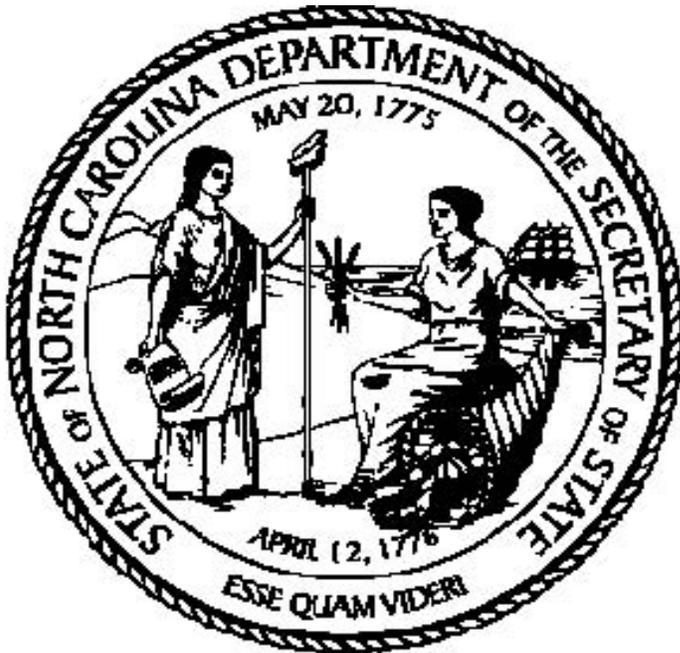


Organizing Your Limited Liability Company in North Carolina



Elaine F. Marshall
Secretary of State

A Message from The Secretary of State of North Carolina

Over the past few decades, North Carolina has earned a reputation on the national and international scale as a desirable place to conduct business. Our state's laws on limited liability company (LLC) organizations, considered some of the most progressive in the entire nation, have helped build that reputation. We here at the Department of the Secretary of State are proud of our ability to make the state's LLC laws work smoothly for our business customers. Organization is one of the biggest steps in setting up an LLC. We want to do everything we can to make a swift, easy process for our customers.



This guide, *Organizing Your Limited Liability Company in North Carolina* is designed to help you through the organization process. We have identified many of the most common questions customers ask during the organization process and have provided detailed answers to them here. At the same time, you should remember that this guide is not intended as legal advice or legal opinion. If you have any questions specifically regarding your business entity, we encourage you to consult an attorney. If you have a general question regarding business entities in North Carolina and you don't see it in this guide, please contact the Corporations Division. You can reach the Corporations Division at:

Corporations Division
N.C. Department of the Secretary of State
PO Box 29622
Raleigh, NC 27626-0622

(919) 807-2225
(888) 246-7636
(919) 807-2039 (fax)
corpinfo@sosnc.com
www.sosnc.com

On behalf of the staff here at the Department of the Secretary of State, I'd like to thank you for doing business in North Carolina. We look forward to making the organization process a pleasant one for you and your company.

A handwritten signature in cursive script that reads "Elaine F. Marshall".

Elaine F. Marshall
NC Secretary of State

Introduction

Limited liability companies differ from business corporations in many respects. In determining if you wish to establish a limited liability company, you will want to consider many factors, from management structure to tax codes. In making this decision, you may want to consult with an expert such as an attorney, who could help you determine which structure best suits your needs as well as refer to Chapter 57C and 55D of the North Carolina General Statutes, the *North Carolina Limited Liability Company Act* and *Filings, Names, and Registered Agents for Corporations, Nonprofit Corporations and Partnerships* respectively.

This publication is designed to provide guidance to those interested in organizing a limited liability company and should not be used as a substitute for competent legal counsel.

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Limited Liability Company Names

Part of the process of organizing is choosing and reserving a name for your limited liability company. Our office will approve or reject proposed corporate names according to North Carolina law, which requires that the name chosen must be distinguishable upon the records of the Secretary of State from the name of other business entity of record in North Carolina. Proper name selection is important in your process of organizing because other parties may sue for unfair competition or trade name infringement if the name chosen is so similar to another business entity's name as to deceive or confuse the public.

The steps involved in choosing a corporate name are the following:

1. Selecting a Name;
2. Determining whether it is feasible to use the name;
3. Putting the name in use; and
4. Deciding on a trademark or service mark.

If you are seeking to obtain protection for a particular corporate name or to resolve a dispute over such a name, you should seek the advice of an attorney rather than contact this office.

Selecting a Name

In choosing the limited liability company's name there are certain legal requirements of which you should be aware:

- 1 A limited liability company name shall not contain language stating or implying that the organization is organized for any purpose other than a purpose that is lawful and that is permitted by its Articles of Organization.
- 2 The limited liability company's name must be distinguishable upon the records of the Secretary of State, from the name of any business entity of record, a corporate name reserved or registered, or a name used, reserved, or registered by a limited liability company, or a limited partnership or a limited liability partnership.
- 3 The name of a limited liability company must contain the words, "limited liability company: or the abbreviation "L.L.C." or "LLC", or the combination "ltd. Liability Co." or "ltd. Liability company."

The choice of a name depends on many factors, but there is one important rule to follow. Do not choose a name because you have seen it elsewhere and believe it will work well for your own company, unless you obtain written permission of the party already using the name. Also, examine N.C. Gen. Stat. § 55D-20 and 55D-21 and Chapter 80 of the North Carolina General Statutes for more details.

Feasibility of a Name

If you have chosen a limited liability company name, you may do the following in order to determine if the name chosen is available for use:

1. You can check the telephone books in your area for similar names.

2. You can check the Register of Deeds office in your county and surrounding counties for similar names listed as assumed names or partnership names.
3. You can check online or call the N.C. Department of the Secretary of State to determine if a proposed name would be available as a limited liability company name or if the name contains any words which are restricted.
4. You can check business directories, city directories, chamber of commerce lists, etc. in your locality for similar names.
5. For a fee, you can hire an attorney or a trademark search firm to conduct a trademark search through the U.S. Patent and Trademark Office for similar Federal trademark or service mark registrations.
6. You can check online or call the Trademark Registration Office to determine if the words which make up your proposed name have been registered as a trademark or service mark under North Carolina law.
7. You can conduct searches similar to those outlined above in other states which you plan to operate by contacting the officials in those states which are in charge of similar types of registration. The appropriate offices and the details of registration may vary according to the laws of each state.

