

Business: Incorporating

What is the definition of a corporation? A legal entity that exists independently of its owners is a corporation. When correctly filled out articles of incorporation are filed with the proper state authority and all fees are paid, a corporation is created.

There is a difference between an "S" corporation and a "C" corporation, what is it? Every corporation begins as a "C" corporation and must pay income tax on the taxable income made by the corporation. After filing federal form 2553 with the IRS, a "C" corporation becomes an S corporation. The net income or loss of an "S" corporation is included in their personal tax returns and are "passed-through" to the shareholders. There is no double taxation as with "C" corporations because income tax is not taxed at the corporate level. Also known as Subchapter "S" corporations, they are limited to 100 shareholders.

Is an attorney necessary to incorporate? Obtaining a lawyer is not a necessity to incorporate (except in South Carolina, where an attorney's signature is required). You can fill out and file the articles of incorporation by yourself in every other state. However, you should be completely briefed on all aspects of the law beforehand. A good corporate attorney can be an irreplaceable resource to a small business despite the expensive hourly rates. A one-hour consultation can be very beneficial if you are unsure of the process, or if there isn't time for research. Prepare a list of questions before the consultation.

Is there a process for naming my corporation? Take time to think about a name for your corporation. The most common rule for naming your corporation is that it cannot be misleadingly similar to a company that is already formed, but each state has their own rules. A suffix must be included in the corporation name such as "Incorporated", "Inc.", "Company", and "Corp." Each state has suffix standards of their own.

Are there benefits to incorporating? Limiting your liability to the assets of the corporation is the primary advantage of incorporating. It is common that shareholders are not responsible for the debts or obligations of the corporation. Unless you didn't personally sign for the loan and your corporation defaults on it, your personal assets are safe. With a sole proprietorship or partnership, this is not the case. There are many tax advantages that are available to corporations and not sole proprietors.

A few of the advantages are:

- A corporation allows for easier setup of retirement funds and qualified retirement plans (such as a 401k).
- The life of a corporation is not limited and is not dependent upon its members. The corporation will continue to prosper and do business even if an owner dies or wants to sell their interest.
- A corporation has a centralized management.
- It is easy to transfer ownership of a corporation.
- With the sale of stock, capital can be raised more easily.

What exactly is a Registered Agent? In the majority of states, a corporation is required to name a "registered agent." The agent must be located in the formation state. The registered agent must be accessible during regular business hours to receive official state documents or service of process.

Do I need a specific number of Directors or Shareholders? Most states permit one person to function as director, shareholder, and all officer roles.

Are there a number of shares of stock I should choose and at what par value? You may select any quantity that you wish. The par value is either "No Par Value" or any dollar amount per share as you choose. In some states you must issue the stock for no less than the par value. Some states establish their fees from the amount of shares approved, multiplied by the par value.

What does EIN stand for and what is a Federal Tax Identification Number? A Federal Tax Identification Number, which is also known as a Employer Identification Number (EIN) is required for each corporation so the IRS may track payroll and income taxes paid by the corporation. Just as a Social Security number, an EIN is used for almost every function of the business.

After I incorporate, what do I do next? If your director(s) have yet to be designated in the articles, you will need to hold your first shareholder meeting to select your director(s). After that, you will need to hold the first organizational meeting of directors. During this meeting, you will hold elections for officers, approve the company's bylaws and issue your stock, as well as other actions.

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