

UPC Business Solutions

Corporate Formation Process

Incorporating your business can be pretty simple. To incorporate simply means filing a document called articles of incorporation with a state. The filing and subsequent approval of these articles creates the corporation. The corporate entity, which is like a legal person, must follow specific formal state rules to be active and provide it's legal & tax protections.

In general, there are three steps to the incorporation process:

Step I - Form the corporation with the state;

Step II - After formation, your corporation must complete its initial actions; &

Step III - Throughout the year your corporation must continue to follow formal corporate governance rules.

Failure to follow any of the rules for each step, will result in your corporation being non-compliant with state rules. When a corporation is non-compliant, its veil of protection from lawsuits and taxes is destroyed!

Are all Incorporators the Same?

BEWARE! Most filing services companies, attorneys, CPA's, and others who offer incorporation services (AKA Incorporators), do not help you with all three steps of the process. All Incorporators set up your corporation with the state. Most offer one or more related services: registered agent, kit materials, and/or EIN services. Far fewer still will assist you with some of your initial organizational paperwork (i.e. bylaws, minutes, etc.). None offer all three... until now.

“We take care of and assist you with EVERY STEP of the incorporation process”

When you incorporate with us, we provide the only Complete Incorporation Service available today, helping you with every step of the process. Here's an outline of what you can expect:

- Complete the Incorporation Process
- Unlimited name availability checking (per entity);
- Preparation of your articles of incorporation;
- Submittal to your state using their expedited* process;
- Notifications of the process status;
- Follow up with the state, when they're taking too long;
- Verification of proper completion (state's mess up filings all the time);
- Email notification when your filing is approved
- Digital Documents – Ability to download a copy 24/7
- Originals forwarded to you by FedEx
- Preparation of documents necessary to issue initial ownership interests in your business
- File you initial Annual Report with the State (if necessary)
- Obtain your EIN (AKA: Federal Tax ID)
- Deluxe Kit materials (personalized attaché' binder with desktop seal, & stock certificates)
- Offer all your corporate Forms on CD
- Offer a Registered agent service
- Obtain the S Corporation Status qualification with the IRS

- Post Filing docs ready for filing or actually filed for you (see State Fees to see if your state has this requirement)
- Preparation of your initial compliance documentation (using My Corporate Secretary™)
- Initial Organizational Meeting – Including initial minutes, meeting waiver, bylaws, bank authorization, S Corp authorization, & authorization to issue stock)
- Transfer of your business to your entity – Without this your business is not owned by your Corporation
- Bill of sale
- Resolutions
- Issued stock certificate(s) – think of it as title to your corporation
- Initial Shareholders Meeting (by your new stock holder(s)) documents
- Lease of premises – Your corporation must lease a space in your home or office
- Employment contract – You must be employed by your corporation (especially for S Corps)
- Continual monitoring and email reminders of your annual and ongoing requirements (again using My Corporate Secretary™). This will include:
 - Annual Directors Meeting
 - Annual Shareholders Meeting
 - Annual State Filing Requirements
 - Instruction and documentation for any and all ongoing meetings to discuss important changes such as, changing the corporate name or address, making any changes to the articles of incorporation, adding or changing officer bonus structure, and much more.
 - Receive a first year tax preparation discount of 20%.
 - Receive first year bookkeeping structure consultation for your business.

* Expedited process is different with each state. See Estimated State Filing Time Estimate for your state, in your quote.

UPC CORPORATION PRICING

S Corporation Package – Premium (\$1249.00) – This will vary depending on State Fees

- **State Fees**
- **Expedited Filing**
- **My Corporate Secretary**
Manage your corporation's compliance needs!
- **Deluxe Company Kit**
Includes: Personalized Binder w/ Tabbed Dividers, Desktop Seal, Stock Certificates & More
- **EIN Full Service**
- **FedEx Ground**
- **Annual Consultation**
UPC Business Solutions will provide a complimentary one year Business Tax Club Membership, including up to 6 hours of one-on-one consultation for your business.
- **Tax Preparation Discount**
UPC Business Solutions will give you a first year 20% discount for filing your business taxes.
- **Company Business Agreements**
UPC Business Solutions will include a start-up contract package for your Company. This will include any necessary Executive Agreements, Management Agreements, Employee Agreements and Independent Contractor Agreements.
- **Bookkeeping Structure**
UPC Business Solutions will design your initial bookkeeping structure, including, P&L statement, proper depreciation forms, a list of standard deductions for your business and proper income reporting techniques.
- **S Corporation Status with IRS**
UPC Business Solutions will fill out your IRS Form 2553 for your election to be treated as an S-Corporation.
- **Initial Annual Reporting**
UPC Business Solutions will help you fill out any necessary Corporate State Filings for your first year in business. (This does NOT include any Income Tax forms)
- **Corporate Secretary Mirror**
UPC Business Solutions will monitor all Corporate Secretary E-mails sent to your business. We will make sure that you are staying compliant on all your corporate filing matters. (This is for your initial year in business)

S Corporation Package – Standard (\$999.00) – This will vary depending on State Fees

- **State Fees**
- **Expedited Filing**
- **My Corporate Secretary**
Manage your corporation's compliance needs!
- **Deluxe Company Kit**
Includes: Personalized Binder w/ Tabbed Dividers, Desktop Seal, Stock Certificates & More
- **EIN Full Service**
- **FedEx Ground**
- **Annual Consultation**
UPC Business Solutions will provide a complimentary one year Business Tax Club Membership, including up to 6 hours of one-on-one consultation for your business.
- **Tax Preparation Discount**
UPC Business Solutions will give you a first year 20% discount for filing your business taxes.
- **S Corporation Status with IRS**
UPC Business Solutions will fill out your IRS Form 2553 for your election to be treated as an S-Corporation.