You are responsible for deciding which of these steps you should follow to determine whether the name you've chosen for your company is available or not. We strongly recommend that you make sure you have received all of your final organization papers from the N.C. Department of the Secretary of State before you spend any money on supplies such as checks, stationery, signs or any other printed items.

Should your company decide upon a name that is already reserved by another North Carolina corporation, limited liability company, limited partnership or limited liability partnership, it is possible to transfer that name to your company if the current users of the name agree. To do this you need to fill out form BE-04, "Notice of Transfer of Reserved Name."

Statutory Prohibitions

Please keep in mind when naming your company that there are certain words and phrases that you are prohibited by law from using in your business entity name unless you have received permission from the proper legal authority. Those words and phrases include:

Bank, Banker and Banking
Trust
Mutual
Cooperative, Co-op

The Department of the Secretary of State will also reject the following words in business entity names unless the applicant can provide documentation that proves his or her company is legally qualified to provide the service indicated:

**Insurance
Engineer, Engineering
Architect, Architecture, Architectural
Surveyor, Survey, Surveying
Certified Public Accountant and abbreviations of such**

Wholesale (unless a letter is submitted with the Articles of Organization stating that the company will comply with N.C. Gen. Stat. § 75-29 by engaging principally in wholesale rather than retail business.)

There are several other words which the Department of the Secretary of State could reject in your business entity name without adequate documentation that your business is legally qualified to provide the service implied in the corporate name. If you have any questions about whether or not you should provide documentation for your chosen name, call the Corporations Division at (919) 807-2225.

18 NCAC 04 .0502 Words Prohibited in Addition to Statutory Prohibitions

- (a) The words "engineer" or "engineering" or their derivatives shall not be included in the corporate name for a corporation unless it is organized pursuant to G.S. Chapter 55B or, if it is a foreign corporation, unless it complies with G.S. 55B-16, provided that the words specified shall not be prohibited in any case where such words are modified by another word or words in such manner as to indicate activity other than the practice of engineering as defined in G.S. 89C-3(b).
- (b) The words "surveyor", "survey", "surveying", or their derivatives shall not be included in the corporate name for a corporation unless it is organized pursuant to G.S. 55B or, if it is a foreign corporation, unless it complies with G.S. 55B-16, provided that the words specified shall not be prohibited in any case where such words are modified by another word or words in such manner as to indicate activity other than the practice of land surveying by registered land surveyors as defined in G.S. 89C-3(7).
- (c) The words "architecture", "architectural", "architect", or their derivatives shall not be included in the corporate name for a corporation unless it is organized pursuant to G.S. 55B or, if it is a foreign corporation, unless it complies with G.S. 55B-16, provided that the words specified shall not be prohibited in any case where such words are modified by another word or words in such manner as to indicate activity other than the practice of architecture as defined in G.S. 83A-1(7) or landscape architecture as defined in G.S. 89A-1(c).
- (d) The word "co-op" shall not be included in a corporate name in which the use of the word "cooperative" is prohibited by G.S. 54-139.
- (e) When a document is submitted conferring a corporate name containing the word "wholesale," unless the purpose clause of the document indicates clearly that the corporation shall not engage in retail sales, the Corporations Attorney shall not file the articles unless he finds, pursuant to written assurance by the principals or their attorney, that the corporation shall comply with G.S. 75-29.
- (f) The corporate name for a business corporation shall not contain the word "realtor."
- (g) The corporate name for a business corporation shall not contain the word "insurance" followed directly by a corporate ending or the word "insurance" followed directly by a geographical designation and a corporate ending.

18 NCAC 04 .0503 Deceptively Similar and Distinguishable Names

(a) Designations of entities, such as "company", "co.", "limited", "ltd.", "corporation", "corp.", "incorporated", "inc.", "professional association", "p.a.", "limited liability company", "L.L.C.", "professional limited liability company", and "limited partnership" shall be disregarded in determining if a proposed entity name is distinguishable upon the records of the Secretary of State, provided that such words appear at the end of the proposed entity name. Such words shall not be disregarded in such determination when they appear in the body, rather than at the ending, of the proposed entity name.

(b) Articles, conjunctions, prepositions, punctuation, spaces, and the substitution of an Arabic numeral for a word shall be disregarded in determining whether a proposed entity name is distinguishable upon the records of the Secretary of State or otherwise permissible for use in a proposed entity name.

Putting the Name in Use

Once you have gone through the necessary steps in determining the availability of your limited liability company's name, you are ready to put it in use. By properly filing its Articles of Organization, a domestic limited liability company is formed.

If you are a foreign limited liability company trying to qualify in North Carolina, you need to apply for a Certificate of Authority by filing a Form (L-09), Application for Certificate of Authority, with the Department in order to qualify to transact business in North Carolina. The filing fee is \$250.

This filing means only that the chosen name is acceptable under the North Carolina Limited Liability Company laws. It does not guarantee that the use of the name will not be challenged by someone who has been using a similar name and who charges that the use of your chosen name constitutes unfair competition.

You may reserve a name prior to filing Articles of Organization by filing Form BE-03, "Application for Reserved Name" and paying a \$30 fee. Foreign LLCs may register a name by filing For BE-13, "Application for Registered Name" and paying a \$30 fee.

Articles of Organization

Articles of Organization, Form L-01, is the legal document that must be filed in order to form a limited liability company. The information required to be included is detailed below. It is suggested that any other information be contained in your operating agreement. Operating Agreements are not filed with the Secretary of State. See N.C.G.S. § 57C-2-21 for more information.

Articles of Organization must include the following:

Company Name

The exact company name, including abbreviations, punctuation, etc. must be used consistently in all documents filed. For example, the company name stated in the caption of the documents filed must be identical to the name stated in Articles of Organization. The name must also include an ending (i.e., limited liability company, llc, etc.)

Dissolution Date

The company may state a latest date of dissolution. If a date is stated, it must be a “date certain” – month, day and year. This date can be extended at some point in the future. The future date must also be a specific date. If no date is specified, the LLC will be considered to be perpetual.

Organizers/Members

At least one person must execute the Articles of Organization. The articles must state the name and business address of each person executing the Articles of Organization, and must also state whether each of those persons is executing the document in the capacity of a member or organizer.

The Articles of Organization may identify the initial members of the LLC. Unless the Articles of Organization provide otherwise, any person who executes the articles in the capacity of a member, and any person otherwise named in the articles as a member of the LLC, becomes a member at the time the filing becomes effective.

