

Business Services



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Business Entity Selection

There are numerous entity choices available for businesses that decide to formally organize. This guide contains information about the most common business forms and provides detail about two of the most popular entities, **Limited Liability Companies ("LLCs")** and **Corporations**. Other business entities include **Partnerships**, **Limited Partnerships**, and **Limited Liability Partnerships**. Individuals in certain professions, such as attorneys, accountants, and engineers, may form **Professional Limited Liability Companies ("PLLCs")**, which are not covered in detail here. Choosing an entity type that complements the founders' goals and expectations is an important step in the life of any new business.



Business entities are governed by state law and not all entity forms are available in every state. Even in states that permit the formation of the same entity types (e.g., LLCs), the laws of the various states differ. An entity might enjoy certain rights or have particular obligations in one state that do not exist in another (e.g., an LLC

organized in Tennessee vs. an LLC organized in Kentucky). In addition to the type of entity to form, business owners also should consider carefully the state in which to form the company, which may or may not be a state in which the company has a physical presence.

It is important to recognize the difference between **tax treatments** and types of business entities. Many people refer to organizations as "S corporations," "C corporations," or "501(c)(3)s"; however, these are tax treatments, not types of business entities. Choosing the proper tax treatment is a critical decision that one should make by consulting with the attorney forming the business and an experienced tax advisor. DeSalvo Law Firm PLLC will cooperate with your tax advisor when making this critical decision.

Formation Basics

A Tennessee corporation is formed by filing **Articles of Incorporation** with the Tennessee Secretary of State. The Articles contain certain information required by statute and may contain governance provisions. After the Articles are filed, the corporation must adopt **Bylaws**, elect directors, and continue observing various corporate formalities throughout the life of the entity. The Articles and Bylaws serve as the governing rules of the corporation, and directors must abide by them (although they may be altered by vote). Corporations are also required to file an **Annual Report** with the Secretary of State.

An LLC is formed by filing **Articles of Organization** with the Secretary of State. This document contains statutorily required information and may contain governance provisions. The LLC's governing documents include the Articles of Organization and the **Operating Agreement**, which the members of the LLC adopt and may alter by vote from time to time. Unlike a corporation, LLCs need not follow many of the formalities required of corporations, but members of LLCs still are subject to a court "piercing the veil" if it determines the LLC is engaged in inequitable conduct, as discussed later in this guide.

Entity Comparison

The following chart identifies some key distinctions among the most common business entities:

	Sole Proprietorship	Partnership	Limited Liability Company (LLC)	Corporation
Primary Characteristics	Default entity for a business with no formal organization owned by a single individual	Default entity for a business with no formal organization owned by more than one individual	Requires formal organization with the state Combines the limited liability benefit of a corporation with the pass-through taxation benefit of a partnership	Requires formal incorporation with the state Provides certain tax and liability incentives
Owners	Owner/Proprietor	Partners	Members	Shareholders
Formation	Automatic	Automatic	File Articles of Organization with Secretary of State	File Articles of Incorporation with Secretary of State
Management	Solely managed by owner	Managed by partners or as provided in written Partnership Agreement	Managed by members or as provided in Operating Agreement	Governed by shareholders, usually through a board of directors Day-to-day management handled by corporate officers
Continuity of Life	Terminates upon transfer of ownership or owner's death	Terminates upon change in partners	Dissolution occurs upon events specified by statute or as provided in Operating Agreement	Indefinite duration, provided annual report and taxes filed
Transferability Of Ownership	Business terminates upon transfer of ownership, but assets may be sold	Transferable upon approval of partners or as provided in Partnership Agreement	Transferrable, subject to Operating Agreement	Transferrable, subject to Shareholder Agreement
Owner Liability	Unlimited personal liability	Unlimited personal liability; partners may bind other partners	Generally limited to a member's investment in company	Generally limited to a shareholder's investment in company
Income Taxation	Subject to self-employment tax	Passed through to partners	Passed through to members	Unless S Corp or N Corp, earnings and distributions are taxed

Post Formation Issues

After a business is formally organized, it is important to obtain an “**Employer Identification Number**” (“**EIN**”), also known as a “Federal Tax Identification Number.” This number will be necessary to open a bank account in the business name. More information about the purpose of an EIN and how to obtain one is available on the U.S. Internal Revenue Service website at <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Employer-ID-Numbers-EINs>.

A reputable accountant is an invaluable asset when starting a business. In addition to helping the company set up its accounting system, an accountant can assist with obtaining an EIN and business licenses, as well as ensuring that the business is properly enrolled on all appropriate state, county, and local tax rolls.

