

### Entity Selection & Creation

#### **Why should I form an entity for my NIL business?**

The most important reason to form an entity are the personal liability protections that come with using a business entity. If you enter into a contract or otherwise provide services personally, you will be subject to personal liability for any breach of contract, negligence, or other potential harms you may cause. Depending on the claim, you may be subject to personal liability beyond the value of a contract and the injured party may go after your personal assets when seeking recovery.

Conversely, using a business entity will limit your personal liability to the assets of the limited liability company (LLC) or corporation. For example, if there is a breach of a business contract and an LLC was the contracting party, the LLC itself is liable, not the person who owns the LLC. This means any penalties or liabilities are owed by the LLC and its assets, not those of the owner. There are other benefits to using an LLC or corporation in your business dealings, but protecting yourself from unlimited liability is first and foremost.

#### **What type of entity should I form (LLC or corporation)?**

There are numerous types of business entities with varying liability protections, tax considerations, corporate formalities, and other factors to consider when forming an entity. Some important considerations when deciding which entity to form include the following:

1. **Choice of Entity.** The two main types of entities you should focus on are an LLC or a corporation. Though there are many others to choose from, these two are the most advantageous for small business entrepreneurs. Between the two, an LLC will be more flexible, with fewer restrictions imposed by statutes on how to manage the company or split finances among multiple owners.
2. **Limited Liability.** Both an LLC and a corporation provide the “limited liability” protection.
3. **Tax Considerations.** Generally, corporations are subject to “double taxation,” meaning the entity pays corporate taxes before any individual income taxes are paid by shareholders. Conversely, an LLC is taxed as a partnership, providing the owner “passthrough taxation,” which means that you will not be subject to double taxation and any income of the LLC will be included in your individual income taxes.
4. **State of Formation.** The state in which you form the entity will govern the entity going forward. Most state laws governing LLCs and corporations are similar, but there are some distinctions among states that may impact where you should form the entity. Consult local counsel for any questions on the applicable state laws impacting relevant LLCs and corporations.

In most instances, small business owners will elect to form an LLC rather than a corporation due to its legal flexibility, limited liability protections, and tax savings. In some circumstances, a corporation may be preferable to an LLC,

but generally an LLC offers “the best of both worlds” in the form of liability shielding and passthrough taxation.

**What is a registered agent and why do I need one?**

A registered agent is the person or entity that is the designated contact for legal services in the state of formation. Your LLC or corporation must appoint a registered agent who is located at a physical location (i.e., the registered office) in the formation state. You don’t have to live in the state in which you form the entity (e.g., a Kansas resident can own and operate an Illinois LLC), but you will need to have a “Registered Agent” in the state of formation.

While you are allowed to be the registered agent, and many single member companies choose to list the owner as the registered agent, it is not required. You can choose another individual or even appoint a corporate service company that can serve as your registered agent. An important consideration, even if you choose to be the registered agent, is that the registered agent is supposed to be at the registered office location during normal business hours to receive official documents for the company.

Another consideration if you choose to list yourself is that some states have a timely notice requirement for filing a change of registered agent/office address. Using a college residence can be tricky due its tendency for abrupt or frequent changes, but just be aware of the time requirements and make sure to hit them if they exist.

**How do I go about creating an LLC or a Corporation?**

Generally, forming either an LLC or corporation is quite simple. In most states, all you need to do to create an LLC is to file Articles of Organization with the Secretary of State’s office and pay a small fee. For a corporation, you would file Articles of Incorporation with the Secretary of State’s office, pay a small fee, and you’re good to go.

In addition to the state filings, most states require corporations to create Bylaws, designate a board of directors, and appoint officers. These corporate formalities are required by state law and failure to follow them may result in losing the advantages of creating a corporation in the first place.

On the other hand, LLCs generally have fewer corporate formalities, but at a minimum you will want to prepare an operating agreement to outline the internal rules and procedures of the LLC. One of the benefits of an LLC is the flexibility that is allowed under state law in drafting this document to modify the default rules applicable to LLCs.

**After I’ve created my business entity, are there any reporting requirements for corporations and LLCs?**

Both LLCs and Corporations have compliance requirements that varies among states. Most states require corporations to file periodic reports listing the directors, officers, and other information about the corporation. LLCs are often subject to the same reporting requirements, but to a lesser extent in many states.

Make sure you know the important dates or frequencies if you need to file annual or quarterly reports, etc. There may be monetary penalties for non-compliance, so make sure you stay on top of things with your newly created entity.



**What is the Corporate Transparency Act?**

The Corporate Transparency Act (CTA) is a new federal reporting requirement that requires most entities to report beneficial ownership information to the Financial Crimes and Enforcement Network (FinCEN). The CTA applies to most business entities, including LLCs and corporations. Because the CTA is somewhat complex and the penalties for noncompliance can be severe, you should consult a qualified attorney or advisor who can assist you in compliance with the CTA.

**How do I terminate a corporation or LLC when I no longer have use for it?**

If you decide you no longer want or need to run an NIL business, be sure to formally dissolve the LLC or corporation rather than simply abandoning it. If you choose to let it lie and forget about it, the company may miss required deadlines, resulting in penalties. To avoid these risks, formally dissolve your company. The method can change from state to state, and methods to do so differ between LLCs and Corporations.