

Corporation Formation Fact Sheet

A corporation shields the personal assets of its shareholders from liability for business debts. Corporations are the oldest and most common form of business entity. Corporations can be C corporations or S corporations. A C corporation pays tax on its own income and distributes profits to shareholders, who then pay tax on the income received from the corporation. S corporations are considered pass-through entities for tax purposes and the 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 a corporation in New York State:

File Certificate of Incorporation (COI) with the Department of State

- Required information to include on the COI: business name, purpose, county location, agent for service of process, number of shares (and classes, if any) the corporation is authorized to issue, name and signature of filer
- Business name must include one of the following words or its abbreviation: Corporation, Incorporated, or Limited.
- How to file:
 - By mail or in person to the address on the form at: <https://dos.ny.gov/system/files/documents/2022/06/1239-f.pdf>
 - By fax to the Division of Corporations at (518) 474-1418
 - Online: visit https://appext20.dos.ny.gov/ecorp_public/f?p=2201%c3A17
- Filing fee for the Certificate of Incorporation is \$125.

TIP: Check the availability of the business name before filing the Certificate by searching here: http://www.dos.ny.gov/corps/bus_entity_search.html

Hold an Organizational Meeting

- Also called the meeting of the incorporators, the purpose of this meeting is to:
 - Adopt the corporation's bylaws (an internal document that explains how the corporation will operate)
 - Appoint initial directors for the corporation, as provided in the bylaws
 - Take care of other initial business, such as selecting a bank for the corporation
- These actions can be taken at an in-person meeting or by a written action in lieu of a meeting (called an Incorporator's Statement).

Issue Stock/ Enter into Shareholder Agreements

- Although not legally required in most states, small corporations may issue paper stock certificates.
- Enter each shareholder's name and contact information in the corporation's stock transfer ledger.
- You may also draft a shareholder agreement to detail the rights and responsibilities of shareholders.
- This agreement can include information about pricing of shares, transfer of shares, voting rights, and decision-making procedures, for instance.

TIP: Keep all of your corporation's important papers, including minutes of director and shareholder meetings, stock certificates, and stock certificate stubs, in the corporate records book held at the corporation's principal office.

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 at: <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

File Federal and State Elections (For S Corps Only)

- To elect federal S Corporation status, file IRS Form 2553: <https://www.irs.gov/pub/irs-pdf/f2553.pdf>
- To qualify for New York State S corporation treatment, your corporation must:
 - Be a federal S corporation
 - Be a general business corporation taxable under Article 9-A of the NYS Tax Code
 - Obtain consent from all of the shareholders for New York State S corporation election
- To make the New York State election, file Form CT-6: https://www.tax.ny.gov/pdf/current_forms/ct/ct6_fill_in.pdf

This resource is provided for informational purposes only and does not cover all of the issues that could arise when setting up a corporation.

For more information, contact an attorney.