

Frequently Asked Questions and Answers for Guiding Small Business Owners

I don't have a business yet, but I want to form an LLC, should I consider other options?

If the client's business is still in the early stages, they may choose to remain as a sole proprietor. However, it's important to evaluate the nature of their business and the potential risks involved. Depending on these factors, they may want to consider forming an LLC to help protect their personal assets. Important to go over the concept of limited liability and its exceptions.

Should I form my business in Delaware or New York?

While Delaware is a popular choice for forming a business entity because its courts are specialized in business disputes and there is no publication requirement for an LLC, a business operating in New York would have to register as a foreign entity and pay additional fees. This means clients would have to pay formation costs twice, so it is important to make them aware of this.

Can I form an LLC if I am a licensed professional?

A Professional Limited Liability Company (PLLC) is for licensed professionals, such as doctors, therapists, and architects, who need liability protection while complying with licensing regulations. If the client is a licensed professional (refer to the New York Education Department's list of licensed professions), they must form a PLLC, not an LLC, as the application process differs. If the client has already formed an LLC but will practice a licensed profession under it, they must create a separate PLLC.

What is an S-Corp, and how does it affect my taxes?

An S-Corp is a tax status, not a business entity, that allows an owner to pass business income through to their personal tax returns, potentially reducing self-employment taxes. However, it can be costly to maintain and complex, with limitations like for example, the shareholders must have immigration status. For new entrepreneurs with limited capital and earnings, it may not be the best option. Refer client to an accountant to evaluate the financial pros and cons.

Should I create a different LLC for each business I run?

For smaller businesses, separating operations into multiple LLCs can help limit liability, but it may not always be necessary. Help the client assess factors like whether they are leasing different spaces or have distinct ownership structures. For example, if they plan to sell similar products online, one LLC may suffice.

Can I use an address where I'm not located for business purposes?

Clients often ask about using an address outside of NYC when registering their business to avoid the publication requirement. We typically advise them to use an address where they conduct business and can receive mail, unless they are willing to pay for a registered agent outside the city. If the concern is privacy—specifically not wanting their name to appear as the owner on the New York Department of State website once the company is filed—we recommend using a virtual address, which can be in or outside of NYC. The LLC law does not require using an address where the business owner is physically located.

Do I need a registered agent, and what does it cost?

In New York, a registered agent is not required since the Secretary of State serves as the agent for service of process and forwards correspondence to the owner. If the client chooses a registered agent for privacy or other reasons, their information must be listed in the Articles of Organization. They should also be aware that this service can cost up to \$300 per year.

What is a DBA, and is it the same as my LLC name?

A DBA (Doing Business As) or "assumed name" in New York is a trade name that a business uses, separate from its legal LLC name. If a client plans to sell different products/services and use different names for each, they can register several DBAs. If they don't, they must use the LLC's legal name (including "LLC") in signs, advertisements, etc., as listed in the Articles of Organization. While this is the requirement, enforcement is uncommon. The cost to register a DBA for an LLC is \$25.

Do I need insurance for my business?

Insurance protects a business from various risks, but it is not the same as the liability protection provided by the business entity. It's important to assess the nature of the business activities and recommend that the client consider insurance. There are different types of insurance, so they should consult with a broker in their industry to find the right coverage for their needs. Additionally, some contracts may require insurance.

Why do I keep receiving scam mail after forming my business?

After forming an LLC, clients may receive a letter from the Department of Taxation and Finance to confirm their company details. It's important to make clients aware of this and that they ensure the letter is from the legitimate government agency, as scams often mimic official communications and offer unnecessary business materials that appear to be legal requirements.