Principal Office Address

If the limited liability company has a principal office, the Articles of Organization must identify the complete street address of that office, along with the county in which it is located. The Articles of Organization must also state the complete mailing address of the limited liability company if the mailing address is different from the street address.

Registered Office and Agent

A limited liability company is required to have a registered office and a registered agent (N.C.G.S. § 55D-30). The duty of the registered agent is to forward to the business entity at its last known address any notice, process, or demand that is served on the company. A registered agent must be:

1. An individual who resides in North Carolina and whose business address is identical to the registered office;
2. A domestic business corporation, nonprofit corporation, limited liability company whose business address is identical to the registered office; **or**
3. A foreign business corporation, nonprofit corporation, or limited liability company authorized to transact business in this state and how business address is identical to the registered office.

The Articles of Organization must set forth the street address (**and the mailing address, if different from the street address**) of the registered office, as well as the county in which the registered office is located, and the name of the initial registered agent. The registered office may, but need not be, the same as any of the company’s places of business.

Managers

According to N.C.G.S. §57C-3-20(a), all members of a limited liability company are also managers of the company unless it is specifically stated otherwise. Make sure to indicate on the Articles of Organization form which of these is true for your company.

Optional Provisions

The articles of Organization may set forth any provision that can be included in the operating agreement of a limited liability company or other provisions that are consistent with the law. The articles may contain:

1. A statement of the purpose or purposes for which the company is organized;
2. Provisions relating to management and regulation of the company's affairs;
3. Provisions which define, limit, or regulate the powers of the company, its managers, and its members;
4. Provisions defining the qualifications, rights, and responsibilities of its members; and
5. Provisions limiting or eliminating the personal liability of any member/manager for monetary damages for breach of any duty as a member/manager.

Powers

N.C.G.S. §57C-2-02 sets forth certain powers that all limited liability companies shall have, unless the Articles of Organization state otherwise. Because these powers are statutory, they do not need to be listed in the Articles of Organization. Among these statutory powers are the following: to sue, and be sued; to complain and defend in its own name; to purchase, lease, acquire, hold, use, own, or otherwise deal in and with any real and personal property; to make contracts and incur liabilities; to elect or appoint managers, officers, employees, and agents; and to render professional service, subject to the regulations of N.C.G.S. §57C-2-01(c).

Notarization Not Required

Notarization is not required for corporate documents to be filed with the N.C. Department of the Secretary of State. It is permissible for such documents to be notarized or verified. However, the notarization or verification must not be defective in any way or the document will be rejected.

Filing the Document

One executed original of the Articles of Organization, Form L-01, signed by at least one member or organizer, must be submitted to the N.C. Department of the Secretary of State by mail or in person, along with a check, money order, or cash in the amount of \$125.

The Office of the Secretary of State will examine the Articles of Organization, and if the articles satisfy the requirements of the NC Limited Liability Company Act, they will be stamped "filed" with a date and time of filing. The signed original will be retained by the N.C. Department of the Secretary of State. A certified copy will be returned to the person who submitted it for filing either electronically via e-mail or through regular mail. E-mailed certified documents provide notification as soon as the document is filed and an image of the document to be electronically retained in the corporate files of the business.

Articles of Organization are not required to be filed with the office of the Register of Deeds.

Certificate of Authority

A Certificate of Authority is a legal authorization which a foreign business entity must obtain in order to be able to transact business in this state (N.C.G.S. § 57C-7-02(a)). In order to be qualified to transact business in North Carolina, the company must complete and submit one executed original application for a Certificate of Authority to the NC Department of the Secretary of State. All of the sections must be completed. The application must include the following (N.C.G.S. 57C-7-04(a)):

Company Name

The company name, including abbreviations, punctuation, etc., should be exactly as it appears on file in the state of organization. If the name is not available for use in North Carolina because it is not distinguishable from another business entity in the records of the Corporations Division, the company is required to use a fictitious name which must be stated on the application. If a fictitious name is necessary, the application must be accompanied by a resolution of the limited liability company's managers adopting the fictitious name.

State of Organization and Period of Duration

You must specify the state or country in which your company was originally organized along with a date of organization along with the period of duration. This information must be consistent with the information found in the Articles of Organization.

Principal Office

You must state the street address, and mailing address, *if different from the street address*, of the principal office address in the state or country in which it is organized.

Registered Office/Agent

A foreign limited liability company is required to have a registered office and agent in North Carolina. The duty of the registered agent is to forward to the company at its last known address any notice, process, or demand that is served on the registered agent. A registered agent must be:

1. An individual who resides in North Carolina and whose business address is identical to the registered office;
2. A domestic business corporation, nonprofit corporation, limited liability company whose business address is identical to the registered office; **or**
3. A foreign business corporation, nonprofit corporation, or limited liability company authorized to transact business in this state and how business address is identical to the registered office.

If the Registered Agent is a business entity required to be filed with the Secretary of State's Office, the entity must be active upon the records of the Secretary of State's Office.

You must specify the street address and the mailing address, *if different from the street address*, of the company's registered office in North Carolina, as well as the county in which such office is located. You must also identify the company's registered agent in North Carolina. The registered office may, but need not, be the same as any of the company's places of business.

Managers

The names and business addresses of the current managers of the company must be included.

Certificate of Existence

The foreign company must include with the application a Certificate of Existence (or document of similar import) duly authenticated by the Secretary of State or other official having custody of corporate records in the country or state under whose law it is incorporated. This Certificate of Existence must be an original and not be more than 6 months old.

Filing the Document

One signed original copy of the application for the Certificate of Authority (Form L-09), along with an original Certificate of Existence, duly authenticated by the Secretary of State (or the appropriate official) of the state of organization, are submitted to the N.C. Department of the Secretary of State by mail or in person, along with a check, money order, or cash for the full filing fee required by law. The filing fee is \$250.

The N.C. Department of the Secretary of State will examine the application for the Certificate of Authority, and if the application satisfies the requirements of the NC Limited Liability Company Act, it will be stamped filed with the date and time of filing. The signed original and the Certificate of Existence will be retained by the N.C. Department of the Secretary of State. A Certificate of Authority authorizing the company to conduct its affairs in this state and a filed copy of the application will be returned to the person who submitted it for filing either electronically via e-mail or through regular mail. E-mailed certified documents provide notification as soon as the document is filed and an image of the document to be electronically retained in the corporate files of the company.

