

Nebraska Secretary of State

- John A. Gale

Business Services

[Home](#) ^a [Corporation Services](#) ^a [New Business Information](#)

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New Business Information

Introduction

In Nebraska, the Secretary of State's Office acts as the recorder of corporate documents. As such, the office often receives questions from individuals starting their own businesses. The following information has been prepared to give individuals who are thinking about starting a new business some general information about business formation and subsequent documents that are filed in the office.

Depending on the nature of your business, there will be other local, state and federal agencies that you will need to contact in connection with starting your business. It is highly recommended that you seek legal, tax and financial advice from professionals before starting a business.

Nebraska offers an ideal location, quality workforce, sound infrastructure and pro-business climate for a wide variety of business endeavors. We wish you luck with your new business!

Formation

One of the first things you will need to determine when starting a new business is the organizational structure you will use to operate the business. Most businesses are organized as corporations, limited liability companies, partnerships or sole proprietorships. There are various tax and liability reasons for choosing one organizational structure over another. Therefore, it is important that you consult an attorney and/or tax professional to help you determine which entity is right for your business.

Depending on the choice of entity, you will need to file certain formation documents with the Secretary of State's Office. There is not a general business license in Nebraska. Following is a brief overview of each entity and the documents you would need to file with the office:

Sole Proprietorship: A sole proprietorship is 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. 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.

Partnership: A partnership consists of 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. A limited partnership provides for limited liability for some of the partners. Formal documents are not required to form a general partnership. A limited partnership is formed by submitting a certificate of limited partnership for filing.

Corporation: A corporation is a separate legal entity apart from the owners (shareholders) of the corporation. 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. A corporation is recognized as a separate taxpaying entity and is responsible for paying corporate income taxes. A corporation is formed by submitting articles of incorporation for filing.

Limited Liability Company: A limited liability company is 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 limited liability company can be managed by the members or management can be delegated to one or more managers. Generally, limited liability companies have less formal requirements than corporations and more freedom in the management of the company. A limited liability company is formed by submitting a certificate of organization for filing.

Name

You will need to pick a name for your business. It is imperative that you wait to obtain signage (signs, letterhead, etc.) for your business until your company has been formally created to ensure that the name you have chosen is available. Otherwise, you risk losing the money you spent on advertising and signage should you discover upon filing that the name you have chosen is not available.

You can check the availability of a name by submitting the name in writing to the Secretary of State's Office via e-mail, fax or mail. You will receive a written confirmation as to whether the name is currently available. Names cannot be the same as another name on record. In some cases when a name is deemed to be unavailable due to similarity with an existing registered name obtaining permission (consent) to use the name from the owner may be an option.

Due to the volume of filings received, the current availability of a name does not guarantee that the name will be available when the formation documents are submitted. The final name availability decision is not made until the document is submitted to the office for filing.

You also can reserve a name by filing a [name reservation form](#) along with the required fee. If the name is determined to be available, its use will be exclusively reserved for 120 days. Reserving a name prevents someone else from taking your name while you get formation documents and other paperwork prepared for filing.

Registered Agent

If you plan on forming a corporation or limited liability company, you will need to choose a registered agent. The registered agent is designated by law as the entity's agent for service of process and official government communications. The name of the registered agent and the location of the registered office must be listed in the entity's formation documents.

The registered agent can be a member of the entity or a designated third party who resides in Nebraska. The registered agent may be a corporation as long as the corporation is authorized to transact business in Nebraska. The registered agent's office must be identical to the registered office.

The registered agent and registered office must be continuously maintained in this state. Failure to maintain a registered agent and/or office can result in the administrative dissolution of the company (more about administrative dissolution in the next section). To change your registered agent or office, you need to submit a [change of agent/office form](#) along with the required fee.

Biennial Reports

All corporations must file biennial occupation tax reports in even number years, and all limited liability companies must file biennial reports in odd number years. A notice to file the report is mailed to the registered agent on record. The corporate occupation tax report is due March 1 and delinquent April 15 of the reporting year. The limited liability company biennial report is due April 1 and delinquent June 2 of the reporting year.

Failure to pay the tax or fee and submit the report as required by law will result in administrative dissolution. Each year, thousands of entities are dissolved for failing to comply with the law. Nebraska law provides that an entity that is administratively dissolved continues its existence but may not carry on any business, except business necessary to wind up and liquidate its business and affairs. Further, the entity may lose its limited liability status and name. The entity would no longer be in good standing and would not be able to obtain a certificate of good standing that many lenders require before loaning money. Should the corporation wish to continue business, it must reinstate by filing an application for reinstatement and pay the reinstatement fee, and all delinquent occupation taxes with interest. A limited liability company must pay the reinstatement fee and all

delinquent biennial fees.

To ensure that you receive the required biennial report or notice to file and avoid administrative dissolution, make sure you keep current the registered agent information on file with the Secretary of State's Office. To change your registered agent or office, you need to submit a [change of agent/office form](#), along with the required fee. If you have not received the appropriate notice to file in the reporting year the fastest and easiest method to file your report is to file online at sos.ne.gov.

Filing Tips

Documents can be submitted for filing [online](#), in person at the Secretary of State's Office. or by mail. If you submit documents by mail, please include a cover letter with contact information including your phone number so that a filing officer can contact you if there are any questions.

To avoid the return of your documents, make sure that you include the [correct filing fee](#). In addition to the filing fee, there is a \$5.00 per page recording fee for most documents. Make checks payable to the Secretary of State.

One of the main reasons formation documents are rejected is because the name is not available. You can easily avoid this problem by checking to see if the name is available ahead of time. This process is explained under "Name" above.

[Applicable statutes](#) regarding corporations, limited liability companies and trade names can be viewed at the secretary of state's Web site. The site also lists [available forms](#) for filing.

Contact Information

Here is contact information for the secretary of state's Corporate Department:

Phone: (402) 471-4079

Fax: (402) 471-3666

Mailing address: P.O. Box 94608, Lincoln, NE 68509-4608

Overnight mailing address: 1445 K St., Room 1301, Lincoln, NE 68509

Location: State Capitol, Room 1301, Lincoln, NE 68509

Send e-mail to: [Corporate](#)

Additional Resources

Here is a list of Web sites that may be useful to you in planning your business:

[Nebraska Department of Economic Development](#)

[Nebraska Department of Labor](#)

[Nebraska Department of Revenue](#)

[U.S. Internal Revenue Service](#)

[U.S. Small Business Administration](#)

[SCORE \(Counselors to America's Small Business\)](#)

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