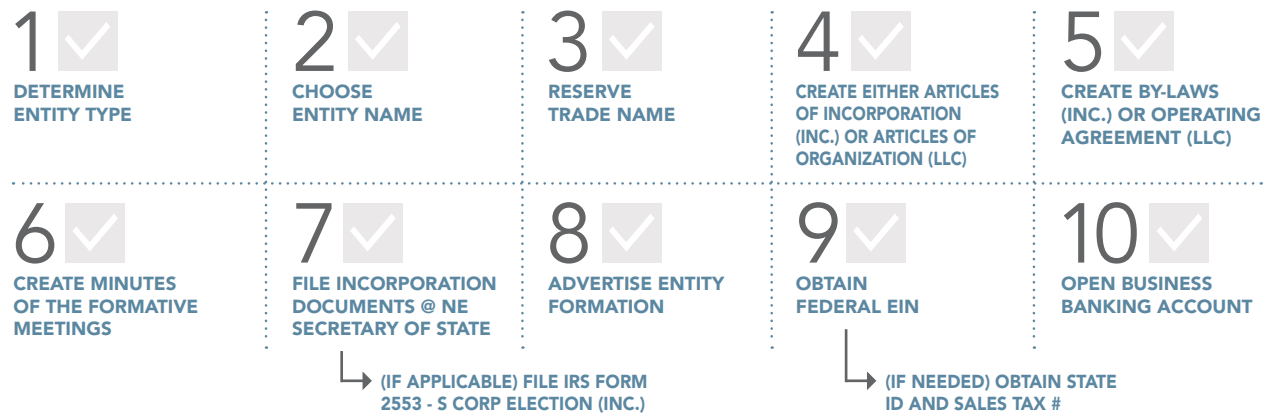


NEBRASKA BUSINESS ENTITY FORMATION PROCESS



CHOOSING AN ENTITY TYPE

It is wise to consult with an accountant and/or attorney before settling on a business entity type. Your decision can have an effect on many aspects of a business, including liability, taxation and ownership issues. The chart on the following page – though not comprehensive – compares a number of important considerations.

Depending on the choice of entity, you will need to file certain “formation documents” with the Nebraska Secretary of State (NSoS). Below is a brief overview of each entity and the documents you would need to file:

SOLE PROPRIETORSHIP A form of business in which an individual owns the business with no other owners

- A sole proprietorship is not a separate legal entity apart from the owner.
- The owner of a sole proprietorship is personally liable for all of the business’s debts and obligations.
- Few formalities are required to form a sole proprietorship.

PARTNERSHIP Two or more persons carrying on as co-owners of a business

- A partnership does not pay income tax. Instead, each partner includes his or her share of the partnership’s profit or loss on his or her individual tax return.
- The owners of a general partnership are personally liable for the debts and obligations of the partnership. *Formal documents are not required to form a general partnership.*

- A limited partnership provides for limited liability for some of the partners. *It is formed by submitting a certificate of limited partnership for filing.*

CORPORATION A separate legal entity apart from the owners (shareholders) of the corporation

- A corporation is recognized as a separate taxpaying entity and is responsible for paying corporate income taxes.
- The owners of a corporation have limited personal liability from the debts and actions of the corporation.
- A corporation is managed by a board of directors who can delegate management of the day-to-day affairs of the corporation to corporate officers.
- Shareholders must observe certain corporate formalities, including issuing stock, holding meetings, recording the minutes of the meetings, electing directors and conducting business by resolution.

LIMITED LIABILITY COMPANY (LLC) Similar to a corporation in that the owners (members) have limited personal liability for the debts and actions of the company, but it has the tax advantages of a partnership in that the profits and losses of the company can be passed through to the owners

- A LLC can be managed by the members or management can be delegated to one or more managers.
- Generally, LLC’s have less formal requirements than corporations and more freedom in the management of the company.

