



ALBANY LAW SCHOOL GOVERNMENT LAW CENTER

Info sheet >>>

STEP-BY-STEP INCORPORATION GUIDE

What you need to know to form a business.

CORPORATIONS

This resource will help entrepreneurs understand the steps required to legally incorporate and operate in New York State. Not all business structures that are available under the New York Business Corporations Law are included; only the most common ones are within our Step-By-Step Incorporation Guide Info sheets.

CORPORATIONS DEFINED

Corporations are entities with a distinct and separate identity from the original incorporators, and all owners (known as shareholders), have limited liability. You can designate your Corporation as either C, S, or B.

C-CORPORATIONS	S-CORPORATIONS	B-CORPORATIONS
 Subject to double-taxation C-Corp pays tax on all business income, and 	 "Pass-through" entities, meaning the owners pay a personal income tax, but 	 Like C/S corps but also have one or more "specific public benefit" purposes
 Profits given to shareholders are taxed as their personal income 	 The business itself does not pay taxes 	 i.e. promotion of social and environmental goals

STEP-BY-STEP >>>



Verify availability of and secure a business name.

This can be done through a free search here: <u>https://www.dos.ny.gov/corps/bus_entity_search.html</u>

File a Certificate of Incorporation with the NYS Department of State.

- Filing fee: \$125
- A sample certificate can be found here: <u>https://www.dos.ny.gov/forms/corporations/1239-f-l.pdf</u>
 - This certificate is not applicable for B-Corp filing (see below)
- In the Certificate of Incorporation, you will have to identify how many shares of stock you will have.
- Once the Department of State receives and processes the Certificate of Incorporation, the new corporation will receive a receipt.

2.

3.

By shareholder vote, select Director and Corporate Officers and adopt Corporate Bylaws

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An important note >>>

Many corporations choose to file their Certificate of Incorporation in Delaware, a jurisdiction with favorable corporate laws, and one that some investors prefer. If your business is small and only operates in one or two states, the additional costs of incorporating in DE may outweigh the benefits. (cost of a registered agent, paying franchise taxes etc.). The decision is unique to each business.

STEP-BY-STEP continued>>>

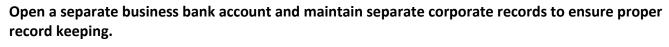


Obtain an Employer Identification Number (EIN).

Must file Form SS-4 found <u>https://www.irs.gov/pub/irs-pdf/fss4.pdf</u> OR complete the online application found <u>https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online</u>.

An important note >>>

An EIN is required if hiring employees, opening a business bank account and making purchases on behalf of the business.



- \circ It is crucial to maintain a separation between business and personal accounts.
- Co-mingling of assets will lead to piercing the corporate veil, absolving any limited liability protections.



5.

If you have employees, register for Unemployment Insurance Tax and Employee Withholding Tax o https://labor.ny.gov/ui/employer.shtm



If you are selling taxable goods or services, you will need to obtain a Certificate of Authority

To find proper form visit: https://www.tax.ny.gov/bus/multi/register_license.htm



Obtain other relevant insurance: Worker's Compensation, General Liability, etc.



File a biennial statement with NYS Dept. of State

- o Filling Fee: \$9 fee
- More info: <u>https://www.dos.ny.gov/corps/bus_llc_faq_statements.asp#whatisastatement</u>

S-CORPORATION



To elect S-Corp status, you must complete and sign **Form 2553** with the IRS.

- Here is the form: <u>https://www.irs.gov/pub/irs-pdf/f2553.pdf</u>
- For more info on S-Corp.'s in NY, go here: https://www.tax.ny.gov/bus/ct/s_corporations_post.htm

An important note >>> Form must be submitted within 2

months and 15 days after the start of the corporation's first tax year.

B-CORPORATION



To incorporate as a B-Corporation:

- Filer's Certificate of Incorporation must state that "The Corporation is a benefit corporation under Article 17 of the Business Corporation Law," and must declare what the corporation's specific benefit purposes are.
- A sample Certificate of Incorporation for B-Corps can be found here: https://www.dos.ny.gov/forms/corporations/2007-f.pdf



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