We also form LLC's. For more information and pricing, please visit our Corporation and LLC Formation site at:

[BUSINESS STRUCTURE NOW](#)

To begin the process you will need to know the following information. If you decide to hire our company to help you, we will walk through the questions and process with you. If you choose the Premium Program, we will also design and create personal Company and Employee Agreements for your company.

Please review the following page for specifics about the formation of your company. This is a guideline for what you (or UPC Business Solutions) will be filling out on your order form.

Remember, if you choose to Incorporate (C or S) you will also receive a one year subscription to the "My Corporate Secretary". This will monitor all of your compliance needs and notify you of any important dates and filings necessary.

COMPANY FORMATION PROFILE SHEET

The following is a step-by-step guideline for filling out the specific questions required to Incorporate you company with our program.

Incorporating / LLC

1. Choose which program you will be selecting:
 - a. Incorporation
 - b. LLC
2. Choose which package you will be selecting:
 - a. Premium
 - b. Standard
3. Choose which State you will be forming in.
4. Choose which Registered Agent format you will be using.
5. A page will come up with your current choices of the Products and Services you have ordered.
6. Order Contact Information
 - a. Name
 - b. Day Phone
 - c. Other Phone
 - d. Fax
 - e. Email
 - f. Password – Used for My Corporate Secretary
 - g. Mailing Address
7. Company Information
 - a. Company name 1
 - b. Company name 2
 - c. Purpose of Company – 10 words or less
8. Ownership
 - a. Authorized Shares Have
 - Par Value
 - No Par Value (Preferred)
 - b. Authorized Stock
 - Total Numbers – 200 (Preferred)
 - c. Par Value
 - No Par Value (Preferred)
9. Management
 - a. Director 1 (Only 1 is required)
 - Name
 - Address
10. Registered Agent
 - a. Resident Agent Is:
 - Resident (Preferred)
 - Corporation
 - b. Name
 - c. Physical Address
11. Ohter Information and Provisions
 - a. Future Effective Date (Only place date if you are not filing now)
 - b. Other Instructions (Any specific instructions not on this form)

12. Federal Tax ID Number (EIN)

- a. Company Name
- b. Company Address
- c. Country
- d. Principal Officer
- e. Title
- f. SSN
- g. Select Reason For Applying (Only Choose One)
 - Started New Business – Type
 - Hired Employees
 - Change Type of Organization
- h. How will the IRS Tax this Business
 - S-Corporation
 - C-Corporation
- i. Which Does Business Do
 - Drop Down Box Choice
- j. Describe Principal Product or Service
- k. Date Business Started
- l. Accounting Year Closing Month
 - December (Preferred)
- m. Estimated date your company will pay wages
- n. Highest Number of Employees (You must fill in each of the three box's
 - The first two box's will usually be (0), and the third will be the number of employees for your company
- o. Have you ever filed for an EIN before
 - If yes
 1. Legal Name
 2. Date Applied
 3. Which State
 4. What City
 5. What was the EIN
- p. Confirm Company Info Page
- q. Read Disclosure and Disclaimer form
 - Check the box
- r. Payment Options
 - Check my mail
 - Order over the phone

**PLEASE READ THE FOLLOWING
CORPORATION INFORMATION**

CORPORATION FORMATION

Doing business as a legal entity, such as a Limited Liability Company (LLC), Corporation or Limited Partnership (LP) can give business owners several benefits, including;

1. organizational structure
2. access to potential tax advantages
3. increased credibility in the marketplace
4. ability to obtain a greater variety of financing
5. a method for reducing personal liability for business debts and obligations

While many businesses take the form of sole proprietorships in their early stages, most successful businesses start out as a legal entity or eventually covert into one.

Most people have heard that forming a corporation provides "limited liability" -- that is, it limits your personal liability for business debts. What you may not know is that there's more to creating and running a corporation than filing a few papers. You'll need to keep good records to handle the more complicated corporate tax return and, in order to retain your limited liability, you must follow corporate formalities involving decision making and record keeping. In short, you've got to be organized.

Limited Personal Liability

One of the main advantages of incorporating is that the owners' personal assets are protected from creditors of the corporation. For instance, if a court judgment is entered against your corporation saying that it owes a creditor \$100,000, you can't be forced to use personal assets, such as your house, to pay the debt. Because only corporate assets need be used to pay business debts, you stand to lose only the money that you've invested in the corporation.

Exceptions to Limited Liability

There are some circumstances in which limited liability will not protect an owner's personal assets. An owner of a corporation can be held personally liable if he or she:

- personally and directly injures someone
- personally guarantees a bank loan or a business debt on which the corporation defaults
- fails to deposit taxes withheld from employees' wages
- does something intentionally fraudulent or illegal that causes harm to the company or to someone else, or
- treats the corporation as an extension of his or her personal affairs, rather than as a separate legal entity.

This last exception is the most important. In some circumstances, courts can rule that a corporation doesn't really exist and that its owners should not be shielded from personal liability for their acts. This might happen if you fail to follow routine corporate formalities such as:

- adequately investing money in ("capitalizing") the corporation
- formally issuing stock to the initial shareholders
- regularly holding meetings of directors and shareholders, or
- keeping business records and transactions separate from those of the owners.

Liability Insurance

Incorporating should never take the place of good business insurance. Even though forming a corporation protects your personal assets, you should use insurance to guard your corporate assets from lawsuits and claims.

A solid liability insurance policy can protect you against many of the risks of doing business. For instance, if you operate a clothing store, good business insurance should adequately cover the bill if someone slips and falls in your store.

