

## **WAYS TO LEGALLY STRUCTURE A BUSINESS AND REGISTERING A BUSINESS NAME**

No matter what business you are in, you will need some form of legal business organization. There are four basic forms - the sole proprietorship, the partnership, the limited liability company and the corporation. Each has advantages and disadvantages, including tax consequences. We recommend you seek the advice of an attorney and tax consultant to select the best form for your circumstances.

### **If you want to operate a sole proprietorship**

A sole proprietor is an individual who owns and operates the business. There is no legal separation between the individual and the business. A person benefits from 100 percent of the profits and is personally responsible for 100 percent of all the debts and liabilities of the business.

- Then you must file an Assumed Name Certificate (also known as a "dba" or "doing business as") with the [clerk of the county/ies](#) in which the business is conducted ONLY IF you are operating under a name other than the proprietor's (no formation document is required).
- Personal liability is full, meaning a sole proprietor is personally responsible for all debts of his or her business.
- The life span of the business is determined by the individual (proprietorships automatically cease on the retirement or death of the sole proprietor).
- For purposes of taxation, business income is reported and taxed through the sole proprietor's personal tax return.

### **If you want to operate a general partnership**

A partnership exists when two or more persons join together in the operation and management of business for profit. Partnerships, like sole proprietorships, are subject to relatively little regulation and are fairly easy to establish. A formal partnership agreement is recommended in order to address potential conflicts before they arise. Under a general partnership, each partner is liable for all debts of the business. All profits are taxed as income to the partners based on their percentage of ownership.

- Then you must reach agreement with the partners to file an Assumed Name Certificate (also known as a "dba" or "doing business as") with the [clerk of the county/ies](#) in which the business is conducted.
- Personal liability is joint and individual for the general partners who are responsible for the obligations of the partnership.
- The life-span of the business is for a designated period stipulated in the partnership agreement; or until a dissolution event occurs.

- For purposes of taxation, a general partnership is not treated as a separate taxable entity; business income is taxed through each general partner's personal tax return.

### **If you want to operate a limited partnership**

- Then you must file a Certificate of Limited Partnership (following an agreement of the partners) and Affidavits of Publication with the [New York State Department of State](#) and publish a Notice of Formation in newspapers.
- Personal liability is joint and individual for the general partners who are responsible for the obligations of the partnership; limited partners are liable to the extent of their capital contribution to the partnership.
- The life-span of the business is for a designed period stipulated in the partnership agreement; or until a dissolution event occurs, subject to any right to continue that may be stated in the partnership agreement.
- For purposes of taxation, a limited partnership is not treated as a separate taxable entity; business income is taxed through each partner's personal tax return.

### **If you want to operate a limited liability company**

- Then you must file Articles of Organization (signed by one or more organizers) with the [New York State Department of State](#).
- Personal liability is generally limited, although the Articles of Organization can specify that member (s) will be liable for company debts, etc.
- The life-span of the business may be for a designated period stipulated in the Articles of Organization; or until a dissolution event occurs and the company takes no action to continue.
- For purposes of taxation, an LLC can elect its classification for federal tax purposes. An LLC with two or more members can elect to be an association (corporation) or a partnership; an LLC with only one member can elect to be an association (corporation) or elect to be disregarded as an entity separate from its owner (in effect, to be treated as a sole proprietorship for federal tax purposes).

### **If you want to operate a business corporation**

- Then you must file a Certificate of Incorporation (signed by at least one incorporator) with the [New York State Department of State](#)
- Personal liability is limited, for shareholders.
- The life-span of the business is perpetual; or for a designated period stipulated in the Certificate of Incorporation.

