free numbers: from the Continental U.S. at 1-800-972-1233 or from within New York State at 1-800 CALL TAX (1-800-225-5829).

Does an LLC 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 (http://www.gorr.state.ny.us/gorr/), P.O. Box 2017, Albany, New York 12220-0107. You may also 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 (http://www.labor.state.ny.us/) and the New York State Workers’ Compensation Board (http://www.wcb.state.ny.us/)

Choosing a Name

First, the name of an LLC must include the words “Limited Liability Company” or the abbreviation “LLC” or “L.L.C.” Second, the name of the LLC must be distinguishable from the names of other LLC's, corporations or limited partnerships on file with the Department of State. Third, Section 204 of the Limited Liability Company Law contains a list of words and phrases that are prohibited or restricted in the name of an LLC. In addition, certain words and phrases require the consent or approval from other state agencies prior to filing the Articles of Organization with the Department of State.

To determine whether a proposed limited liability company name is available prior to filing the Articles of Organization with the Department of State, you may submit a name availability inquiry or reserve a name by filing an Application for Reservation of Name. Note that a finding that the name is available or the filing of an Application for Reservation of Name is not an approval of the name by the Department of State. A final determination is not made until the Articles of Organization are reviewed and filed by the Department of State. No expenditure or other commitment should be made in reliance upon the name availability inquiry or the filing of an Application for Reservation of Name.

Instructions for Completing the Articles of Organization

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

Name

There are three instances on the form where you are required to provide the name of the LLC. The name MUST be typed exactly the same in all three places. Enter the name of the LLC in the space in the title. Also enter the name in Article First and in the title of the document on the last page of the form. The name must be exactly the same in all three places.

County Location

The Articles of Organization must designate the county within New York State where the LLC’s office 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 in New York County, the borough of Brooklyn is in Kings County and the borough of Staten Island is in Richmond County. Bronx and Queens are both a borough and a county.

Designation for Service of Process
The LLC must designate the Secretary of State as its agent for service of process. Provide an address to which the Secretary of State may mail a copy of any process received. "Process" means the papers that acquire jurisdiction of the LLC in a legal action.

*Signature*

The organizer must sign the Articles of Organization and print their name in the space provided opposite the signature.

*Filer*

Provide the name and address of the filer of the Articles of Organization. The Department of State will issue an official filing receipt to the filer of the Articles of Organization.

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**Additional Information**

**Filing Fee**

The fee for filing the Articles of Organization is $200. 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." Do not send cash through the mail. To pay the filing fee using a credit/debit card complete and sign the Credit Card/Debit Card Authorization Form. Expedited Handling Services and certified copies are available for an additional fee.

**Filing the Articles of Organization**

- By mail, send the completed Articles of Organization with the filing fee of $200 to the New York State Department of State, Division of Corporations, State Records and Uniform Commercial Code, One Commerce Plaza, 99 Washington Avenue, Albany, New York 12231.

- In person, deliver the Articles of Organization to the above address. The Division of Corporations, State Records and Uniform Commercial Code is on the 6th floor and is open from 9:00 a.m. to 4:30 p.m., Monday through Friday.

- By fax, you may fax the Articles of Organization along with a Credit Card/Debit Card Authorization Form to the Division of Corporations, State Records and Uniform Commercial Code at (518) 474-1418.

- Online filing through the Governor’s Office of Regulatory Reform

**Filing Receipt**

The Department of State issues an official filing receipt to the filer of the Articles of Organization. The filing receipt reflects the date of filing, the name of the LLC, an extract of information provided in the Articles of Organization, and an accounting of the 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.

Please note that the filing receipt and certified copy, if requested, will be returned by first class mail by the United States Postal Service. 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 and certified copy be returned to you by overnight delivery service by including your account number with the service provider or including a request to charge your credit card with the shipper for these charges. The Division does not utilize UPS.

**Contacting the Division of Corporations**
If you require technical advice or have any questions regarding the filing of your Articles of Organization, please contact the New York State Department of State, Division of Corporations, State Records and Uniform Commercial Code, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231. The telephone number of the Division is (518) 473-2492. The email address is corporations@dos.state.ny.us
(This form must be printed or typed in black ink)

ARTICLES OF ORGANIZATION
OF

_________________________
(Insert name of Limited Liability Company)

Under Section 203 of the Limited Liability Company Law

FIRST: The name of the limited liability company is: ______________________________

SECOND: The county within this state in which the office of the limited liability company is to
be located is: ___________________________________________________________________

THIRD: The Secretary of State is designated as agent of the limited liability company upon
whom process against it may be served. The address within or without this state to which the
Secretary of State shall mail a copy of any process against the limited liability company served
upon him or her is:

____________________________________________________________________________

____________________________________________________________________________

____________________________________________________________________________

____________________________________________________________________________

________________________________________  _________________________________
(signature of organizer)  (print or type name of organizer)
ARTICLES OF ORGANIZATION
OF

(Insert name of Limited Liability Company)

Under Section 203 of the Limited Liability Company 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 articles of organization for a domestic limited liability company. 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 certificate must be submitted with a $200 filing fee made payable to the Department of State.