Also, insurance can protect you where the limited liability feature will not. For example, if you personally injure someone while doing business for the corporation, say by causing a car accident, liability insurance will usually cover the accident so that you won't have to use either corporate or personal assets to pay the bill. However, insurance won't help if your corporation doesn't pay the bills: commercial insurance usually does not protect personal or corporate assets from unpaid business debts, whether or not they're personally guaranteed.

Paying Corporate Income Tax

If an owner of a corporation works for the corporation, that owner is paid a salary, and possibly bonuses, like any other employee. The owner pays taxes on this income just like regular employees, reporting and paying the tax on his or her personal tax return.

The corporation pays taxes on whatever profits are left in the businesses after paying out all salaries, bonuses, overhead, and other expenses. To do this, the corporation files its own tax return, Form 1120, with the IRS and pays taxes at a special corporate tax rate.

Alternatively, corporate shareholders can elect what's called "S corporation" status by filing Form 2553 with the IRS. This means that the corporation will be treated like a partnership (or LLC) for tax purposes, with business profits and losses "passing through" the corporation to be reported on the owners' individual tax returns.

Forming a Corporation

To form a corporation, you must file "articles of incorporation" with the corporations division (usually part of the secretary of state's office) of your state government. Filing fees are typically \$100 or so.

For most small corporations, articles of incorporation are relatively short and easy to prepare. Most states provide a simple form for you to fill out, which usually asks for little more than the name of your corporation, its address, and the contact information for one person involved with the corporation (often called a "registered agent"). Some states also require you to list the names of the directors of your corporation.

In addition to filing articles of incorporation, you must create "corporate bylaws." While bylaws do not have to be filed with the state, they are important because they set out the basic rules that govern the ongoing formalities and decisions of corporate life, such as how and when to hold regular and special meetings of directors and shareholders and the number of votes that are necessary to approve corporate decisions.

Finally, you must issue stock certificates to the initial owners (shareholders) of the corporation and record who owns the ownership interests (shares or stock) in the business.

Retaining Corporate Status

Corporations and their owners must observe certain formalities to retain the corporation's status as a separate entity. Specifically, corporations must:

- hold annual shareholders' and directors' meetings
- keep minutes of shareholders' and directors' major decisions
- make sure that corporate officers and directors sign documents in the name of the corporation
- maintain separate bank accounts from their owners
- keep detailed financial records, and
- file a separate corporate income tax return.

Corporate Structure: Directors to Shareholders

A typical corporation's structure consists of three main groups: directors, officers, and shareholders. The roles and responsibilities of these groups are described in more detail below.

Board of Directors

One of the first steps a new corporation will take is to name the members of its board of directors. Usually, directors are identified in the "articles of incorporation" and/or "bylaws" of the corporation, or are selected by the person who takes the initial step of incorporating the business (sometimes called the "incorporator"). Once the corporation is up and running, directors are typically elected by shareholders at annual meetings.

As suggested by its name, the board of directors "directs" the corporation's affairs and business path. The board of directors also has ultimate legal responsibility for the actions of the corporation and its subsidiaries, officers, employees, and agents. A corporate director's duties and responsibilities typically include:

- Acting on behalf of the corporation and its best interests with an appropriate "duty of care" at all times;
- Acting with loyalty to the corporation and its shareholders;
- Participating in regular meetings of the board of directors;
- Approving certain corporate activities and transactions -- including contracts and agreements; election of new corporate officers; asset purchases and sales, approval of new corporate policies; and more;
- Amending the corporation's bylaws or articles of incorporation.

The number of directors serving on a corporation's board usually depends in part on the size of the business and its holdings, but this number is typically stated in the corporation's articles of incorporation and/or bylaws. A small corporation might have one director (who may also serve as the sole officer and shareholder), while a large corporation may have 10 or more people serving on its board of directors. For voting purposes, a corporation with more than one director should keep an odd number (3, 5, 7, etc.) of directors on its board.

Corporate Officers

The corporation's officers oversee the business's daily operations, and in their different roles they are given legal authority to act on the corporation's behalf in almost all lawful business-related activities. Officers are usually appointed by the corporation's board of directors, and while specific positions may vary from one corporation to another, typical corporate officers include:

- **Chief Executive Officer (CEO)** or President. The CEO has ultimate responsibility for the corporation's activities, and signs off on contracts and other legally-binding action on behalf of the corporation. The CEO reports to the corporation's board of directors.
- **Chief Operating Officer (COO)**. Charged with managing the corporation's day-to-day affairs, the COO usually reports directly to the CEO.
- **Chief Financial Officer (CFO)** or Treasurer. The CFO is responsible (directly or indirectly) for almost all of the corporation's financial matters.
- **Secretary**. The corporation's Secretary is in charge of maintaining and keeping corporation's records, documents, and "minutes" from shareholder meetings.

Keep in mind that in smaller corporations, one person may serve as the business's sole director, officer, and shareholder.

Shareholders

A corporation's shareholders have an ownership interest in the company, by having money invested in the corporation. A "share" is an apportioned ownership interest in the corporation, and the value of a single share can range from less than a 1% interest in the corporation, to 100%.

When a corporation is first formed, its original owners are usually its first shareholders, and in smaller corporations these initial investors may remain the sole shareholders throughout the corporation's existence. A smaller corporation's few shareholders may consist of those involved in day-to-day business operations (as owners, managers or employees). Remember that in smaller corporations, one person may also serve as the business's sole director, officer, and shareholder. Where larger corporations are concerned, private investors (or members of the general public if the corporation "goes public") may decide to invest money in the corporation at any time, and will become shareholders. Whatever the number of shareholders in a corporation, each shareholder usually receives a stock certificate from the corporation, identifying the number of shares held by the investor.

