

Limited Liability Company Formation Fact Sheet

A limited liability company (LLC) can shield personal assets from liability for business debts. LLCs have flexibility to structure their operations through a contract called an operating agreement. LLCs can be structured as a pass-through tax entity where profits and losses of the business pass through to its owners, who report them on their personal tax returns just as they would if they owned a partnership or sole proprietorship.

Below is a general overview of the process you'll need to go through to set up an LLC in New York State:

File Articles of Organization with the New York Department of State

- Include business name, county location, agent for service of process, name, address, & signature of filer.
- Business name must include the words "Limited Liability Company" or the abbreviation "LLC" or "L.L.C."
- How to file:
 - By mail or in person to the address on the form at: <https://dos.ny.gov/system/files/documents/2022/06/1336-f.pdf>
 - By fax to the Division of Corporations at (518) 474-1418
 - Online: at https://appext20.dos.ny.gov/ecorp_public/f?p=2201%3A17
 - The filing fee for Articles of Organization is \$200.

TIP: Check whether your business name is available before filing the Articles by searching here: http://www.dos.ny.gov/corps/bus_entity_search.html

Start the Process to Comply with the Publication Requirement

- New York law requires newly formed LLCs to publish a copy of the Articles of Organization or a notice regarding the LLC's formation in two newspapers for six consecutive weeks
- The information in the published notice, including the name of the LLC, must match the Department of State's records exactly as it is on the Articles of Organization
- Newspapers must be assigned by the county clerk of the county in which the office of the LLC is located.
- Each newspaper will provide an affidavit of publication
 - Total fees charged by newspapers could range from \$750 - \$2000+

Obtain an EIN

- EIN stands for Employer Identification Number. You don't need employees to get an EIN; it's just a number the government uses to identify your business, much like your social security number is used to identify you.
- An EIN will allow you to open a business bank account and apply for business licenses, among other things.
- How to get an EIN:
 - Apply online and get an EIN immediately: <https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online>
 - Mail or Fax IRS Form SS-4 (can take four to five weeks to get an EIN): <https://www.irs.gov/pub/irs-pdf/fss4.pdf>
 - Mail to: Internal Revenue Service, Attn: EIN Operation, Cincinnati, OH 45999
 - Fax to : 855-641-6935

Adopt a Written Operating Agreement

- The owners of an LLC (also referred to as members) are required to adopt a written Operating Agreement.
- The Operating Agreement is the primary document that establishes how the LLC will be managed and describes the relationships between the members.
- 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 an internal document of the LLC and is not filed with DOS.

Finish Complying with the Publication Requirement

- Mail the affidavits provided by the publishers of each newspaper and a Certificate of Publication to the Department of State within 120 days of filing the LLC's Articles of Organization
 - Filing fee for the Certificate of Publication is \$50
 - Certificate of Publication Form can be found at: <https://dos.ny.gov/system/files/documents/2019/01/1708-f.pdf>
 - Mail to: New York Department of State, Division of Corporations, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231

This resource is provided for informational purposes only and does not cover all of the issues that could arise when setting up an LLC. For more information, contact an attorney.