Responsibilities of the Company

It is the responsibility of the company to:

1. Provide an annual report to the NC Secretary of State's Office in a timely manner;
2. Have a current Registered Agent of record with the NC Department of the Secretary of State;
3. Notify the NC Secretary of State within 60 days of any change in the Registered Agent name or address; that's its registered agent has resigned or that the registered agent office has been discontinued; and

Not providing the NC Secretary of State with the above listed information in a timely manner constitutes grounds for administrative dissolution. Grounds for administrative dissolution and the procedures for administrative dissolution can be found at N.C.G.S. §57C-6-03.

Annual Report Requirements

Each domestic limited liability company other than a professional limited liability company governed by N.C.G.S. §57C-2-01(c) and each foreign limited liability company authorized to transact business in this State, shall deliver to the Secretary of State for filing an annual report, in a form prescribed by the Secretary of State.

Information contained in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

Annual Report Due Date and Fees

The first annual report is due on April 15th of the year following the creation year and every year thereafter on or before April 15th. The annual report may either be filed electronically or a pre-populated annual report may be downloaded online and mailed to the NC Secretary of State's Office.

The annual report fee for a limited liability company is \$200.00.

Note: No tax software forms will be accepted for filing.

Members, Managers and Operating Agreement

All limited liability companies must have an organizational structure and rules or bylaws by which they are managed. The organizational structure is comprised of managers, who handle internal management of the company, and members, who have certain specified rights in the operation of the company. The internal management of the company is regulated by the Operating Agreement and the Articles of Organization.

Members

Members are those persons who have membership rights in the organization in accordance with the provisions of its Articles of Organization and/or the Operating Agreement. All persons executing the Articles of Organization in the capacity of a member and any person otherwise named in the Articles as a member of the LLC, become members of the company upon the effective date and time of filing of the Articles of Organization by the Department. Membership may later be acquired in accordance with the Articles of Organization or the Operating Agreement or, if no such provision is made therein, by the unanimous consent of the members.

Membership in a limited liability company entails certain rights and responsibilities. Unless stated otherwise in the Articles of Organization or the Operating Agreement, these rights include the ability to, upon the vote, approval, agreement, or consent of all members:

1. Adopt or amend an operating agreement;
2. Admit any person as a member;
3. Sell, transfer or otherwise dispose of all or substantially all of the assets of the limited liability company prior to the dissolution of the limited liability company; and
4. Merger the limited liability company into or with another limited liability company or other business entity.

Managers

Managers are those persons who are responsible for the management of the limited liability company. Unless the Articles of Organization provide otherwise, all members by virtue of their status as members, shall be managers of the limited liability company.

The Articles of Organization or Operating Agreement of the company may set forth the number and qualifications of managers and the manner in which they are to be designated, removed, and replaced. Unless otherwise provided:

1. Managers need not be members;
2. If all members are not manager by virtue of their status as members, the managers shall be those persons designated as managers in a written Operating Agreement.
3. Upon designation as a manager in a written Operating Agreement, the designated person shall serve as manager until he or she resigns or is removed from office according to the provisions of the North Carolina General Statutes, Articles of Organization or written Operating Agreement of the company.

Operating Agreement

A set of rules known as the Operating Agreement governs the internal administration and regulation of the affairs of the company along with the Articles of Organization. The Operating Agreement may contain any provisions not inconsistent with the law or the Articles of Organization. The written Operating Agreement is filed with the N.C. Department of the Secretary of State. (N.C.G.S. § 57C-2-20 (c)).

Registering Trademarks and Service Marks

A *trademark* is any word, name, symbol, graphic image or combination of words and graphic images that your company has formally adopted and uses to identify its products and distinguish them from the products of its competitors. A *service mark* identifies your company's services and distinguishes them from the services offered by your competitors. Registering a trademark or service mark serves as public notice that you are claiming ownership of that distinguishing mark. It may protect your company from having a competitor adopt a conflicting mark. Registering trademarks and service marks is voluntary.

While the Department of the Secretary of State does not require you to register any of the trademarks or service marks your company uses, we do strongly recommend that you protect those marks by registering them. The Trademark Registration Office can provide you with registration forms for your trademark or service mark. Trade names can qualify for registration as service marks if they meet certain statutory requirements set by the State of North Carolina. Call the Trademark Registration Office at (919) 807-2162 for more information on the registration process or for registration forms. You may fax requests for information to (919) 807-2215 or send them via e-mail to trademrk@sosnc.com.

Both trademarks and service marks must already be in use in North Carolina before they can be registered. Your company's goods must already be manufactured and distributed in this state or its services must already be rendered before you can apply for trademark or service mark registration. Simply advertising that your company's goods or services will be available in North Carolina in the future does not establish that they are currently in use here. When filing for trademark or service mark registration, you should also provide the Trademark Registration Office with actual specimens of the mark as it is used on your company's products or to advertise your company's services.

The NC Trademark Registration Act uses the International classification system. This classification system allows businesses in North Carolina to register similar names for unrelated products and services and prevents duplicate registration of marks that are so similar they could easily confuse consumers.

You can register trademarks and service marks at the Federal level as well as at the state level. While Federal registration will protect your mark throughout the entire United States, it is usually a time-consuming process. Many companies prefer to seek state mark registration in order to protect their marks until they receive Federal registration. State and Federal mark registrations are totally unrelated and the agencies on both levels which handle trademark and service mark registration do not cross-check other state or Federal records as part of the registration process. Requirements for state and Federal mark registration are not identical. Acquiring a Federal mark registration does not mean that your mark will be accepted at the state level. You must always meet the state requirements in order to obtain state trademark or service mark registration. For more information on Federal trademark and service mark registration, contact the Commissioner of Patents and Trademarks, Building Three, Crystal Plaza, Arlington, VA 20231 or call (703) 557-4636. You can view the Web page at www.uspto.gov.

For more information on State Trademark Registration, visit the Trademark Registration Office link from the main NC Secretary of State website at www.sosnc.com.