Corporations are usually required by law to hold annual shareholder meetings, at which the shareholders will elect the corporation's directors. Special shareholder meetings may also be held in rare situations, when significant corporate actions require shareholder approval -- including major transactions and changes in the corporation's stock plans. A corporation's

articles of incorporation (combined with state law requirements) usually set forth shareholder voting rights and procedures.

How to Form a Corporation

To form your own corporation, you must take these essential steps.

If you've sorted through the many types of business structures and decided to create a corporation, you're facing a list of important -- but manageable -- tasks. Here's what you must do:

1. Choose an available business name that complies with your state's corporation rules.
2. Appoint the initial directors of your corporation.
3. File formal paperwork, usually called "articles of incorporation," and pay a filing fee that ranges from \$100 to \$800, depending on the state where you incorporate.
4. Create corporate "bylaws," which lay out the operating rules for your corporation.
5. Hold the first meeting of the board of directors.
6. Issue stock certificates to the initial owners (shareholders) of the corporation.
7. Obtain any licenses and permits that are required for your business.

Choosing a Corporate Name

The name of your corporation must comply with the rules of your state's corporation division. You should contact your state's office for specific rules, but the following guidelines usually apply:

- The name cannot be the same as the name of another corporation on file with the corporation's office.
- The name must end with a corporate designator, such as "Corporation," "Incorporated," "Limited," or an abbreviation of one of these words (Corp., Inc., or Ltd.).
- The name cannot contain certain words that suggest an association with the federal government or restricted type of business, such as Bank, Cooperative, Federal, National, United States, or Reserve.

Your state's corporations office can tell you how to find out whether your proposed name is available for your use. Often, for a small fee, you can reserve your corporate name for a short period of time until you file your articles of incorporation.

Besides following your state's corporate naming rules, you must make sure your name won't violate another company's trademark.

Once you've found a legal and available name, you usually don't need to file the name of your business with your state. When you file your articles of incorporation, your business name will be automatically registered.

However, if you will sell your products or services under a different name, you must file a "fictitious" or "assumed" name statement with the state or county where your business is headquartered.

Pick a State to Incorporate In

One of the first considerations after a new business decides to incorporate is *where* to incorporate. For most small businesses, the answer may be as simple as registering in your business's home state, but questions can arise when you conduct business in another state, and when you are considering the state of Delaware as an attractive option. Following is a discussion on where to incorporate your new business.

Register in Your Home State

A standard rule of thumb is to incorporate in the state where the corporation will do most of its business. This rule holds especially true for smaller businesses that will likely not expand significantly, or that do not foresee conducting business outside of their home state. So, incorporating in your business's home state is usually the safest bet for your new business. Then if, after your corporation has been up and running for some time, it appears that you may need to conduct business in another state, you can always register in another state as a foreign corporation.

Each state has its own legal requirements and registration procedures for new businesses wishing to incorporate. To learn more about incorporating in your state, visit the [Corporations or Business Services Division](#) (or similar business filing agency) of your state's government.

Appointing Directors

Directors make major policy and financial decisions for the corporation. For example, the directors authorize the issuance of stock, appoint the corporate officers and set their salaries, and approve loans to and from the corporation. Directors are typically appointed by the initial owners (shareholders) of the corporation before the business opens. Often, the owners simply appoint themselves to be the directors, but directors do not have to be owners.

Most states permit a corporation to have just one director, regardless of the number of owners. In other states, a corporation may have one director only if it has one owner; a corporation with two owners must have at least two directors, and a corporation with three or more owners must have three or more directors.

Filing Articles of Incorporation

After you've chosen a name for your business and appointed your directors, you must prepare and file "articles of incorporation" with your state's corporate filing office. Typically, this is the department or secretary of state's office, located in your state's capital city. While most states use the term "articles of incorporation" to refer to the basic document creating the corporation, some states use other terms, such as "certificate of incorporation" or "charter."

No state requires a corporation to have more than one owner. For single-owner corporations, the sole owner simply prepares, signs, and files the articles of incorporation himself. For co-owned corporations, the owners may either all sign the articles or appoint just one person to sign them. Whoever signs the articles is called the "incorporator" or "promoter."

Articles of incorporation don't have to be lengthy or complex. In fact, you can usually prepare articles of incorporation in just a few minutes by filling out a form provided by your state's corporate filing office. Typically, the articles of incorporation must specify just a few basic details about your corporation, such as its name, principal office address, and sometimes the names of its directors.

You will probably also have to list the name and address of one person -- usually one of your directors -- who will act as your corporation's "registered agent" or "agent for service of process." This person is on file so that members of the public know how to contact the corporation -- for example, if they want to sue or otherwise involve the corporation in a lawsuit.

Drafting Corporate Bylaws

Bylaws are the internal rules that govern the day-to-day operations of a corporation, such as when and where the corporation will hold directors' and shareholders' meetings and what the shareholders' and directors' voting requirements are. To create bylaws, you can either follow the instructions in a self-help resource or hire a lawyer in your state to draft them for you. Typically, the bylaws are adopted by the corporation's directors at their first board meeting.

Corporate Bylaws: What Is Covered

Corporate bylaws will likely be more complex the larger the business, but a typical corporation's bylaws will cover and contain:

- The corporation's identifying information (name, address, and principal place of business)
- Number of directors and corporate officers authorized for the corporation.
- Number and type of shares and stock classes that the corporation is authorized to issue.
- Procedure for director and shareholder meetings -- including frequency, location, and protocol.
- Procedure for corporate record-keeping -- including rules for preparation and inspection of records.
- Procedure for amending articles of incorporation and bylaws.

Create a Shareholder Agreement

A Shareholder Agreement is generally referred to as a "Shareholder Buyout or Buy-Sell Agreement." Since the Company owns the original shares, it starts with a Shareholder purchase of shares.

