

Marc D. Sherman & Colleagues, P.C.

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Organizing A New Limited Liability Company (LLC) In Illinois

A corporation is a legal entity that is held legally liable for its actions. The owners of a corporation are simply shareholders that help to elect a board of directors to manage the business, even if there is only one shareholder. Under most circumstances, shareholders of the corporation are not personally liable for the actions and obligations of the corporation; we call this the “umbrella of limited liability”. A corporation can be set up to permit taxes to be paid at the corporate level or as a Sub-chapter S corporation to permit income taxes to be paid at the shareholder level.

The LLC entity differs from a traditional corporation, because in most instances it is a hybrid legal structure. The LLC provides the tax flexibility of a Sub-chapter S corporation, and the limited liability protection for owners like a corporation, but frequently with less paperwork than is necessary for a corporate entity. The LLC has Members (not shareholders). The LLC has a Manager (or sometimes more than one Managers). The Members may manage the LLC, or the Members may appoint a separate individual or entity to be the Manager.

In addition to discussing with us the various types of entities that may be used for your project, it is useful to discuss with your accountant whether you would best be served by using a corporation or LLC for your business activities from a tax perspective.

The LLC Organization; Identity of the New Entity and Organizational Documents:

The LLC is created by the filing of its Articles of Organization with the Illinois Secretary of State. We prepare the Articles and submit them for filing on your behalf. Once this filing is accepted, the LLC will adopt its operational rules (like the ByLaws of a corporation), called an Operating Agreement. The Operating Agreement is not filed with the State. It is maintained in the LLC records and updated as necessary from time to time. We will prepare the Operating Agreement to include the subject matter that is necessary for the basic activities of the new LLC.

Prior to the initial step, we will check the name availability for your new entity with the Illinois Secretary of State. If it appears that another entity is using the same or a confusingly similar name we will discuss with you the use of an alternative LLC name. This is not a copyright or trademark review, which must be done by an attorney specializing in the Intellectual Property Law area. Depending upon the business purpose of your new LLC and your expected public advertising and the expected use of tradenames, trademarks or other intellectual property that you have or that you will create, review of those items with an Intellectual Property Attorney is recommended. We can provide a recommendation to an attorney who is independent from our firm, upon request.

Our fee for the organization of the new LLC includes the preparation of the Articles of Organization and the preparation of the Operating Agreement. An LLC does not usually issue certificates memorializing Membership interests, and certificates are not prepared by our Firm. Similarly, there is no need to order a leatherette binder for a "Minute Book" for the new entity; in

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fact, many of our clients prefer to maintain their LLC documents in digital format in a shared DropBox folder.

Accountant/Tax Consultant Involvement:

We recommend that you consult with your accountant or tax advisor in order to review tax treatment of the LLC based upon the expected business activities and personal tax considerations. Usually your accountant will obtain the tax identification number for the LLC, and your accountant will prepare and submit the LLC entity election for tax treatment with the IRS at the appropriate time. Your tax/accounting professional will also assist you with obtaining State and Local business tax or operational registrations, and assist with the LLC decisions for those registrations, as well as by providing recommendations for setting up your accounting books and record.

Our engagement does not include tax or accounting advice, IRS or other filings mentioned above. You should discuss the new LLC and tax/accounting considerations with your accounting professional before starting the new LLC process; refunds are not made and changes are billed separately. If you like, you can put us in touch with your tax/accounting professional; but in any event please share with us their recommendations.

Registered Agent Services; Annual Reporting Requirement:

The new LLC, like a new corporate entity, is required to select a Registered Agent. This will be the individual or corporation that will be identified in the Illinois Secretary of State records available to the public for official communications with the LLC. These notifications and communications include those from the State of Illinois or other officials, those for purposes of service of legal process and sometimes other communications where third parties wish to formalize notice to the LLC.

The State of Illinois requires that the Registered Agent identify the location where the principal office of the business will operate, which cannot be a Post Office Box. This can be changed from time to time as necessary.

Clients often ask that we act as Registered Agent for their new entity, and when doing so we charge an annual fee (currently, \$250.00/year). If there are materials received at our office for the LLC, we will timely send those to you by email, so that you can follow up directly to respond. If those communications require legal services or consultation with our office we will discuss and agree upon an appropriate fee at that time.

If you prefer, you or someone in your new LLC can be the Registered Agent. There are also business that provide this service, often for a fee that is more than our annual fee. We will need to know who will be the Registered Agent prior to the filing of the Articles of Organization. The LLC can appoint a different Registered Agent at any time, in which case there will be a

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small charge by the Illinois Secretary of State for that change, and a small fee to our office (together, usually under \$100.00).

There are ongoing maintenance requirements for every entity, and LLCs are not unique. It will be necessary for your LLC to comply with the annual reporting requirement with the Illinois Secretary of State beginning in the year after it is organized. We encourage our clients to do the annual reporting on their own and to pay the annual fee to maintain the active corporate existence via the Secretary of State's on-line portal. If you desire that we file the annual report, we will quote a flat fee and confirm the out-of-pocket expense at that time.

Other Attorney Work/Services:

Other Names For Your LLC And Its Business:

If you are organizing a Professional Limited Liability Company in Illinois, then there are additional steps that need to be accomplished for that purpose. You should request the opportunity to discuss the creation of a PLLC with Marc Sherman.

If you are expecting to use an assumed business name that will be different than the LLC name for some of the LLC activities (called a D/B/A), and you intend to adopt the use of that D/B/A now, we will need to know and plan for that additional submission to the Illinois Secretary of State. It can be done later, if you choose.