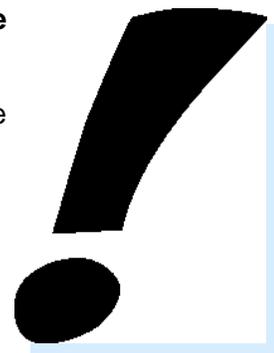
A company's annual maintenance requirements vary based on the state in which the entity is formed. Generally, an entity will remain effective for the term identified in the governing documents, but only if it files its annual reports and other required governmental filings and pays all fees and taxes on a timely basis. The failure to file and pay timely may jeopardize the business.

Potential Pitfalls

It is critical to observe business formalities. Corporations, LLCs, and certain other organized business forms enjoy legal identities separate from their owners. If a corporation's shareholders or an LLC's members operate the company as their “alter egos,” creditors may recover claims against those individuals and the company through a concept called “**piercing the corporate veil.**”

Veil-piercing situations can be devastating to owners. The following are some factors courts may consider when deciding to pierce the corporate veil:

- Whether the business is **undercapitalized**.
- The **ownership of all shares** by one individual.
- The use of the company as an **alter ego** of an individual or other entity.
- **Diversion of company assets** to an owner to the **detriment of creditors**.
- **Ignoring corporate formalities**.
- Other **public policy considerations**.



Generally, a company should conduct its business in its own name to protect the owners from potential personal liability and to establish the company brand. Company branding should appear on all products, signs, advertisements, correspondence, business cards, directory listings, and similar items. The company should obtain and carry its own insurance and file its own income and employment tax returns.

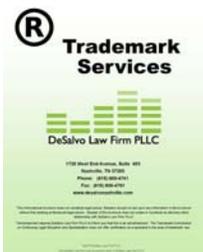
It is important to consult with business formation attorneys and a qualified tax advisor for more detailed advice when forming any business.

Business Name Considerations

Choosing a business name is not always a straightforward process. Developing a business name involves both marketing and legal considerations. As a marketing consideration, the business name often will be the primary mark that consumers associate with the company's products or services, as well as its business practices. It is important to choose a name that is available for use and does not conflict with existing trademarks, service marks or registered trade names.

It can be time-consuming and costly, both in terms of direct expense and lost goodwill, to change a company's name after it has started operating. This issue arises frequently when a company conducts business for a period of time as a sole proprietorship or partnership and subsequently organizes as an LLC or corporation.

DeSalvo Law Firm PLLC is able to provide guidance through the name selection and branding process and offers trademark and service mark clearance and registration services. For more information, please download our complimentary Trademark Services Guide, available at the website address below:



www.desalvonashville.com/trademark_services

Copyright and Intellectual Property Services

For more information about DeSalvo Law Firm PLLC's comprehensive copyright and intellectual property services, please download our complimentary Copyright Services Guide and Intellectual Property Services Brochure, available at the website addresses below:



www.desalvonashville.com/copyright_services



www.desalvonashville.com/ip_brochure

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Business Services

DeSalvo Law Firm PLLC offers a variety of business services, including the following:

- **Formation**
- **Reorganization**
- **Annual Maintenance**
- **Compliance and Cleanup**
- **Commercial Agreements**
- **Mergers/Acquisitions**
- **Asset Acquisition**
- **Internal Policies and Procedures**
- **Employment Agreements**
- **Non-compete Agreements**
- **Non-disclosure Agreements**
- **Contract Drafting and Negotiation**
- **Registered Agent for Service of Process**
- **Trademark Analysis, Clearance, and Acquisition**
- **Intellectual Property ("IP") Portfolio Analysis, Valuation, and Management**
- **Licensing**

Unless included in the following flat rates section, business services are charged at our standard hourly rates plus expenses. Hourly rates vary year to year, based on the years of experience of the assigned attorney or legal assistant and complexity of the issues.

Business Services Flat Rates Effective January 1, 2016

DeSalvo Law Firm PLLC offers the following business services at the flat rates indicated:

Single Member LLC Formation

Includes:

- **Articles of Organization**
- **Operating Agreement**
- **Company Book with Membership Certificates and Organizational Meeting Minutes**
- **Attorney Fees***

\$1,500
+
Company Book (currently \$50)
+
Filing Fees and Postage

*Additional fees apply for multiple member LLCs.

Business Services Flat Rates (cont.)

Effective January 1, 2016

Single Shareholder Corporation Formation

Includes:

- Articles of Incorporation
- Corporate Bylaws
- Company Book with Stock Certificates and Organizational Meeting Minutes
- Attorney Fees*

\$1,500
+
Company Book (currently \$50)
+
Filing Fees and Postage

*Additional fees apply for multiple shareholder corporations.

Annual Maintenance Package

Includes:

- Review of Actions Taken During Prior Year
- Preparation of Company Meeting Minutes and Resolutions
- Preparation and Filing of Annual Report
- Updating Company Book
- Attorney Fees

\$500 Annual Fee
+
Filing Fees and Postage

Tennessee Designated Agent for Service of Process

\$200 Initial Setup Fee
+
\$100 Annual Fee
+
**Hourly Fees and Costs for All Actions
Required as Designated Agent**