Buyout, or buy-sell, agreements are often overlooked, even by shareholders who have diligently filed their articles of incorporation and adopted their corporate bylaws. But this can be a costly mistake: Without a buyout agreement, if a shareholder wants to leave the company, there's no contract that says whether the remaining shareholders or the corporation must buy him out, or for how much.

By creating a buyout agreement, the owners of a small, privately held corporation can be prepared when a shareholder wants to be bought out, or worse, dies, goes bankrupt, or gets divorced.

What Are Buyout, or Buy-Sell, Agreements?

Contrary to popular belief, buy-sell agreements don't have anything to do with buying and selling companies. Instead, they control when and how shares in a corporation can be bought and sold. Buy-sell agreements are also sometimes called shareholders' agreements or stock agreements. Because of this confusion over terminology, we will stick to the term buyout agreement from now on.

Typically, a buyout agreement controls the following decisions:

- whether a departing shareholder must be bought out
- who can buy a departing shareholder's stock (this may include outsiders or be limited to other shareholders)
- what price will be paid for a shareholder's interest in the corporation, and
- what other events will trigger a buyout.

It may help to think of a buyout agreement as a sort of "premarital agreement" between co-owners: It determines what will happen if your corporation's owners decide not to stay together 'til death do they part.

What Events Should Be Covered in a Buyout Agreement?

Typically, the events that trigger the buyout of a shareholder's interest are:

- the retirement or resignation of a shareholder
- an attractive offer from an outsider to purchase a shareholder's interest in the corporation
- a divorce settlement in which a shareholder's ex-spouse stands to receive all or part of a shareholder's stock of the corporation
- the foreclosure of a debt secured by a shareholder's stock
- the personal bankruptcy of a shareholder, or
- the disability, death, or incapacity of a shareholder.

Why You Need a Buyout Agreement

It's a huge mistake to ignore the fact that sooner or later your business will change. Chances are, one of your founding co-owners will eventually want to leave the company (and take his investment with him) before the rest of the shareholders are ready to call it quits.

When one shareholder quits to move to another city or leaves to start another business, without an agreement, who decides whether the remaining owners have to buy out the departing shareholder, and for much? If you don't anticipate and plan for circumstances like these, you're risking serious personal and business discord -- perhaps even court battles and the loss of your business.

In addition, a buyout agreement puts limits on who can buy shares in the corporation. Otherwise, you could be forced to share control of the company with someone you'd rather not run a business with.

File for an S Election with the IRS

S corporations are similar to LLCs in that they provide owners with limited liability protection while offering the tax structure of a partnership.

Many entrepreneurs have two goals when choosing a structure for their business: Protecting their personal assets from business claims (limited liability) and having business profits taxed on their individual tax returns. Not long ago, an S corporation was the only choice for these business owners. In recent years, however, S corporations have been largely replaced by limited liability companies (LLCs). Still, some businesses can benefit by organizing as S corporations.

What Is an S Corporation?

An S corporation is a regular corporation that has elected "S corporation" tax status. Forming an S corporation lets you enjoy the limited liability of a corporate shareholder but pay income taxes as if you were a sole proprietor or a partner.

In a regular corporation (also known as a C corporation), the company itself is taxed on business profits. The owners pay individual income tax only on money they receive from the corporation as salary, bonuses, or dividends.

By contrast, in an S corporation, all business profits "pass through" to the owners, who report them on their personal tax returns (as in sole proprietorships, partnerships, and LLCs). The S corporation itself does not pay any income tax, although an S corporation with more than one owner must file an informational tax return like a partnership or LLC, to report each shareholder's portion of the corporate income.

Most states follow the federal pattern when taxing S corporations: They don't impose a corporate tax, choosing instead to tax the business's profits on the shareholders' personal tax returns. About half a dozen states, however, tax an S corporation like a regular corporation. The tax division of your state treasury department can tell you how S corporations are taxed in your state.

Should You Elect S Corporation Status?

Operating as an S corporation may be wise for several reasons:

- Forming an S corporation generally allows you to pass business losses through to your personal income tax return, where you can use it to offset any income that you (and your spouse, if you're married) have from other sources.
- When you sell your S corporation, your taxable gain on the sale of the business can be less than it would have been had you operated the business as a regular corporation.
- S corporation shareholders are not subject to self-employment taxes (active LLC owners are). These taxes, which add up to more than 15% of your income, are used to pay your Social Security and Medicare taxes.

Aside from the benefits, S corporations impose strict requirements. Here are the main rules:

- Each S corporation shareholder must be a U.S. citizen or resident.
- S corporations may not have more than 100 shareholders.
- S corporation profits and losses may be allocated only in proportion to each shareholder's interest in the business.
- An S corporation shareholder may not deduct corporate losses that exceed his or her "basis" in corporate stock -- which equals the amount of the shareholder's investment in the company plus or minus a few adjustments.
- S corporations may not deduct the cost of fringe benefits provided to employee-shareholders who own more than 2% of the corporation.

Fortunately, a decision to elect to be an S corporation isn't permanent. If your business later becomes more profitable and you find there are tax advantages to being a regular corporation, you can drop your S corporation status after a certain amount of time.

How to Elect S Corporation Status

To create an S corporation, you must first create a regular corporation by filing articles of incorporation with your secretary of state's office or your state's corporations division. Then, to be treated as an S corporation, all shareholders must sign and file IRS Form 2553.

Apply for an EIN

The EIN (Employer Identification Number) is necessary to do business as a corporation. This number is used to as the identification number for the business.

Apply Online

The Internet EIN application is the preferred method for customers to apply for and obtain an EIN. Once the application is completed, the information is validated during the online session, and an EIN is issued immediately. The online application process is available for all entities whose principal business, office or agency, or legal residence (in the case of an individual), is located in the United States or U.S. Territories. The principal officer, general partner, grantor, owner, trustor etc. must have a valid Taxpayer Identification Number (Social Security Number, Employer Identification Number, or Individual Taxpayer Identification Number) in order to use the online application.