Business Type Comparison	Sole Proprietorship	General Partnership	C Corporation	S Corporation	Limited Liability Company	Limited Partnership	Limited Liability Partnership
State filing (and filing fee) required for creation			•	•	•	•	•
Ongoing state filings and fees			•	•	•	•	•
Limited liability protection			•	•	•	maybe	•
Perpetual duration of the business			•	•	maybe	•	maybe
Strict ongoing corporate formalities			•	•			
Flexibility in who manages the business					•		•
Business taxed at entity level			•		maybe		
Pass-through income/loss	•	•		•	•	•	•
Double taxation			•				
Ease of raising capital			•	•	maybe		
Ease of adding owners/transferring ownership interest			•	•	maybe	maybe	maybe



CHOOSE ENTITY NAME

The best entity names are often those that describe in what business the firm is engaged or what services the firm provides.

If you decide to operate your business as a sole proprietor, you may want to file a trade name application. Registering your trade name gives you certain statutory rights, including the right to bring a civil action for misuse of your trade name and the right to bring a civil action to stop the use or sale of any counterfeits. The cost, as of the time this is being written, is \$100 for a ten year period. For corporations or LLC's, so long as your entity is in good standing, your trade name is reserved in the State of Nebraska.

To see if the name is already in use, or reserved, in the state of Nebraska, visit the below website to search all corporations, LLC's and trade name reservations on file with the NSoS.

» <https://www.nebraska.gov/sos/corp/corpsearch.cgi?nav=search>

- If your proposed name has more than one word, perform multiple searches, including a search of the key words individually.
- The Secretary of State's office has sole discretion as to whether the proposed name is too close to an existing one.



COMPLETE EITHER ARTICLES OF INCORPORATION OR ARTICLES OF ORGANIZATION

The entity-type you chose will determine whether you complete articles of incorporation or articles of organization. Articles of incorporation are associated with the formation of a corporation; both "S" Corporations and "C" Corporations. Articles of organization are associated with the formation of an LLC.

It is not required to have an attorney, accountant or other professional draft your organizational documents; however it is prudent. If you chose to

complete these documents on your own, make sure you follow the standards of the State and have all required aspects and conventions. Not having one of the required conventions – even punctuation in the wrong place – will result in the documents being rejected by the NSoS's office. The typical total cost of creating a formal entity type can run \$1,000 or more. However, there are several low cost solutions that can accomplish the process for \$400 or less (including filing fees and advertising).



CREATE BY-LAWS OR AN OPERATING AGREEMENT

The by-laws, or the operating agreement, are internal documents that set forth rules of how the entity governs itself and its officers. It also lays out the parties responsible for various aspects of operation and many of the “what-if’s.”

- All owners should be involved in the process of the creation of these documents.

- These do not need to be presented to the State. They are internal documents for the benefit of the entity.
- Upon applying to establish a banking relationship, this document will be needed to establish which individuals have the legal authority to represent the entity on banking transactions.



FILE DOCUMENTS AT THE NEBRASKA SECRETARY OF STATE’S OFFICE

Either the articles of incorporation (Inc.) or the articles of organization (LLC) will need to be filed with the NSoS’s office in Lincoln, NE. These can be submitted via E-delivery, mail or in person.

- If hand delivering the documents, the process – from submission to approval – usually takes 15 to 30 minutes.
- Submission via mail can take three to four days.
- Whether submitted via mail or in-person, the fees for the requested service should accompany the submitted documents.

For the fee schedule, visit

» http://www.sos.ne.gov/business/corp_serv/corp_form.html

For the list of documents that qualify for submission via E-delivery, visit

» <http://www.sos.ne.gov/business/edocfilingtypes.html>

Please note that there is a processing fee of \$5 per page submitted for filing. Be as concise as possible while still conveying all pertinent information. Utilization of smaller fonts and margins may also be employed.



IRS FORM 2553

For those choosing the entity type of S-Corp, there is an additional requirement of filing IRS Form 2553 (election by a small business corporation). This is a three-page document that allows the IRS to recognize the corporation as a small business corporation (S-Corp) vs. a traditional corporation (C-Corp).

