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Step-by-Step Guide to Forming a Limited Liability Company

This legal guide discusses the features and obligations of operating your business as a limited liability company (“LLC”) and provides step-by-step instructions for forming an LLC.

I. What is a Limited Liability Company?

A limited liability company can be thought of as a hybrid business entity, combining aspects of both partnerships and corporations.

- **Limited liability:** The owners of an LLC, called “members”, do not have personal liability for the business’s obligations. Like corporations, if the LLC incurs business debts, the LLC’s creditors cannot go after the personal assets of the LLC’s members in order to satisfy the business debts.
- **Flexible ownership arrangements:** LLC members can be individuals, partnerships, trusts, or corporations and there is no limit to the number of members.
 - LLCs may be managed by their members (“member-managed”), which results in a management structure that looks similar to a general partnership. Member-managed LLCs are generally the default ownership structure under state law.
 - LLCs may also be managed by managers (“manager-managed”), which results in a management structure that has the look and feel of a corporation. For example, members can elect managers that provide oversight over the LLC in the same way that a board of directors provides oversight over a corporation.
- **Additional organization costs:** LLCs incur some formation and maintenance costs, such as registering the *entity* with the state, making filings to maintain LLC status, and keeping the business’s financial accounts and records separate from your personal accounts and records – factors that are not necessarily present in sole proprietorships.

For further discussion on the advantages and disadvantages of operating your business as an LLC, including the income tax treatment of LLCs, please see our [Choice of Entity](#) and [Deciding on the Right Business Structure for You](#) legal guides.

II. Step-by-Step Guide to Forming an LLC

The specifics of forming an LLC vary slightly by state as each state has its own set of requirements. However, the general formation steps for LLCs are the same.



A. Choose a state to form your LLC

- You can form your LLC in any state, even if the LLC will not be doing business there. However, most people choose to form an LLC in the state where they live and plan to do business.
- If the LLC is registered in a state where it does *not* conduct business, you will have to pay a fee in each state where the LLC conducts business, called a foreign qualification fee, which averages around \$200, but can range from \$50 to \$750 depending on the state.
 - For example, if you formed your LLC in Massachusetts but would like to sell products or provide services in New York, you would pay New York's foreign qualification fee in addition to the fee required to form your LLC in Massachusetts.

Conduct a name check

As part of the process of choosing your LLC's state of formation, you should also check with the state's LLC filing office (typically called the Secretary of State) to see if the name you would like to call your LLC is available. Perform a name check in the state where you want to form your LLC as well as any other state where you plan to conduct business and become qualified. You can conduct a name check by going to the LLC filing office's website and searching for your chosen name. If your chosen name is unavailable, you will need to pick a new name.

B. File formation documents

Next, you must file a formation document with your state's LLC filing office. This document is typically called "articles of organization" but in some states it may be called a "certificate of formation" or a "certificate of organization".

- *Completing the forms:* Articles of organization are typically fill-in-the-blank forms, requiring you to provide your LLC's name, address, names of the members, and whether the LLC will be member-managed or manager-managed. In Massachusetts, you may file your Certificate of Organization online at the Secretary of the Commonwealth's website.
- *Who signs:* All members must typically sign the articles of organization, unless your state allows the signing to be delegated to one person.
- *Fees:* You will also have to pay a filing fee when you file the articles of organization with the state, which is usually around \$100, but can vary from \$30 to \$200.

Designate a registered agent

You will be required to designate a "registered agent" for the LLC as part of the process of filing the formation documents. A registered agent is the person or entity that will receive notices and communications from the LLC filing office, tax documents from the state tax department, as well as legal papers should a lawsuit involving your LLC arise. These companies give you

assurance that important correspondence will be forwarded to you, and some will even scan business papers they receive and make them available to you online.

- *Requirements for a registered agent:* While requirements for registered agents vary slightly by state, generally speaking, registered agents can be individuals over the age of 18 or entities called registered agent service companies, and they must have a physical address in the given state (a P.O. Box is insufficient). The registered agent must also be available during normal business hours. With a few state exceptions, the registered agent cannot be the LLC itself.
- *Fees:* Registered agent service companies usually charge an annual fee between \$100-\$300 to serve as your LLC's registered agent.
- *Where registered agents are needed:* You will need to designate a registered agent in the state where you file the formation documents and in each state where the LLC is qualified to conduct business.

C. Create an LLC operating agreement

An LLC operating agreement is an LLC's primary governing document; it establishes the rules for ownership and operation of the business. The name of the document can vary by state. For example, in Delaware, an LLC's primary governing document is called a "limited liability company agreement" while in Massachusetts, it is called an "operating agreement". Some states require the LLC to have an operating agreement (such as California, New York, and Delaware), while other states do not (such as Massachusetts), so it is important that you review your filing state's specific requirements regarding this document.

Why have one, if not required.

Without an operating agreement, default LLC rules for your state will apply. Drafting an operating agreement gives you the freedom to create your own LLC terms. It is also good practice when the LLC has more than one member and members may have different ideas about finances, profit sharing, risk taking and other business issues. A well-drafted operating agreement can provide clarity to the ownership and operating terms, in case disagreements among members arise or the LLC's existence is ever challenged in court.

What to include in an operating agreement

Typical provisions of an operating agreement include:

- Each member's percentage of ownership;
- Each member's rights and responsibilities;
- Each member's voting rights;
- Each member's allocation of profits and losses;
- How the LLC will be managed;
- Rules for holding meetings and counting votes;
- Rules for adding new members; and

- Rules for transferring ownership interests in cases where a member wants to sell an interest, dies, or becomes incapacitated.

For more details on drafting an operating agreement, see our Legal Brief on Drafting Operating Agreements.

D. Consider other steps before operating the business

After filing, the state will issue a certificate or other document that officially makes your LLC a separate legal entity. However, there may be other licenses and permits that you need to obtain before you start conducting business. These may include:

- A business license or tax registration certificate;
- Federal employer identification number (EIN);
- A seller's permit; or
- A zoning permit.

Additionally, in some states, like Arizona, Nebraska, and New York, you are required to publish notice in a local newspaper about the formation of your LLC.

E. Keep your LLC in good standing by filing annual reports

In many states, LLCs doing business in the state must file an annual report with the state's LLC filing office. Filing may be required in the state where you filed the formation documents as well as any other states where your LLC is qualified to do business. Along with this annual report, you will typically be required to pay a fee similar to the initial filing fee. It is important that you keep current with your annual reporting so that your LLC remains in good standing with the state.

Looking for legal help?

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legalfoodhub.org

legalfoodhub@clf.org

1-844-LAW-GROW (1-844-529-4769)