Separate fees and out of pocket expenses apply for each D/B/A that you select. Please be sure to notify our office of the proposed D/B/A as early as possible, so that we can be sure that the name is available. Usually the flat fee billing for a D/B/A filing (called the Adoption Of An Assumed Name) is \$175.00 plus the out-of-pocket filing fees that are charged by the Illinois Secretary of State.

A word of caution: Use of a name that is different from the LLC's name, without the proper registration, may expose the LLC Members to personal liability for obligations of the entity.

Other Services: Further changes to the LLC Operating Agreement following its original preparation and adoption, and other legal assistance beyond the activities discussed here, will be discussed at the time the new services are requested and we will agree upon either a flat fee or hourly fee basis appropriate for the project. Regular hourly attorney rates for litigation and non-litigation matters will be provided on request, as they change from time to time.

Fees & Costs; Confirmation of Our Engagement; Retainer Deposit:

Whether a corporation or LLC is to be created, both require filings to be prepared and submitted to the Illinois Secretary of State. The filing fee to set up a traditional LLC is shown below. The Secretary of State will usually confirm the organization of the new entity within 48

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hours after filing of the initial documentation for an additional expediting fee that must be paid at the time of submission. Note the additional "expedited" fee shown below. If regular delivery is requested, the organization of the entity will usually be confirmed within a week to 10 days after the Articles of Organization are submitted.

In most cases we are able to assist with the organization of your new LLC based upon a flat fee attorney engagement. Proposed fee and out of pocket expenses are included with the Engagement Confirmation and instructions for the Retainer Deposit you will receive. Reach out to discuss any questions and to confirm your decision to start the process.

If there are multiple Members, involving negotiation of different classes of ownership or the use of restrictive covenants, purchase or buy-back options, or other non-standard preparation to be included in the Operating Agreement, there will be additional fees. Discuss these prior to the start of the engagement.

Thoughts on the Use of On-Line LLC Creation and Self-Help Steps

There are many areas of the law in which on-line document creation and filing services are useful, or where self-help instructions appear to allow you to save attorney fees. We support those methods if clients want to explore those steps, but we do not recommend them for organizing your new corporation. This is because these services and "how to" methods do not typically review all of the considerations that are important for your organization of the new entity: they do not offer guidance to address potential liability issues; and they do not engage in the all-important attorney-client dialogue that is useful to identify considerations for other related issues (such as contracts, day-to-day and extraordinary business activities, staffing and other matters).

If you choose to organize the new LLC on your own, then retaining our practice to explore these and other issues after you have organized the new entity is not based upon flat fee billing. You will be required to sign an hourly billing agreement that frequently exceeds the fees quoted here, depending upon the services requested of us.

Steps to begin the process to organize the new LLC:

You will work with our staff to:

1. Complete our Client Contact Information Form.
2. Confirm the exact name that will be used for the LLC [discuss with us the use of any D/B/A identity that is expected and the separate fee and expenses for approval of the D/B/A.]
3. Confirm the identity of each Member and Manager:

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(a) For each Member, provide the name and address as you want it to appear on the corporate organizational documents and in the Illinois Secretary of State Business Services Division records. This includes providing a copy of each Member's unexpired Driver's License, State I.D. or Passport. Residence address information is required to be reported.

(b) For each Member who will be a Manager of the LLC, identify each person and whether the managerial activities will be limited to specific activities in the operation of the LLC. [Note: If a corporation or a person who is not a Member of the LLC will be a Manager, please discuss this with us before the organization documents are submitted for the LLC].

4. Provide the current address location for the principal business operations of the new LLC (this may change if you open a separate office location in the future).

5. Describe in reasonable detail the business activities for the new LLC (review specialized professional or technical business operations with us, if you have not done so already). In the absence of specific business activity description, the Articles of Organization will include a general business purpose description so that the LLC can choose to engage in all lawful activities for which an LLC may be organized in the State of Illinois.

6. Confirm that Marc Sherman, at our Lincolnwood Office address, will be the Registered Agent of the new LLC, or provide to us the identity of the person or company that you would like to identify as the Registered Agent and the Registered Office location.

7. Provide your private email address(es) so that we can arrange for DocuSign signatures for the enabling documents; Confirmation of this Attorney Engagement authorizes Attorney Marc Sherman to electronically execute and submit the LLC filings to the Secretary of State on your behalf when the materials are submitted for filing with the State of Illinois.

Following the State of Illinois approval of the LLC we will provide the draft LLC Operating Agreement for review and work with you to make changes based upon the LLC's specific needs. LLC amendments following completion of the Operating Agreement are not included in the Flat Fee Billing Proposal.

Engagement Confirmation And Instructions For Retainer Deposit

<u>Description</u>	<u>Non-Expedited*</u>	<u>Expedited*</u>
Attorney Fee Quote:	1,050.00	1,250.00
Illinois Secretary of State Filing Fee and CC Charge:	162.50	162.50
Illinois Secretary of State Expediting Fee:		100.00
Total Base Fee Plus Costs:	\$1,212.50	\$1,412.50

* Non-expedited IL Sec of State turnaround is usually 7 – 10 calendar days; Expedited organization is typically 2 business days. In each case, the Secretary of State determines the date of approval.

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** See payment information, below.

Retainer Deposit By E-Check or Zelle

Before we begin working on the LLC organizational materials and filings, we require a retainer deposit of the full amount for the agreed fee and cost quotation. This is paid by e-check through one of our secure payment systems or by Zelle (credit card is not available for retainer deposit). Personal banking information is not retained or used for any other purpose without the client's express permission.

The retainer deposit is usually, but not in every case, the final invoice amount. When the LLC organization is approved and the organizational materials are provided, the firm will also provide an invoice for the fees and out-of-pocket expenses.

It would be our pleasure to assist you with this important project. Please reach out with your questions to Marc Sherman.

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