North Carolina Licensing Boards

Alarm Systems Licensing Board	(919) 662-4387
Board of Architecture	(919) 733-9544
Auctioneer Licensing Board	(919) 981-5066
Board of Barber Examiners	(919) 715-1159
Board of Certified Public Accountants Examiners	(919) 733-4222
Board of Chiropractic Examiners	(704) 782-0111
Board of Cosmetic Art Examiners.....	919) 733-4117
Board of Registered Counselors	(919) 787-1980
Board of Dental Examiners.....	(919) 781-4901
Board of Examiners of Electrical Contractors	(919) 733-9042
NC Board of Electrolysis Examiners.....	(336) 789-1538
Board of Examiners for Professional Engineers and Land Surveyors.....	(919) 881-2293
Board of Registration for Foresters.....	(919) 772-5883
Hearing Aid Dealers and Fitters Board.....	(919) 715-8750
State Board for General Contractors.....	919) 571-4183
NC Board for Licensing of Geologists	(919) 850-9669
Board of Landscape Architects.....	(919) 850-9088
Landscape Contractors Registration Board	(919) 266-8070
Board of Law Examiners	(919) 828-4886
Public Librarian Certification Commission	(919) 733-2570
Medical Board.....	(919) 326-1100
Midwifery Joint Committee.....	(919) 782-3211

Board of Nursing.....	(919) 782-3211
Board of Nursing Home Administrators.....	(919) 571-4164
NC Board of Occupational Therapy	(919) 832-1380
Board of Opticians	(919) 733-9321
Board of Optometry	(910) 285-3160
Board of Pharmacy	(919) 942-4454
NC Board of Physical Therapy Examiners.....	919) 490-6393
State Board of Plumbing, Heating and Fire Sprinkler Contractors	(919) 875-3612
Board of Podiatry Examiners.....	(919) 468-8055
Private Protective Services	919) 662-4387
NC Psychology Board.....	(704) 262-2258
Real Estate Commission	(919) 875-3700
State Board of Refrigeration Examiners.....	(919) 755-5022
Board of Sanitarian Examiners	(704) 212-2006
Board for Social Work.....	(336) 625-1679
Board of Examiners for Speech and Language Pathologists and Audiologists	(336) 272-1828
Veterinary Medical Board.....	(919) 733-7689

Organizing a Limited Liability Company in North Carolina: Questions & Answers

Q: *What is a limited liability company?*

A: A limited liability company (LLC) is an unincorporated separate entity that is a cross between a corporation and a partnership with certain advantages to both of them. The owners are referred to as “members” and the company can have from one to an unlimited number of members. Members can be natural persons, sole proprietorships, corporations or any other form of entity whether for profit or nonprofit.

An LLC can also be defined by comparing it to other business entities. An LLC is:

1. A general partnership with limited liability;
2. A limited partnership where all owners can participate in management and still retain their limited liability protections;
3. An S corporation without the ownership, distribution, voting and tax restrictions;
4. A closely held family corporation with pass through tax benefits;
5. A sole proprietorship with owner’s liability protection; and
6. An entity that can raise initial capital without the restrictions placed on newly-formed corporations.

Limited liability companies are the entity of choice across the United States. There are more LLCs formed than any other entity. Limited liability companies are regularly used for estate and gift planning; real estate development and holding; asset protection; joint ventures; capital formation; family businesses; and as an all purpose business form.

Q: *What are the advantages and disadvantages of making your business a limited liability company?*

A: The Department cannot advise on matters such as this. For an explanation of the differences, please contact an attorney or other adviser. However, one advantage of forming a limited liability company is that it can protect an individual's personal assets, and may also protect against others using your business name.

Q: *What is the difference between a "limited partnership," a "limited liability partnership," and a "limited liability company?"*

A: A limited partnership is a partnership with two types of partners: general partners and limited partners. The general partners manage the business and are subject to unlimited liability; that is, the general partners are personally liable for the debts and obligations of the partnership. Generally, limited partners are not personally liable for the debts and obligations of the company. Filing a certificate of limited partnership with the Secretary of State creates limited partnerships.

A limited liability partnership, also called a registered limited liability partnership (RLLP), is a type of general partnership. RLLPs are frequently businesses that provide professional services, such as law firms. An RLLP does not have "limited partners," but a general partner is nevertheless NOT subject to personal liability for the malpractice of another partner unless he or she participates with or is responsible for supervising the partner committing the malpractice. A general partnership becomes an RLLP by filing an application for registration with the Secretary of State.

A limited liability company (LLC) has some of the characteristics of partnerships and some of the characteristics of corporations. A limited liability company may be organized to avoid "double taxation" which frequently accompanies a corporation. The owners of a limited liability company are called members. LLCs are managed by the members or by managers who may or may not be members. Members enjoy "limited liability." Filing articles of organization with the Secretary of State creates LLCs.

Q: *What is the difference between an LLC and a business corporation at the Secretary of State's Office?*

A: Aside from the management structure and different forms used to create each type entity, the only difference concerns the annual report requirements. A business corporation annual report is due to either the Secretary of State's Office (electronically) or the Department of Revenue (paper form) on the 15th day of the fourth month following the fiscal year end of the business. The fees are \$20 (including electronic filing fee) and \$25 respectively. A limited liability company's annual report is not connected in any way to a fiscal year, the report is due to the Secretary of State's Office in electronic form on April 15th following the year of creation. The annual report fee for an LLC is \$200. See the *Guidelines to filing Annual Reports online* from the guidelines menu.

Q: *How many people are required to form a non-profit corporation; a limited liability company or a business corporation?*

A: One or more.

Q: *How many people are required to form a limited partnership?*

A: Two or more (1 limited partner and 1 general partner).

Q: *How do I organize my company in North Carolina?*

A: First, you must file your company's Articles of Organization with the Corporations Division. Make sure the following information is provided in your filing:

The name of your company

Your company's name must include at least one of the following business entity endings: Limited Liability Company, LLC, Ltd. Liability Company, etc.

Dissolution Date

The company may state a latest date of dissolution which must be a date certain listing the month, day and year. This date can be extended at some point in the future. The future date must also be a specific date. If not date is specified, the LLC will be considered perpetual.

Organizers

As least one person must execute the Articles of Organization. The articles must state the name and address of each person executing the Articles of Organization and must also state whether each of those person is executing the document in the capacity of a member or an organizer.

The Articles of Organization may identify the initial members of the LLC. Unless the Articles of Organization provide otherwise, any person who executes the articles in the capacity of a member, and any person otherwise named in the articles as a member of the LLC, becomes a member at that time the filing becomes effective.