Apply By EIN Toll-Free Telephone Service

Taxpayers can obtain an EIN immediately by calling the Business & Specialty Tax Line at (800) 829-4933. The hours of operation are 7:00 a.m. - 10:00 p.m. local time, Monday through Friday. An assistor takes the information, assigns the EIN, and provides the number to an authorized individual over the telephone. Note: International applicants must call (215) 516-6999 (Not a toll-free number).

Apply By FAX

Taxpayers can FAX the completed Form SS-4 (PDF) application to their state FAX number (see Where to File - Business Forms and Filing Addresses), after ensuring that the Form SS-4 contains all of the required information. If it is determined that the entity needs a new EIN, one will be assigned using the appropriate procedures for the entity type. If the taxpayer's fax number is provided, a fax will be sent back with the EIN within four (4) business days.

Apply By Mail

The processing timeframe for an EIN application received by mail is four weeks. Ensure that the Form SS-4 (PDF) contains all of the required information. If it is determined that the entity needs a new EIN, one will be assigned using the appropriate procedures for the entity type and mailed to the taxpayer.

Third Party Authorization

The Third Party Designee section must be completed at the bottom of the Form SS-4. The Form SS-4 must also be signed by the taxpayer for the third party designee authorization to be valid. The Form SS-4 must be mailed or faxed to the appropriate service center. A third party designee may call for an EIN; however a faxed Form SS-4, with the taxpayer's signature, is still required. IRS assistors will take the information over the phone from the third party designee and ask the third party to fax the completed Form SS-4 to them (to the IRS assistor's attention) at an administrative fax number. After receiving the faxed Form SS-4, the EIN will be assigned and faxed back to the third party designee, or given over the phone. The third party designee's authority terminates at the time the EIN is assigned and released to the designee.

Hold the First Board of Directors Meeting

Your Company's first BOD is more or less a formality, but documenting it is very important because it OFFICIALLY starts the business. All directors that were listed in your Articles of Incorporation should be present. The first order of business is to elect the officers of the organization. The second thing to do is to pass a resolution authorizing the board to open a Corporate Bank account. You will need a copy of this resolution to open the bank account. Make sure to prepare minutes of this meeting and keep them in the "Minutes Book".

Issue Certificates of Stock to Shareholders

Determine the number of shares of stock you will issue each owner. Laws in the various states generally specify a minimum number of shares that should be issued. If you exceed that amount, you may pay higher fees to the state.

Know that each share is worth a proportionate amount of the company's total net worth.

Decide what class of shares you will offer - preferred or common. In elections, holders of common stock generally have one vote for each share they hold. They have a right, upon dissolution of the company, to a proportionate share of the assets. Preferred shareholders take certain preferences over common shareholders.

Ensure that shareholders' spouses sign the agreement if the shareholders live in states in which community-property laws govern joint ownership of property.

Consider selling shares to a venture-capital firm as a means by which to raise additional capital to buy equipment, hire employees, conduct research and develop, or intensify your marketing efforts.

Start a “Minutes Book” for the Corporation

If you don't keep adequate records and minutes of meetings, you could lose your limited liability protection.

As the owner of a corporation, you are required to hold shareholders' and directors' meetings, maintain corporate records, and document major corporate decisions. If you neglect these formalities and your business runs into legal trouble, a court may decide to disregard your corporate status -- and hold you personally responsible for the corporation's debts.

The good news is that many states have streamlined the procedures for operating a small corporation, permitting owners to make decisions quickly, without jumping through needless procedural hoops.

Who Makes Corporate Decisions?

To understand the corporate decision-making process, let's look at the different legal roles people traditionally play in a corporation: shareholder, director, officer, and employee. As we consider these roles, keep in mind that you can set up a corporation in which one or two people play all of them.

Shareholders

Shareholders own stock (called shares or ownership interests) in the corporation. Shareholders have the exclusive right to:

- elect and remove directors
- amend the articles of incorporation and bylaws
- approve the sale of all or substantially all of the corporate assets
- approve mergers and reorganizations, and
- dissolve the corporation.

State laws typically require the shareholders to hold an annual meeting. However, many states allow shareholders to do this through a "written consent" or "consent resolution" -- a document signed by all of the shareholders -- instead of a face-to-face meeting.

Directors

The board of directors sets policy for the corporation and makes major financial decisions. Among other things, the directors:

- authorize the issuance of stock
- elect the corporate officers
- set officer and key employee salary amounts

- decide whether to mortgage, sell, or lease real estate, and
- approve loans to or from the corporation.

While many states require directors to hold regular meetings, it's often simpler and just as effective for the directors to take actions by signing a consent resolution or written consent. Alternatively, most states allow directors' meetings to be held by telephone.

While the organizational structure of corporations separates the rights and duties of shareholders and directors, this separation isn't much of an issue for small corporations because most shareholders are also directors and officers. However, even if you are both a shareholder and director of your corporation, you must still observe the formalities required by law, which means wearing different hats at different times. For instance, sometimes you'll have to sign a document in your capacity as director; at other times, you'll sign as a shareholder.

Officers

Officers are responsible for the day-to-day operation and management of the corporation. State laws usually require the corporation to have at least a president, a secretary, and a treasurer (sometimes called a chief financial officer). But in most states, the same person can hold all of the required offices.

The president is usually the chief operating officer (COO) of the corporation. The secretary is responsible for the corporate records. The treasurer, or chief financial officer (CFO), of course, is responsible for the corporate finances, although it's common to delegate everyday fiscal duties to a bookkeeper.

