

FORMING A NEW BUSINESS ENTITY

- Select the type of entity to be formed (e.g., corporation, limited liability company, partnership);
- Select the state of formation;
- Select a federal tax classification;
- Choose a name for the business;
Note: Alabama requires a name reservation certificate to be filed with the formation document for your new entity. Like most states, Alabama law restricts the use of certain terms in entity names related to insurance, securities, and banking industries, among others, and the name must be distinguishable on the records of the Secretary of State from existing entities. You should also check the proposed name against similar names to avoid confusion or possible trademark infringement.
- Choose a registered agent;
Note: Alabama requires that the registered agent must be either a person who is a resident of Alabama or an entity (other than the entity to be formed) existing in Alabama, and the address for the registered office must include a physical street address in Alabama. A separate mailing address may also be provided. For all other states, you will need to verify the requirements.
- Prepare and file the primary formation document with the county's judge of probate where the registered agent is located (if Alabama) and/or Secretary of State (certificate of incorporation or formation);
- Obtain a federal employer identification number from the Internal Revenue Service;
- Prepare and file initial Alabama Business Privilege Tax Return (or equivalent under applicable state law) due 2½ months after the date the taxpayer is organized or qualifies to do business in Alabama;
- Prepare the primary governance document (corporate bylaws, limited liability company agreement, or partnership agreement);
- Prepare minutes of the owners and directors / managers (required for a corporation; optional for a limited liability company, or limited partnership);
- Open a bank account for the new business;
- Receive initial capital contributions (in compliance with federal and state tax and securities laws);
- Issue ownership interests (which may be certificated or uncertificated);
- Prepare agreements among owners restricting transfer of ownership interests;
- Prepare agreements governing employment of key employees and operation of the new business venture;
- Prepare and timely file any applicable election for federal tax classification with the Internal Revenue Service (e.g., election to be classified as an S corporation must be filed within 75 days of the formation of the business entity);
- Qualify to do business in states other than state of formation, if applicable;
- Prepare and file applications to protect intellectual property rights in entity name under federal and state trademark and assumed name laws; and
- Prepare and timely file applicable Section 83(b) elections with the Internal Revenue Service.