



ZAYAS LAW OFFICES

Business Law 101 for Ministers

Types of Business Organizations

Sole Proprietor

- A sole proprietorship is a business owned and operated by one person (a sole proprietor). This is the simplest and most common form of small business organization.
- Schedule C – Profit & Loss from Business / Sole Proprietors
- Doing Business As (DBA)
- Online Portal Database for DBA Search - <http://www.nyc.gov/portal/site/DBusinessSite>
- Blumberg Forms - <http://www.blumberglegalforms.com/>
- Open Bank Account under assumed name / Business Cards & Stationery
- For information on legal requirements for doing business in New York State and a comprehensive listing of state, local, and federal government agency resources, visit the New York State Web site (www.nyfirst.ny.gov). For federal tax information, visit the Internal Revenue Service (IRS) Web site (www.irs.gov).
- New York Publication 20, New York State Tax Guide for New Businesses, from the Department of State

Partnership

- A partnership exists when two or more persons join together to carry on a trade or business (e.g. husband and wife / domestic or business partners).
- Each partner may act on behalf of the other partner – both in terms of having authority for making decisions as well as incurring an obligation on behalf of the partnership.
- The profits and losses of a partnership are generally assumed to be 50/50 – or proportional to the number of partners – unless there is an indication to the contrary.



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Corporation

- Limited liability on the parts of its shareholders, officers, or directors.
- The individual members are known as shareholders and the ownership interest is represented by the proportional of total corporate stocks owned by each shareholder.
- It is considered a separate entity – separate and apart from its shareholders.
- Corporate Requirements Include: holding directors and shareholders meetings, keep corporate minutes, and allow shareholders to vote on major corporate decisions.
- It is important that all documents be signed in an official capacity – so as to avoid any confusion as to whether it is the corporation or individual who is obligating itself.
- An additional distinctive feature – corporations are perpetual in existence whether or not the original founders or incorporators remain involved.

Certificate of Incorporation

- Formed by filing a certificate of incorporation with the Secretary of State.
- Requirements – Available Name / Filing COI / Payment of Fees
- Name Availability –
- NYS DOS Name Search - http://www.dos.ny.gov/corps/bus_entity_search.html
- Sample Certificate of Incorporation
- Insert Name of Corporation / Purpose / County of Activity / Number of Shares (200 no par value) and Agent for Service of Process
- Par or No Par Value Stock –



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- Agent for Service of Process – Secretary of State and post office address – within or without the state - to which secretary shall mail a copy of any legal process.
- Corporation can operate under name other than its legal corporate name.
- Certificate of Assumed Name

S Corporation

- A corporation can operate as a C corporation or as an S corporation.
- In a C Corporation, taxes are paid for any dividends or payment of profits that are made to the shareholder and the corporation also pays taxes.
- The S corporation is often more attractive to small-business owners because an S corporation has some appealing tax benefits and still provides business owners with the liability protection of a corporation. With an S Corporation, income and losses are passed through to shareholders and included on their individual tax returns. As a result, there's just one level of federal tax to pay.
- Sample S Corporate Election Form.

Limited Liability Company – LLC

- Owners of an LLC are called members.
- With an LLC, the members have the option to have the profits "pass through" to the owners who pay taxes at their individual tax rates.
- Its [profits](#) and [tax benefits](#) are [split](#) any way they choose.
- Tax returns for an LLC are filed with the taxation [authorities](#) only for the purpose of [information](#), and each shareholder [files](#) own tax return separately.



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Differences between LLC and S Corporation –

- There are restrictions on who can be owners (called "shareholders") of an S corporation. An S corporation can have no more than 75 shareholders. None of the shareholders can be nonresident aliens. And shareholders cannot be other corporations or LLCs.
- The directors or officers of an S corp. manage the company.
- An S corp. has no flexibility in how profits are split up amongst its owners.
- LLCs offer greater flexibility in ownership and ease of operation. There are no restrictions on the ownership of an LLC.
- An LLC can be member-managed, meaning that the owners run the company; or it can be manager-managed, with responsibility delegated to managers who may or may not be owners in the LLC.
- And the owners of an LLC can distribute profits in the manner they see fit.

