

Step by Step Guide for Starting a Limited Liability Company (LLC) in New York

Step 1: Name the LLC

The name of your LLC should be distinguishable from other business names in your state and must meet the New York naming guidelines. In naming an LLC, be sure to:

- ⇒ Review New York's [naming guidelines](#)
 - Depending on the name you select, you may need to obtain government consent before you can file articles of organization (step3).
 - The name must include the words LLC, L.L.C. or Limited Liability Company.
 - Note that if you plan to use a name other than the legal name of your LLC, for example without the "LLC" in the name, you must apply separately for an assumed name, also referred to as "doing business as" (dba) name.
- ⇒ [Check](#) if the name is available on the New York Department of State (DOS) website.
- ⇒ Check if the web domain is available.

Step 2: You May Choose a Registered Agent

A registered agent is a person or company that is authorized to accept service of process and official communications on behalf of the LLC. In New York, the Secretary of State is the default registered agent for all New York LLCs. For example, if your LLC is served with a lawsuit, the Secretary of State will receive notice and forward it to you to the post office address you provide. Although not necessary, you may designate a secondary agent such as a commercial service to keep your address off public records.

Step 3: File the Articles of Organization

The Articles of Organization is the legal document required to establish your LLC. You may use the DOS on-line filing system to register the LLC. However, you may complete the [template](#) available on the DOS website and fax or mail it to DOS. You will need the following information:

- ⇒ The name of the LLC (as provided in Step 1).
- ⇒ The county where the LLC is located.

- ⇒ The address where the Secretary of State will send you notices, or if you are using a registered agent, their name and address.
- ⇒ The date when you would like the LLC to begin existing and its duration.
- ⇒ Will your LLC be managed by some of its members (manager-managed) or by all its members (member-managed).

The filing fee is \$200. However, you may be charged additional fees for requesting certified copies or to expedite the processing of the application (if you submitted via mail or fax). If you file via mail or fax, you will need to attach a [credit card authorization form](#) to your application. Make sure to confirm the fees as these may change from time to time.

Step 4: Complete the Publication Requirement

Within 120 days of formation, all New York LLCs must publish a notice in two newspapers for six consecutive weeks stating that you have formed an LLC. You will need to contact the county clerk of the county where the LLC was formed to designate the papers you will use and their contact information. After you pay for the publication, the newspapers will draft the notice and publish it for six weeks. Once the publication is completed, the newspapers will send you an affidavit of publication, which you will then submit to the DOS together with the [Certificate of Publication](#). The fee is \$50 plus other fees if you request a certified copy or to expedite the process.

If you do not comply with this requirement, it could delay closing on a loan or other transactions that may require your LLC to obtain a certificate of status from the DOS indicating the LLC is in good standing. Another consequence of not meeting this requirement is that your entity will not be able to maintain a lawsuit against third parties.

Step 5: Create an Operating Agreement

New York state requires LLCs to adopt a written operating agreement (“LLCA”). An LLCA is an internal governance document that lays out the rules and management procedures of your LLC, like bringing in new members, recording capital contributions, distributing profits etc. Although you do not need to file the LLCA with the state, it should be kept in the LLC’s records and referred to regularly. It can be amended as needed. For example, if you start as a single member LLC and later bring in other members, you can amend it to reflect that. Consult a tax accountant about tax reporting requirements when changing from a single member to a multiple member LLC.

Step 6: Obtain an EIN

An EIN is a nine-digit number that the government uses to identify your business. You may [apply for free](#) on the Internal Revenue Service's (IRS) website. You may also mail [Form SS-4](#). When you apply for an EIN, you may choose the tax classification of your preference. Since LLCs are pass through entities, meaning they don't pay income taxes on their own, you may choose to be taxed as sole proprietorship, or a partnership, depending on the number of members and goals of the business. Speak with a tax accountant for guidance.

Note that once an EIN is assigned to your LLC, it cannot be reused by another entity. If you change your entity form, create a new corporation after a statutory merger, become a subsidiary of another corporation, or receive a new charter from the Secretary of State, your LLC will need a new EIN. To discontinue an EIN speak to your tax accountant about reporting the change to the IRS.

Step 7: Comply with Applicable Tax Obligations

Unincorporated Business Tax (UBT): an LLC does not pay franchise taxes because it is not considered a corporation. However, it is required to pay UBT tax to the NYC Department of Finance (DOF), [Form IT-204-L](#).

Sales Tax: If the LLC will make certain sales or provide certain services, it must register with the NY State Department of Taxation and Finance (DTF) and obtain a Certificate of Authority before doing business. You must register online at [New York Business Express](#).

Not sure whether you need to register? See [Do I Need to Register for Sales Tax?](#) and [How to Register for New York State Sales Tax](#).

After formation, you will receive a form in the mail from the New York State Department of Taxation and Finance, called "LLC Request for Information," Form TR-570. This is not a scam; it is the state asking you to provide information about your company. You may complete it and send it back.

Step 8: Filing Biennial Statement

LLCs must file their Biennial Statement online using the Department of State's [e-Statement Filing Service](#). The filing fee is \$9.

Step 9: Other Considerations

- If you plan to do business using a different name than your business legal name, you must apply for an assumed name (dba) with the NY Department of State.
- Put agreements in writing to prevent disputes.
- If you plan to do business online, ensure that you protect yourself and your customer data with a Privacy Policy and Terms of Use Agreement.
- Consider applying for the [Minority/Women-Owned Business Enterprise Certification](#) (MWBE), if eligible. Getting this certification allows your business to become more visible to prospective buyers, including City agencies and private contractors seeking to purchase goods and services.
- Consider obtaining business insurance to cover expenses from business risks.
- Consider protecting your businesses' brand and creations by registering your trademark with the United States Patent and Trademark Office (USPTO).
- If you intend to conduct business in another state, make sure you meet the requirements and file appropriate forms to qualify to do business in another state.
- Visit an accountant before it is time to file taxes. An accountant can also recommend business deductions and ways to save money at tax time.

This resource is provided for informational purposes only and does not cover all the issues that could arise when setting up a sole proprietorship. For more information, contact an attorney. For pro bono legal services, you may contact VOLS at (347) 521-5729; or send an email to microenterprise@volsprobono.org.