

How to Form an LLC

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Introduction

A Limited Liability Company, also known as an LLC, is a legal entity that combines the advantage of a Corporation's shield from personal liability with the advantage of pass-through taxation enjoyed by a sole proprietorship or partnership.

An LLC can be domestic, meaning it is a North Carolina entity, or foreign, an entity created in another state that does business in North Carolina.

The LLC: A Brief History

Wyoming was the first state to enable the creation of the Limited Liability Company back in 1977. After that, several states, taking note of the attraction to businesses, followed suit. On October 1, 1993, North Carolina authorized the creation of LLCs. The law has been modified several times since then including an update in 1997, allowing for the creation of a single-member LLC, and in 2001, allowing an LLC to be managed by non-member directors and executives.

How is an LLC formed in North Carolina?

In order to form an LLC in North Carolina, executed Articles of Organization must be filed with the Secretary of State. The moment the Secretary of State files the Articles, the LLC comes into legal existence, unless the Articles specifically delay the effective date until a later time, not to exceed 90-days after filing.

You can submit the Articles of Organization on paper, but the simplest way is to utilize the Secretary of State's website. Not only will you find an easy online submission system, but also several FAQs and tutorials to help you navigate any questions you may have along the way.

An LLC can be formed for any lawful purpose, including business, professional, non-profit, charitable, or religious purposes.

The Articles of Organization may be signed by one (or more) person as an "Organizer." The Organizer is not required to be a member of the LLC and doesn't even have to be a natural person. Another legal entity (e.g. your law firm) can act as the Organizer.

The cost to form an LLC is \$125, and it typically takes 3-5 business days from the submission date for the Articles of Organization to be filed. However, if you are in a time-crunch, you can pay an additional fee for expedited service. The fee for same-day filing is \$200 and must be received before noon that day. The fee for filing within 24-hours of submission is \$100.

What information is required in the Articles of Organization?

The Articles of Organization must be in the form prescribed by the Act and contain the following mandatory provisions:

1. The name of the LLC;

Unique Name. The name of the new company can't already be in use by another entity. When determining if a name is unique, the Secretary of State does not consider the suffix of the name. For example, February Flowers LLC and February Flowers Co. LLC are too similar because the suffixes (LLC and Co., respectively) are disregarded. Other factors that will not be taken into account are conjunctions, punctuation, spaces, and using an Arabic numeral instead of a word. However, North Carolina is a 'distinguishable on the record' state which means if there is a business name your client is determined to have, adding another word or a number to the name may be enough to make the name unique.

Prohibited words. You must refer to the rules of the appropriate licensing board or state agency in order to use words like bank, trust, realtor, insurance, and other prohibited words in the company's new name.

Required words. The name must contain some configuration of the words (or abbreviation) limited liability company. For example, Ltd. Liability Company, LLC, or Limited Liability Co. are all acceptable.

2. The name and address of each person executing the Articles of Organization and whether that person is a member, an organizer, or both;
3. The name and email address of the LLC's North Carolina registered agent.

The duty of a registered agent is to receive any notice or demand on behalf of the company and forward it to the principal office of the company. The Secretary of State's portal provides a list of companies in North Carolina that you can pay to designate as the company's registered agent. You also have the option of selecting a person or entity in North Carolina that is not on that list;

4. The address and county of the LLC's registered office; and
5. The address and county of the LLC's principal office, if there is one.

Do I need an Operating Agreement?

North Carolina does not require an LLC to have an Operating Agreement, but in practice, it is a good idea to have one. Think about the operating agreement as the LLC's contract.

This contract may be written, oral, or even implied. However, if the company doesn't have one, North Carolina default provisions will apply. Basically, if your client doesn't want the state deciding how the company operates, the LLC needs have an operating agreement in place.

North Carolina provides a "flexible framework" that allows most operating agreement provisions to apply so long as they aren't contrary or inconsistent with state law. For example, if your operating agreement limits the right of a member to have the LLC judicially dissolved without providing an alternative remedy, that provision would be contrary to North Carolina statute and unenforceable.

The LLC is filed with the Secretary of State. Now what?

Congratulations of creating a new legal entity! However, the work is not complete, and it won't be as long as the company remains in existence. The company is required to file an annual report by April 15th. Included in that report must be the name of the LLC; the name and address of the registered agent and office; the address and phone number of the principal office; the names, titles, and business addresses of principal company officials; and a brief description of the nature of the business.

This annual report must be executed by a company official and can be filed in paper form or electronically using the Secretary of State's website (highly recommended).