Limited Liability Partnership

- The Limited Liability Partnership (LLP) is essentially a general partnership in form, with one important difference. Unlike a general partnership, in which individual partners are liable for the partnership's debts and obligations, an LLP provides each of its individual partners protection against personal liability for certain partnership liabilities.



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RELIGIOUS CORPORATION

- Churches and religious organizations generally eligible to receive tax-deductible contributions.
- Churches that meet the requirements of IRC section 501(c)(3) are automatically considered tax-exempt.
- Unlike churches, religious organizations that wish to be tax exempt generally must apply to the IRS for tax-exempt status.
- Faith Based Organizations without an IRS determination of [501\(c\)\(3\)](#) status may also be **ineligible** to receive grants because of the possibility that they do not actually qualify as a 501(c)(3) entity.
- Faith Based Organizations cannot be excluded from the competition for federal funds simply because they are religious.
- Generally, federal grant funds may not be used for inherently religious activities such as worship, prayer, proselytizing, or devotional Bible study.

Ministers & Taxes

- Ministers not exempt from paying federal Income taxes.
- Ministers are exempt from social security and Medicare taxes collected under FICA (Federal Insurance Contributions Act), but may / may not be exempt from paying such social security taxes under SECA (self-employment contributions act).
- Ministers may be able to exclude some or all of their designated housing allowance from income taxes.
- Churches may reimburse ministers for business & ministry-related expenses through accountable reimbursement plans.



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NON-PROFIT CORPORATION

- Purposes are charitable, educational, religious, scientific or cultural purposes.
- No shareholders.
- No private inurement
- Board of directors govern and have power to make corporate decisions.
- Donations are tax deductible.
- Cannot engage in partisan or politics. Limited lobbying activities.
- Retroactive Deductibility.
- Certain approvals may be required from governmental agencies.

NON PROFIT FILING & REGISTRATION REQUIREMENTS

TAX RETURNS

- Form 990s.
- Most small tax-exempt organizations whose annual gross receipts are normally \$50,000 or less are required to electronically submit Form 990-N, also known as the e-Postcard, unless they choose to file a complete Form 990 or Form 990-EZ instead.
- Online link - <http://epostcard.form990.org/>



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FUNDRAISING SOLICITATIONS

- Solicitation of Contributions may require recording with certain government agencies.
 - In NY – State Attorney General’s Charities Bureau.
 - IN CT - Public Charities of Dept of Consumer Protection.
 - IN NJ - Charities Registration Section of the NJ Division of Consumer Affairs.

STATE TAX FILINGS

- IRS tax exemption may exempt non-profit from state franchise taxes.

SALES TAXES

- Tax exempt organizations qualify but are required to file for sales tax exemption (NY – Form ST 119-2)

BOARD OF DIRECTORS

- Board manage the overall organization and make major decisions
- Board owes a fiduciary duty of care, a duty of loyalty and a duty of obedience.
- Job description for each board member



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FISCAL SPONSORSHIPS

- An arrangement in which a 501c3 tax-exempt entity agrees to accept donations on behalf of another entity that is not tax-exempt.
- The Sponsor will issue letters to donors.
- Written agreement.
- Administrative fee.

Employer Identification Number

- Form SS-4
- Online Filing at www.irs.gov

Employees & Independent Contractors

- Form I-9, Employment Eligibility Verification.
- Often corporations (business or non-profit) will get into difficulties related to the issue of employees and independent contractors.

Factors in Determining Status of Employee / Independent Contractor

- Control.
- Written agreements.
- Nature of any “employee” type benefits.



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Insurance & Risk Management

- Property Coverage
- Workers Compensation
- General Liability Insurance
- Directors & Officers Coverage
- Errors & Omission
- Indemnifications

Bylaws

- Sample

Shareholder Agreement –

TRADEMARKS & SERVICE MARKS

- Refer to words, designs or logos that are used to indicate the origin or source of goods and service.
- When used to identify a tangible product (e.g. jewelry) the word, design or logo is considered a trademark. When used to identify services, known as a service mark.