The street address and county of the registered agent/office and the name of the registered agent

The Registered Office is the business address for the Registered Agent. The Registered Office must be located in North Carolina and have a physical address. If the mailing address of the registered office differs from its geographic address, please provide both in your filing. A street address must be provided for the initial registered office. *See page 8 of this publication for more detailed information regarding registered agents.*

Principal Office Address

A principal office is the location where the business has its office or where the business records are kept if no such business office exists. If the company has a principal office upon creation, the Articles of Organization must identify the complete street address of that office, along with the county in which it is located. The articles of organization must also state the complete mailing address of the principal office if the mailing address is different from the street address. The annual report requires a principal office location.

Other Provisions

If the limited liability company is being formed pursuant to the conversion of another business entity, the Articles of Organization must also contain Articles of Conversion that state:

1. That the domestic limited liability company is being formed pursuant to a conversion of another business entity;
2. The name of the converting business entity, its type of business entity and the state or country whose laws govern its organization and internal affairs; and
3. That a plan of conversion has been approved by the converting business entity as required by law.

Cover Sheet

Provide the Office with a cover sheet along with your filing and fee. The cover sheets can be found online by clicking “cover sheet” on the main Corporations web page at <http://www.secretary.state.nc.us/corporations/>. The current policy of Corporations Division is to e-mail problem documents and certified copies of filed documents to the filer. The filer receives confirmation as soon as the document is filed and an electronic copy of the document for the corporate files.

Note: Please remember **do not** include any personal identifying information within any document filed with the NC Secretary of State’s Office, such as date of birth, social security numbers, or federal identification numbers.

Q: Who is authorized to execute documents to be filed at the NC Department of the Secretary of State?

A: A document required or permitted by to be filed by the Corporations Division of the Secretary of State must be filed under Chapter 55D of the General Statutes.

A document submitted on behalf of a domestic or foreign limited liability company must be executed:

1. By a manager, director, or executive of the limited liability company;
2. If the limited liability company has not been formed or if the limited liability company has never had any members, by an organizer; or
3. If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary. (N.C.G.S. §57C-1-20)

Q: Where do I file my company’s Articles of Organization?

A: You can mail your filing to the Corporations Division, N.C. Secretary of State, P.O. Box 29622, Raleigh, N.C. 27626-0622. If you want to deliver your Articles of Organization in person and need directions to our office, please *Google* or Map Quest the address 2 South Salisbury Street, Raleigh, NC 27601.

Q: How much will it cost to file my company’s Articles of Organization?

A: The fee for Articles of Organization is \$125.

Q: *How will I know when my Articles of Organization have been filed?*

A: Once your Articles of Organization have been filed, you will receive a certified copy of them from the Department of the Secretary of State by e-mail as soon as the document is filed if a cover sheet was provided including the e-mail address or via regular mail if the e-mail address was not provided.

Q: *Do I have to hire an attorney to organize an LLC?*

A: No, but you should consult an attorney if you have any legal questions concerning your company, such as taxation, liability of the owners and other issues not directly related to filing the Articles of Organization. Please keep in mind that, while we will do everything we can to make the organization process as easy as we can, the Corporations Division can only act in an administrative capacity. We cannot offer you legal advice or opinion on your particular filing. We recommend that you consult with your own attorney and accountant during the organization process.

Q: *Can the Secretary of State's office answer questions regarding the legitimacy of an LLC?*

A: No. The Secretary of State can only tell a client how long a company has been organized and if it is in good standing with the agency. For questions on legitimacy, the client should contact the Attorney General's Office, Consumer Protection Office, www.jus.state.nc.us/cpframe.htm .

Q: *What do I do once my Articles of Organization have been filed with the Department of the Secretary of State?*

A: There are several more steps you'll need to take before you can actually begin operating as an LLC. You'll need to:

Hold an organizational meeting

If they have not already been specifically named in your Articles of Organization, you should designate a manager. You should then admit additional members. Next, you should develop and execute a written Operating Agreement. Then, adopt banking resolutions for your entity and fix dates for the start and end of each fiscal year.

Approve any other agreements or contracts deemed desirable for your company

Obtain your company's tax identification numbers from the North Carolina Department of Revenue and the IRS

Check with the Business ServiCenter at the Department of Commerce to see if your company needs a license to operate.

The Business ServiCenter is a division of the Department of Commerce. Its mission is to help new businesses like yours identify and complete any governmental permitting processes prior to starting up corporate operations.

Call (919) 807-4280 or toll free 1-800-228-8443 for Business ServiCenter assistance. The web address is:

<http://www.nccommerce.com/en/BusinessServices/StartYourBusiness>

Contact county and local agencies to see what regulations and restrictions may apply to your business.

Your attorney will usually be able to guide you through this process. You are not, however, required by law to hire one.

Set up an accurate bookkeeping system

Most companies hire an accountant to oversee this part of the organization process and check the company's books on a regular basis. An accountant can also help prepare your company's tax filings.

Know when your first annual report is due and how to file

A notice is sent out with each creation document on when the annual report is due for each specific type business entity. If you don't remember receiving this notice and need to find out when and how to file the annual report for a business entity, either click [here](#) or go to the Frequently Asked Questions section of the Corporations Division main web page and choose "Annual Reports – General Questions"

Q: *What are a registered agent and a registered office?*

A: A registered agent can be one of three things:

An individual who lives in North Carolina and whose business office is identical with the registered office.

A domestic corporation, limited liability company or nonprofit domestic corporation whose business office is identical with the registered office.

A foreign corporation, foreign limited liability company or non-profit foreign corporation authorized to transact business in North Carolina and whose business office is identical with the registered office.

If choosing a business entity as the registered agent, the business entity must be active upon the records of the Secretary of State. The registered agent need not be the organizer of the company. The only duty of the registered agent is to forward any notice, process or demand that is served on the registered agent, often by a deputy sheriff, to your company at its last known address. The registered office may—but need not—have the same address as any of the company's places of business. Under North Carolina law, the registered agent and the registered office must be continuously maintained in North Carolina.

Q: *How do I change my registered agent and registered office?*

A: Simply file a Statement of Change of Registered Office and/or Registered Agent with the Corporations Division. You can also change registered agents and registered offices by indicating the change in your annual report.

Q: *When is my company's annual report due?*

A: A limited liability company's annual report is not connected in any way to a fiscal year, the report is due to the Secretary of State's Office in electronic form on or before April 15th beginning the year following the creation year. The annual report fee for an LLC is \$200. See the *Guidelines to Filing Annual Reports online* from the guidelines menu.

Each limited liability company is required to file your company's annual report in a timely manner. Failure to do so may result in the administrative dissolution of your company or revocation of your Certificate of Authority.