Employees

In small corporations, the owners are usually also employees of the corporation. Owners of small corporations receive most of their financial benefits through the salary and other compensation they receive as corporate employees.

Documenting Corporate Decisions

While you don't need to document routine business decisions, you should prepare written minutes or consent resolutions for events or decisions that require formal board of director or shareholder participation. These include:

- the proceedings of annual meetings of directors and shareholders
- the issuance of stock to new or existing shareholders
- the purchase of real property
- the approval of a long-term lease
- the authorization of a substantial loan or line of credit
- the adoption of a stock option or retirement plan, and
- the making of important federal or state tax decisions.

If you document important corporate decisions, whether through formal written minutes or less formal consent resolutions, you'll protect your limited liability status -- and you'll have solid documentation if key decisions are later questioned by creditors, the courts, or the IRS. In addition, keeping good corporate records allows you to note the reasons for making critical decisions; this can head off controversy and dissension in your ranks in the future.

Open a Bank Account

You must open a Separate Company Bank Account using your Corporate EIN. This account should be kept separate from any personal accounts you may have. All checks, credit cards and debit cards that you use from this account **MUST** be used for business **ONLY**.

DO NOT ever mingle personal banking, money transfers, etc. from this account

Obtain a Business License

Most city, county and state governments require business owners to obtain business licenses and permits. In some instances, the federal government may also require you to secure special licenses or permits, depending on your kind of business.

Local Business Licenses

Nearly all businesses need a county or city license. This is a general license that grants you, as the business owner, the privilege of legally operating a business within a certain city and/or county jurisdiction. Fees are typically low and these kinds of licenses are easy to obtain, though application procedures may vary.

To obtain a local license:

- Have your business paperwork in order, including any fictitious name certificates and your Employer Identification Number (EIN).
- Contact your city hall and/or county government offices to determine the kind of license you need and obtain necessary application paperwork.
- Complete the application and file it, along with a fee, with the appropriate government office. (Most often, this must be done in person).
- Be sure to file renewals. Once granted, local business licenses usually must be renewed (and renewal fees paid) annually.

State Business Licenses

State business licenses are issued to businesses that provide products or services regulated by state law. For example, special state licenses are required for doctors, lawyers, hairdressers, realtors, auto mechanics, private investigators, building contractors and others who must meet state licensing requirements—i.e., a certain level of "certified" training or education. State licenses are also required of businesses that must meet certain state standards or codes, such as restaurants and other establishments that serve alcohol. Each state has different agencies regulating these types of businesses.

To obtain a state license:

- Contact your local government offices to see if your particular business requires a state license. Local libraries are another good source for state-specific licensing information.
- Obtain license requirement information and application paperwork from the state agency regulating your kind of business.
- Complete the application and file it with the appropriate state office, and pay filing fees as required.

- Stay on top of annual renewals and/or other kinds of procedures as required by state law for your kind of business.

Sales Tax Licenses

In some states, business licenses are the exception rather than the rule. However, almost all states require a sales tax license or permit for all retail businesses. This allows you to charge sales tax to customers on items purchased. Check with your State Franchise Tax Board on how to obtain this license.

Federal Licenses

For a very few businesses, federal licensing is required. In general, federal licensing is required if the business is highly regulated by the government. For example, firms providing investment advice, interstate-trucking companies, businesses involved with meat preparation, and those that sell heavily regulated products such as firearms. If you need a federal license, consider consulting an attorney to either advise you on or handle the entire application process for you. Your business may require more than one business license. Make sure you understand which licenses you must have, as well as the order in which you need to obtain them.

Permits

Many businesses are also required to obtain permits. Generally, permits regulate the safety, structure, and appearance of the community as defined by local and/or state laws, typically referred to as "ordinances." Once your jurisdiction determines that your business is in compliance with such ordinances, you will be issued the relevant permit(s) enabling you to legally operate your business.

Local permit requirements vary by jurisdiction. Failure to have the proper permits may prevent your business from opening, and could result in fines or even being shut down. Usually it is best to first research the kinds of permits your business will need and find out what the regulating agency requires. This helps ensure that you are in compliance with regulations and avoid costly delays and expenses related to re-tooling your business after the fact.

Applying for business permits is similar to applying for a business license:

- Research the permits you need through the appropriate agency.
- Make sure your business complies with the ordinances in your area.
- Obtain the proper application forms and/or set-up the proper applications procedures (in some cases, this might be an on-site inspection).
- File the necessary paperwork to obtain the relevant permit(s), and pay any filing fees.

Types of Permits

Types of permits your business may need include:

- **Seller's Permit**

If you'll be purchasing wholesale merchandise for resale, your state will probably require you to register for a seller's (sometimes called a reseller's) permit or sales tax permit. Usually your State Franchise Tax Board agency grants seller's permits.

- **Building Permit**

If you plan on remodeling or building a commercial space, check local building codes to find out if you'll need to get a building permit. Make sure as well that your business space is in compliance with other local ordinances, such as access and facilities for the disabled, so that your business is eligible to receive the other permits you will need.

- **Health Permit**

If you'll be preparing food as part of your business, you'll also need to get a health permit. Call the governing health department to research the requirements, then make sure you are in compliance and arrange for an inspection.

- **Zoning Permit**

Don't sign a lease without first checking that the space is properly zoned for the use you have in mind. Some cities require that all new businesses get a zoning compliance permit before they open. You can research this through your local library, planning department or zoning board.

- **Home Occupation Permit**

If your business is home-based, many local governments require that you obtain a home occupation permit. The cost is usually a flat fee or a percentage of annual receipts from your business. Call your city hall and ask them for zoning information in your area. (Also check with your building's management (if you rent) or the local homeowners association).