- For purposes of taxation, a corporation pays state franchise taxes and taxes on income; shareholders pay taxes on income distributed as dividends (a limited exception exists for "Subchapter S" corporations).
- For information on state business taxes: [New York State Department of Taxation & Finance](#)
- For information on Federal business taxes: [Internal Revenue Service](#)

**For technical assistance on legal forms of business organizations contact a business counselor at your nearest [New York State Small Business Development Center](#) or Empire State Development Entrepreneurial Assistance Center (1-800-STATE NY).**

## **NOT-FOR-PROFIT CORPORATIONS**

New York State Department of State Not-For-Profit Corporation Filing information can be found at <http://www.dos.state.ny.us/corp/nfpfile.html>

### **Certificate of Incorporation**

#### *Domestic Corporations*

A **not-for-profit corporation** may be formed by filing a Certificate of Incorporation pursuant to **Section 402 of the Not-for-Profit Corporation Law**. The Department of State has prepared forms that may be used for this purpose. These forms satisfy the basic statutory filing requirements for a not-for-profit corporation in New York State. The Department of State has also prepared instructions for completing Not-for-Profit Forms DOS-1510 or DOS-1511.

**Form DOS-1510 should be used if you do not intend to file for tax-exempt status.**

**Form DOS-1511 should be used if you anticipate applying to the Internal Revenue Service and the NYS Department of Taxation and Finance to obtain tax-exempt status.**

**Section 301 of the Not-for-Profit Corporation Law** includes provisions relating to restrictions on the use of certain words and phrases in the name of the corporation. Generally, the name of the entity may not include a word or phrase restricted by another statute unless one has complied with the restriction. Certain words and phrases also require the consent or approval from another agency prior to filing the document with the Division of Corporations.

In addition, certain activities, such as day care centers, hospitals, substance abuse programs, etc., require the consent or approval of another agency prior to filing the Certificate of Incorporation with the Division of Corporations. Please be sure to review **Section 404 of the Not-for-Profit Corporation Law** to determine whether any consents or approvals are required. If there is any doubt as to what, if any, consents or approvals may be required, the Division of Corporations or the agency in question should be contacted prior to submitting the document for filing to the Division of Corporations.

The completed Certificate of Incorporation, together with the statutory filing fee of \$75, should be forwarded to the Department of State, Division of Corporations, 41 State Street, Albany, NY 12231.

Corporations formed for the purpose of operating a church are generally filed pursuant to the **Religious Corporations Law**. Corporations with religious purposes, other than the formation of a church, may be filed pursuant to the **Not-for-Profit Corporation Law**.

Corporations formed pursuant to the **Religious Corporations Law** are generally created by filing a Certificate of Incorporation with the office of the county clerk (*See Religious Corporations Law, §2.*). Corporations that do not have a principal office or place of worship are filed with the New York State Department of State. Certificates of Incorporation for all other religious corporations are filed directly with the office of the county clerk in which the principal office or place of worship is located. The form for filing under the Religious Corporations Law must be drafted by the filer by following the requirements of the Religious Corporations Law. Although it is not required, we deem it advisable that legal papers be prepared under the guidance of an attorney.

Documents submitted to the Department of State must be enclosed in a white cover sheet that sets forth the title of the document being submitted and the name and address of the individual to whom the receipt for the filing of the document should be mailed.

Certificates to be filed with the Department of State should be submitted to the New York State Department of State, Division of Corporations, 41 State Street, Albany, NY 12231. The statutory filing fee for filing a Certificate of Incorporation under the Religious Corporations Law is \$125.

Please note that this office does not require or maintain information regarding taxes. Questions regarding tax exemption should be directed to the New York State Department of Taxation and Finance, Corporation Tax Bureau, W.A. Harriman State Campus, Albany, NY 12227, and your nearest office of the United States Internal Revenue Service.

- [Download Certificate of Incorporation Form \(DOS-1510\)](#) (15KB Typeable PDF File 3 pgs)
- [Download Certificate of Incorporation Form \(DOS-1511\)](#) (71KB PDF File) (4 pages)
- [Instructions for Completing Not-for-Profit Forms DOS-1510 and DOS-1511](#)
- [New York "Not-for-Profit Corporation Law" Text at NYS Senate Site](#)
- [New York "Religious Corporations Law" Text at NYS Senate Site](#)
- [Payment by Credit Card](#)