This document should be filed:

- At formation (most acceptable)
- At any time during the tax year preceding the tax year the election is to take effect
- No more than two months and 15 days after the beginning of the tax year the election is to take effect

Shareholders must consent to the election being made. Only shareholders who own stock on the day the election is made need to consent to the election.

The original form (not a photocopy) should be mailed to the following address or faxed to the number below:

» **Department of the Treasury
Internal Revenue Service Center
Ogden, UT 84201
(801) 620-7116 (fax)**

The service center will notify the corporation if its election is accepted (and when it will take effect) or if its election is denied. The corporation should generally receive a determination on its election within 60 days after it has filed Form 2553. Once the election is made, it stays in effect until terminated or revoked.



CERTIFICATE OF GOOD STANDING

For an additional \$10, the State can provide a document that contains the seal of the State of Nebraska, the date the entity was formed and that it is in "good standing."

- The document is suitable for framing.
- Many firms choose to obtain one at the time of registration.
- Some certification processes, such as SBA's 8(a) program, require the presentation of a certificate of good standing that is no more than 90 days old.

If you need to obtain a certificate of good standing in the future, always go through the State. Some online services will charge up to \$150 for an expedited copy via courier when it costs only \$6.50 for a letter and \$10.00 with the seal. It is printable from your own computer.



ADVERTISE YOUR ENTITY'S FORMATION

The NSoS's office requires you to advertise the formation of a new entity. Once your entity's formation is confirmed by the NSoS, immediately contact a periodical that is capable of advertising its formation in accordance with the statutes.

- Most major periodicals will be familiar with the process.
- Some will take care of everything – from running the notice to sending the proof of publication back to the NSoS' office.
- If proof of publication is not received by the NSoS' office in the prescribed time allotted, the filing may be voided and the process may have to start again.

Below is a partial list of periodicals in which formation notices may be run. A complete list of all media outlets in the area, which includes periodicals that may be able to meet the notification requirements, can be found in the Communication Toolkit in the member's section of the Greater Omaha Chamber's website.

Omaha World Herald
 legals@owh.com
 402-444-3130 or 800-694-5455 ext. 3130

The Daily Record
 brian@omahadailyrecord.com
 402-345-1303

Council Bluffs Daily Nonpareil
 sharon.olszewski@nonpareilonline.com
 712-325-5800

Midlands Business Journal
 Ann Massara, legals@mbj.com
 402-330-1760

Omaha Star
 2216 N. 24th Street Omaha, NE 68110
 402-346-4041



OBTAINING AN EIN

Once the entity has been formed, it may be necessary to obtain an employer identification number (EIN) through the Internal Revenue Service (IRS). Most likely, it will also be required for the entity to obtain identification number(s) from the State of Nebraska's Department of Revenue as well. These may include, but are not limited to, withholding and sales & use tax.

To determine if a Federal EIN is necessary, utilize the following assistant provided by the IRS.

- Do I need an EIN?

➤ <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Do-You-Need-a-New-EIN>

- Do I need a new EIN?

➤ <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Do-You-Need-an-EIN%3F>

To go directly to the EIN application page, click **APPLY ONLINE NOW**.

➤ <https://sa2.www4.irs.gov/modiein/individual/index.jsp>



ESTABLISHMENT OF A BANKING RELATIONSHIP

There are many types of accounts and offerings from banks, credit unions and other financial institutions. It is recommended you consult with more than one institution – and speak with an accountant or other financial professional – prior to formalizing any relationship.

Any bank or credit union will need the following to open an account for your newly formed business:

- Articles of organization or articles of incorporation (copy of the filed document with the State's barcode in the upper corner)

- By-laws or operating agreement
- Minutes of the organization indicating when formed
- Names of those authorized to establish banking relationships
- Identification issued by the state or federal government



Winsley Durand, senior director-recruitment
Greater Omaha Chamber
402-233-7144, wdurand@selectgreateromaha.com