

Steps to Incorporating a Business in New York State

The following is a brief review of the necessary steps for incorporating a business in the State of New York. Please note that it is advisable to consult with an attorney on all matters pertaining to incorporation.

Step 1: Name Search/Reservation

To form a corporation in New York State, it must first be determined whether or not the proposed name of the new corporation is already in use by an existing corporation, limited partnership or limited liability company. This determination can be made by forwarding a written request for a name search, along with a \$5.00 fee per name submitted, to the New York State Department of State, Division of Corporations, One Commerce Plaza, 99 Washington Avenue, Albany, New York 12231. In addition, company names on file with the New York Department of State can be searched for free online at http://www.dos.ny.gov/corps/bus_entity_search.html. Requests for name availability cannot be handled by phone. Searching the availability of a corporate name, however, does not reserve the name.

A new corporation cannot use a name that is not “distinguishable” from that of an existing corporation, limited partnership or limited liability company on file with the Department of State. A corporation’s name cannot contain those certain prohibited words set forth in Section 301(a) (1) of the of the Business Corporation Law. If the name chosen is available, it is advisable that it be reserved during the completion of your business plan. The name can be reserved for a period of sixty (60) days by filing an Application for Reservation of Name. The fee for reserving a name is \$20.00.

If a name is reserved, the filing receipt issued by the Department of State for the Application for Reservation of Name must accompany the Certificate of Incorporation when presented to the Department of State for filing.

Step 2: Certificate of Incorporation

The next step is to complete and file a Certificate of Incorporation. The Certificate of Incorporation must be signed by one or more incorporators and must contain the name of the corporation, names and addresses of the incorporators, the stock issuance and structure, purpose of the corporation, address for the corporation’s registered agent and county in New York where the corporation’s offices will be located. The incorporation filing fee is \$125.00 (not including legal fees). The filing fee is due at the time of filing. Payment of fees may be made by cash, check, money order, MasterCard, Visa or American Express. Checks and money orders should be made payable to the “Department of State.” In addition, a certified copy of the filed Certificate of Incorporation may be obtained from the Department of State by submitting a written request along with the Certificate of Incorporation, as well as a \$10.00 fee per certified copy.

The Certificate of Incorporation can be filed by mail with the New York State Department of State, Division of Corporations, One Commerce Plaza, 99 Washington Avenue, Albany, New York 12231, or by fax, or by using the New York Department of State Online Filing System. The Department of State offers optional expedited filing options, which cost an additional, non-refundable fee.

Step 3: Filing Receipt and Filed Certificate of Incorporation

If the Certificate of Incorporation is approved for filing, a Filing Receipt and filed copy of the Certificate of Incorporation will be issued by the Department of State. The corporation exists upon issuance of the filed Certificate of Incorporation. Corporations that want to do business in more than one state must also comply with each state’s individual statutes regarding qualifications to do business, as well as all other applicable federal and state laws and regulations.

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Step 4: Corporate Formalities

Once the business is incorporated, certain corporate formalities must be respected. Accordingly, an organizational meeting should be scheduled to elect directors and officers, establish by-laws, properly capitalize the corporation and issue share certificates. Care should be taken not to commingle corporate and personal funds and the corporation has to have a separate bank account. Moreover, New York law requires that a meeting of the shareholders of the corporation be held annually for the election of directors and the transaction of other business. In addition, the board of the directors of the corporation has to meet regularly. The secretary of the corporation should record the minutes of the meetings of the directors and shareholders and maintain such minutes in the corporation's minute book.

DOING BUSINESS UNDER AN ASSUMED NAME IN NEW YORK (“D/B/A”)

Corporations in New York are required by statute to conduct activities under its name as set forth in its filed Certificate of Incorporation. If a corporation desires to conduct activities under a name other than its true legal name, a certificate complying with Section 130 of the General Business Law must be filed with the New York State Department of State.

A domestic or foreign New York corporation may conduct or transact business under an assumed name (commonly referred to as a D/B/A) by filing a Certificate of Assumed Name pursuant to Section 130 of the General Business Law. A fillable Certificate of Assumed Name form and instructions may be obtained on the New York State Department of Corporations website.

In addition to the \$25.00 New York Department of State filing fee, an additional county filing fee is collected based on the county or counties in which the corporation does business or intends to do business. The county filing fee is \$25.00 for each county, except for the counties of New York, Kings, Queens, Bronx and Richmond, for which the additional fee is \$100.00 for each county.

The completed Certificate of Assumed Name, together with the appropriate filing fee should be forwarded to the New York Department of State, Division of Corporations, One Commerce Plaza, 99 Washington Avenue, Albany, New York 12231.

Step 5: Employer Identification Number (EIN)

The Internal Revenue Service (IRS) requires that businesses operating as a corporation obtain an employer identification number (EIN). An EIN, also known as a Federal Tax Identification Number, is a nine-digit number assigned by the IRS and used to identify taxpayers who are required to file various business tax returns. The online application available on the IRS website is the preferred method for customers to apply for and obtain an EIN; however, customers can also apply by completing an Application for Employer Identification Number (Form SS-4) and sending it to the IRS by fax or mail. There is no cost to obtain an EIN.

For more information on this topic, please contact Carolyn Powell, Business Development Manager, Invest Buffalo Niagara (content reviewed by legal experts). Carolyn can be reached at: 1-716-842-1357 or cpowell@buffaloniagara.org

CAROLYN'S TIPS

The corporation formation and structure will be the foundation for the U.S. company—affecting tax, accounting functions, immigration, banking, and more.