Q: Is there any way I can reserve a certain name for my limited liability company before I file for organization?

A: Yes, there is. You can reserve an LLC name for a non-renewable 120 days by filing an Application to Reserve a Name with the Corporations Division of the Department of the Secretary of State. You must pay a \$30 fee at the time you file to reserve your company's name. The name you choose for your company must be clearly distinguishable from the names of all other corporations, limited liability companies and limited partnerships already on file with the Corporations Division. We encourage you to check the corporate name you have chosen by calling us at (919) 807-2225 or searching name availability online. Please understand that any clearance you receive from us by phone or through the internet for a name is preliminary. We cannot guarantee that the name you have chosen will still be available when you file your Articles of Organization unless you file an Application to Reserve a Name. Because of this, we strongly recommend that you not have stationery, business signs, cards or other material printed until you have received your final papers from the N.C. Department of the Secretary of State.

Q: I want to start a new limited liability company as soon as possible. Do I need to file a form to reserve the corporate name I want?

A: No. A name may be reserved so as to save it for later use, but if you're ready to form the limited liability company now, and the name is available for use, there is no need to reserve it.

Q: I filed Articles of Organization with the Secretary of State, but they were sent back unfiled because the name was not available. What do I do now?

A: Select a new name that is available, change the articles and send them back to the Corporations Division of the N.C. Department of the Secretary of State. It is important that you return the same document presented with the returned cover letter so as to connect the payment received to the new document.

Q: The company name I want to use is currently in use by a company that has been dissolved. How long must I wait to use the name?

A: If the company was dissolved voluntarily, the name is available 120 days after the effective date of the dissolution. If the dissolution was administrative, then you must wait five years after the effective date of the dissolution. N.C.G.S. § 55D-21(d).

Q: I want my limited liability company to have a new name. How do I go about changing its name?

A: Changing the name of a company requires the filing of an amendment to the Articles of Organization accompanied by a fee of \$50. Other changes that may be made in the same amendment include: 1) changing the dissolution date; 2) changing member managed to manager managed and vice versa; and 3) changing the registered office or agent. Changing the registered office or agent can also be done by filing a form (BE-06), "Statement of

Change of Registered Office and/or Agent”, for a fee of \$5, or by indicating the change on the Annual report filed with the Department.

Q: *If my company is already organized in another state or nation, what do I have to do in order to conduct business in North Carolina?*

A: You will need to file an Application for Certificate of Authority with the Corporations Division of the Department of the Secretary of State. You should include the following information in your application:

The name of your company

You should provide the name of your company exactly as it appears on file in the state or country where your company was originally incorporated. If that name is not available in North Carolina, you should choose a fictitious name under which your company will conduct business in this state.

If your company chooses to use a fictitious name, you will need to file a copy of the resolution adopting the fictitious name chosen by your company’s managers.

The name of the state or country in which your company was originally organized

The date of organization and the period of duration for your company.

The street address of your principal office in the state or country under whose law it is governed.

This must be an actual geographic location. We will not accept a Post Office Box number.

The mailing address of your principal office if it is different from the street address

This address may be a post office box.

The street address and county of your registered office

Your registered agent office must be located in the state of North Carolina. The address provided must be the actual physical location of your registered agent office.

The mailing address of your registered office if mail is not delivered to the street address. This must be a North Carolina address.

The name of your company’s registered agent.

The names, titles and business addresses of your company’s current managers.

A Certificate of Existence or similar document

This document will have to be authenticated by the Department of the Secretary of State or by the official who has custody of the corporate records in the state or country in which your company was originally organized. In either event, the certification date must be no more than six months old. The Certificate of Existence must also be an original. We will not accept photocopies or fax copies.

Q: *How much will it cost me to file my Application for Certificate of Authority?*

A: The filing fee for an Application for Certificate of Authority is \$250.

Q: *Can I change my Articles of Organization after they've been filed?*

A: Yes, you can. You should file an Amendment of Articles of Organization. The Articles of Amendment must be signed by a manager, or if no manager, by an organizer of the company. Only one signature is required and we do not require a company seal or notarization on Articles of Amendment. There is a \$50 fee for filing Articles of Amendment. Please note that the names of the initial organizers cannot be changed by filing articles of amendment.

Q: *If a mistake has been made on a document that has already been filed, is there a way to correct it?*

A: Yes. You may file Articles of Correction indicating:

- The name of the entity;
- The type of business entity;
- The day the document was filed;
- The type of document or an attachment of a copy of the document filed;
- Statements as to what the errors were on the document; and
- How to correct those errors or an attachment of a corrected document.

The filing fee for Articles of Correction is \$10.

Q: *Where do you file an assumed name certificate?*

A: At the office of the Register of Deeds in any county where you do business.

N.C.G.S. § 66-68.

Q: *Do I need to file my company's Articles of Organization with the local Register of Deeds?*

A: No. The only time local recording is required is when a limited liability company owns real property and the company's name is changed due to an amendment of the Articles of Organization or the company's property is transferred by merger with another company. In that case, a certificate reciting such name change must be filed with the Register of Deeds of any county where the property lies. The Secretary furnishes certificates for this purpose. N.C.G.S. § 55D-26.

Q: *I'd like to get a "Certificate of Good Standing" regarding a particular Limited Liability Company. Does the Secretary issue such certificates?*

A: The Secretary issues "Certificates of Existence" pursuant to N.C.G.S. §§ 55-1-28, 55A-1-28, and 57C-1-28. The certificate gives information about the company's name, about its incorporation or organization, (or authorization to conduct business in North Carolina if it is a foreign entity), about whether the company's articles or Certificate of Authority have been suspended, if its annual report is current, and if articles of dissolution have been filed. The Secretary will certify other facts of record as requested.

The Certificate of Existence may be relied upon as conclusive evidence that the company is

in existence or is authorized to transact business in North Carolina.

Q: *I need a Certificate of Existence in a hurry. May I have it right away if I come to pick it up in person?*

A: No. You may order it by phone, in person, or online. If the certificate is ordered online and the document has already been imaged, the certificate can be downloaded immediately for your use. Orders over the phone presently take approximately 3-4 days to process and mail.

To order a certificate of existence click “Order Certified Documents Online” from the Corporations Division main web page.