If for some reason your business is unable or unwilling to comply with an ordinance, you can petition the jurisdiction for a special permit, called a variance, which would allow you to, in effect, violate the ordinance. If you're interested in a variance, talk to your lawyer. Because variances are not routinely granted and can be expensive (in terms of legal fees) to obtain, make sure you really need the variance before you request it.

Finally, if you're not sure which agency in your city or state to contact for specific questions about what your business will require, start with unofficial sources of information. The Small Business Administration (SBA), your local chamber of commerce, trade associations and even other businesspeople or attorneys working with your kind of business should be able to point you in the right direction.

Staying Compliant With Your Company

Once your company is set up and ready for business, there are many things that need to be done on consistent bases. There must be a strong and thorough system put in place to stay compliant. The following is a list and description of primary concerns for your business to run successfully:

Create Company Agreements

Whether you are a single or multi owner Corporation, you should always have and keep company agreements that include, but are not limited to:

- Management Agreements
- Employee Agreements
- Independent Contractor Agreements

- Company Service and Product Agreements
- Company Notice Agreements
- Company HR Manuals and Agreements

Create Company Bookkeeping Records

It will be up to you how elaborate you want your bookkeeping system. However, it is one of the most important things to have. You can use a Software program or just use a simple Excell Spreadsheet format. If you are going to have any type of inventory, property assets, etc, you will need to use a double entry system. You should talk to a bookkeeping expert to help you with this matter.

Create a Company Payroll System

As a Corporation, you will be paying wages to at least one or more people. You can learn how to complete all the necessary forms, state and federal taxes, etc. Or you can hire a payroll company.

If you are a single owner S-Corporation you can even get away with paying yourself only once a year. You are already aware of the Tax Savings due to payroll taxes not being paid on corporate distributions.

Try not to give the IRS ammunition for reclassifying distributions to wages. The result is a catastrophe. Payroll taxes, plus late payment and filing penalties. Avoid problems by complying with these suggestions:

- Distributions should be recorded in the corporate minutes each time a dividend payment is made.
- The distribution payment should be stated as a dollar value per share (to the nearest whole dollar) times the number of shares held.
- Do not make "distributions" more frequently than once a month. If cash flow does not permit a dividend one month, wait until the 15th (or declaration date) of the following month for a distribution payment.
- Distributions must be paid to all shareholders on the same date in proportion to the ownership percentage. Non pro rata distributions could result in the loss of S status because of the one class of stock requirement.
- Do not pay your personal bills through the business and call them distributions.
- Pay reasonable wages (see below for a discussion of reasonable)
- If your company is losing money and you do not have retained earnings from prior years, do not pay distributions. In other words, do not borrow money (higher vendor payables, or company borrows from bank, or company increases credit card debt) and then pay yourself a distribution. This creates "basis" problems and red flags your tax return for scrutiny by the IRS

Use the Bureau of Labor Statistics website to find out the average pay in your industry. We have found that the IRS will accept this beyond all else when it comes to verifying your source of income:

<http://www.bls.gov/oco/>

Maintain Federal and State Regulations

Each state requires some form of corporate report to be filed with its corporate filing office, either annually or biennially. Some states send the form directly to corporations for completion and filing.

This report is fairly simple, and usually requires only a few pieces of information, including:

- The principal corporate address;
- Names of the corporate President and Secretary, and their business addresses;
- Names and addresses of the corporate Board members;
- A description of your corporation's principal business activity;
- Federal or state identification numbers.

The corporate report is a public document, and, as such, is available for review by the public upon request. Because of this, it's important to include only that information which is requested. Furthermore, it's a good idea *not* to include home addresses for any corporate officer or director on the report. A nominal fee is usually required for filing the corporate report. The penalty for not filing the report or for filing without paying the fee may be that your corporation's charter is revoked by the state.

Corporate franchise tax form.

A franchise tax is a fee paid for the privilege of doing business in a state. The good news is that not all states charge a franchise tax, in an attempt to attract businesses. If your corporation is doing business in more than one state, one of those states may charge a franchise tax, and another state may not. Different states use different formulas to assess this tax. One common method bases the fee on the number of authorized shares of corporate stock.

Failure to file the franchise tax form or pay the required tax has very negative consequences for your corporation. Not only can your corporate charter be revoked, but penalties will also be assessed, and will be based on the amount of tax not paid by the due date. The method for calculation, payment, and time for payment of franchise taxes varies greatly from state to state.

Required State Filings

Initial Filing Requirements

Each state has its own requirements for filing a legal entity. You can contact us or go to that states Corporate Filing website for more information.

Insurance Requirements

Some professional and industry companies are required to have Federal, State or Local insurance policies. If insurance is required for your profession, who should keep records and dates due documentation available for compliance.

Most states also require Workman's Comp Insurance if you have employees. You should always check with your State's policy for insurance compliance. Even if your state does not require this type of insurance, you should always have a plan in place for employee injuries and lawsuits.

Piercing the Corporate Veil

In certain limited instances, creditors or litigants can attempt to impose personal liability on principals in a corporation by claiming that the corporation is a sham, a device created merely to defraud creditors, or is being run as a sole proprietorship (e.g., no shareholder's meetings or director's meetings have taken place; there has been a commingling of corporate and individual property). The process of imposing individual and personal liability is referred to as "piercing the corporate veil" or "disregarding the corporate entity." Ordinarily, a party seeking to pierce the corporate veil will have a heavy burden in attempting to persuade the courts to disregard the corporate entity.

Income Tax Requirements

Your income tax planning and tax preparation should be handled by a Tax Expert. This is NOT something that you wait until tax time to determine. Your annual planning should be prepared at the beginning of each year. Your tax structure will change each year due to many different factors. The law also changes each year, and you should always be aware of how to maximize these laws to your benefit.