

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: 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 (DOS)

- 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://www.dos.ny.gov/forms/corporations/1336-f.pdf>
 - By fax to the Division of Corporations at (518) 474-1418
 - Online: at https://appext20.dos.ny.gov/ecorp_public/?p=201:17
- 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

Comply with the Publication Requirement

- Newly formed LLCs must publish a copy of the Articles of Organization or a notice regarding the LLC's formation in two newspapers, assigned by the county clerk of the county in which the principal office of the LLC is located, for 6 consecutive weeks. Newspapers will provide affidavits of publication.
 - Total fees charged by newspapers could range from \$750 - \$2000+.
- Mail the affidavits of publication and a Certificate of Publication to the Department of State within 120 days of filing the LLC's Articles of Organization. Here's a link to the Certificate of Publication: (<https://www.dos.ny.gov/forms/corporations/1708.pdf>)
 - The filing fee for Certificate of Publication is \$50.

Obtain an EIN

- EIN stands for Employer Identification Number. You don't need to have employees in order 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 as an individual.
- An EIN may be needed to open business bank accounts & apply for business licenses, among other things.
- How to get an EIN:
 - Apply online (to get an EIN immediately): <https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online>
 - File IRS Form SS-4 (can take up to two weeks to get an EIN): <https://www.irs.gov/pub/irs-pdf/sss4.pdf>

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.

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.