Q: *Where can I get a copy of the Limited Liability Company Laws of North Carolina?*

A: For paper copies, contact Lexis Law Publishing Company, P.O. Box 7587, Charlottesville, VA. 22906. You may also phone Lexis Law Publishing at (804) 295-6171 or toll-free at (800) 562-1197. Most public libraries in North Carolina have copies of the North Carolina General Statutes available for public research. You may also access the North Carolina General Statutes through the Secretary of State’s home page www.sosnc.com and clicking on “N.C. General Statutes” at the bottom of the page. The Limited Liability Company Act is Chapter 57C of the North Carolina General Statutes.

Important Note: *The N.C. Department of the Secretary of State produces all forms related to business entities free of charge. The department reserves the right not to accept any form produced by any third party outside this agency. If your forms do not meet the statutory requirements, we will not accept them. We strongly recommend that you use forms provided directly to you by the N.C. Department of the Secretary of State.*

Q: *I want to stop doing business, is there anything I need to file with the Secretary of State’s Office?*

A: Yes, you will need to file Articles of Dissolution with the Secretary of State’s Office. All forms are available from the website under “Print Corporation Forms” by entity type. There are a few documents used across entity types which are located under the Business Entity link.

Payment Policies

1. 18 NCAE 04 .0201 Tender of Payment

Filing of any document shall be accomplished only upon tender of applicable filing fee to the Division.

2. 18 NCAE 04 .0202 Form of Payment

Payment shall be by cash, check or money order. Check or money order shall be payable to Secretary of State, to the State of North Carolina, or to the State Treasurer.

3. 18 NCAE 04 .0204 Cancellation for Nonpayment

After the filing of any document, if the Division determines that the payment of fees and taxes tendered is for any reason insufficient; and, after notice and reasonable opportunity is given to the proper party to submit payment, it is determined that proper payment has not been made, the Secretary of State shall, by appropriate certificate, cancel such filing with a notation that the filing was an error.

4. Non-Sufficient Fund policy

Invoices are due and payable no later than 30 days from the invoice date. Failure to pay the entire invoice within the time described will result in an interest charge of **5% per day** until the invoice is paid, as mandated by G.S. 147-86.23. An additional 10% penalty for late payment shall also be due on invoices not paid within 30 days."

There will be a \$25.00 fee for all returned checks and the document filed may be subject to cancellation.

Administrative Rules can be viewed online at <http://ncrules.state.nc.us/ncac.asp?folderName=\Title%2018%20-%20Secretary%20of%20State>

Addresses

Annual Report Section (only)

PO Box 29525
Raleigh, NC 27626-0525

All other documents to be filed:

Corporations Division

PO Box 29622
Raleigh, NC 27626-0622

Directory of State Agencies

State Operator(919) 733-1110

Department of the Secretary of State

P.O. Box 29622
Raleigh, NC 27626-0622
www.sosnc.com

Corporations Division(919) 807-2225
toll-free (888) 246-7636
fax (919) 807-2039

Lobbyist Registration Division(919) 807-2156

Notary Section(919) 807-2131

Securities Division(919) 733-3924

Solicitation Licensing Section(919) 807-2214
toll-free (800) 830-4949

Trademarks Division.....(919) 807-2162
fax(919) 807-2215

Uniform Commercial Code Section.....(919) 807-2111

Department of Commerce

301 N. Wilmington St.
Education Building, Fourth Floor
Raleigh, NC 27601
www.nccommerce.com

Main Number(919) 733-4151

Business & Industry Development Division.....(919) 733-4151

Business ServiCenter(919) 807-4280
toll free (800) 228-8443

Small Business Administration.....(704) 334-6563

Small Business & Technology Development Center(919) 715-7272

Utilities Commission(919) 733-4249

Department of Revenue

P.O. Box 25000
Raleigh, NC 27640-0640
www.dornc.com

Corporate, Excise & Insurance Tax Division(919) 733-8510

Sales & Usage Tax Division(919) 733-8510
toll free (877) 252-3052
Privilege License Division.....(919) 733-3673
(877) 308-9103

Internal Revenue Service

www.irs.gov

Downloadable Forms<http://www.irs.gov/formspubs/index.html>

Telephone Assistance for:

Business Organizations.....(800) 829-4933

Exempt Organizations, Retirement Plan Administrators & Government Entities .(877) 829-5500

People with hearing impairments.....(800) 829-4059 (TDD)

Department of Crime Control and Public Safety

4704 Mail Service Center

Raleigh, NC 27699-4704

www.ncale.org

Bingo Licensing(919) 733-3029

Corporations Division Fee Schedule

Domestic and Foreign Limited Liability Companies	
Articles of Organization	\$125
Articles of Organization including Articles of Conversion	\$125
Articles of Conversion	\$50
Application for Reserved Name	\$10
Notice of Transfer of Reserved Name	\$10
Application for Registered Name by a Foreign LLC	\$10
Application for Renewal of Registered Name by a Foreign LLC	\$10
Statement of Change of Address of Registered Office for each affected LLC <i>domestic and foreign</i>	\$5
Amendment of Articles of Organization	\$50
Restated Articles of Organization	\$10 or \$50
Articles of Merger	\$50
Articles of Dissolution.....	\$30
Cancellation of Articles of Dissolution	\$10
Application for Certificate of Authority <i>foreign only</i>	\$250
Application for Amended Certificate of Authority <i>foreign only</i>	\$50
Application for Certificate of Withdrawal <i>foreign only</i>	\$10
Articles of Correction <i>domestic and foreign</i>	\$10
Annual Report	\$200
Application for Reinstatement following Administrative Dissolution	\$100
Designation of Registered Office and/or Agent <i>domestic and foreign</i>	\$5
Certificate of Existence (domestic) or Certificate of Authorization <i>foreign</i>	\$15

Advisory Review of a Document	\$200
Any other document required or permitted to be filed	\$10
Copying and/or comparing a copy of any filed document.....	\$1 per page
Certifying a copy of any filed document (paper).....	\$15
Certifying a copy of any filed document (electronic).....	\$10

Forms that require no fee:

Statement of Resignation of Registered Agent

Resolution of Foreign Limited Liability Company Adopting a Fictitious Name

domestic - a domestic or North Carolina corporation

foreign - a foreign or out of state corporation

Appendix: Forms

Application for Reserved Name

Articles of Organization

Articles of Organization including Articles of Conversion

Statement of Change of Registered Office and/or Registered Agent

Application for Certificate of Authority

Amendment to Articles of Organization

[Current copies of these forms and others are available from the Corporations Division's section of the North Carolina Department of the Secretary of State Web site, located at www.sosnc.com.]