

Things to Think About When You're Ready to Start Your Business



How you structure your **business** matters. This eBook walks you through what you need to consider.



THE NEXT STEPS IN
GETTING YOUR
BUSINESS OFF
THE GROUND.



You've been dreaming of starting a business for a long time, and now you're ready to take the next steps. But you're not exactly sure what the next steps are. You've come to the right place. In this eBook, we'll discuss the various ways to organize and structure your organization, and which might be right for you. We'll also look at the items (commonly called "articles of organization") that are required by the State of Alabama to start your business and some (operating agreements or corporate resolutions) that may or may not be required by the state but will be required if your business ever wants to borrow money.

STRUCTURE

We'll start with organizational structure.

Organizational Structure Is Right for My Business?

You've probably heard the terms "corporation," "LLC," "partnership," and more. But you may not have heard the term "DBA." We'll get into what exactly do those terms mean – and which may be right for your business.

Depending on which type of business you decide to start, you may be required to submit what are known as articles of organization. These articles are the document(s) you submit to register your business with the Office of the Judge of Probate in the county where the business's office is located and with the State of Alabama's [Secretary of State](#). (We'll discuss what the state requires for each business type in the sections below.)

If you have questions about what type of formation is best for you, consult with your CPA and/or an attorney who specializes in business entity structure.





“Doing Business As” (DBA)

If you are a sole proprietorship, a “doing business as” (DBA) name is the name your business will use instead of using your name (i.e. “Crafts by Carla” instead of “Carla Smith”). You can open a checking account using your DBA – something that has the benefit of keeping your personal assets separate from your business assets.

One of the biggest benefits of a DBA is that they are less expensive to start and maintain than an LLC.

It is important to know, however, that a DBA offers no protection for your personal assets. If your business is sued, your personal assets could be in jeopardy.

DBAs are sometimes used by LLCs or corporations (i.e. an LLC or corporation used as an umbrella entity that may hold funds for multiple LLCs).

How a DBA Pays Taxes

An individual DBA pays taxes at the individual level, so you’d be paying income tax plus a self-employment tax. Your business income would be included with your Form 104 on a Schedule C. Business owners who are DBA use their Social Security Number instead of a separate Employer Identification Number (EIN).

An LLC using a DBA pays taxes under the EIN of the primary LLC.

Establishing a DBA in Alabama

The State of Alabama does not require you to submit any official formation documents, including a Name Reservation Request Form. You will, however, need to check the [Business Entity Records](#) to make sure another business isn’t already using your desired name.

An operating agreement is not needed if your DBA is a sole proprietorship, but if your DBA is a partnership, you’ll be required to have one. Take a look at the [operating agreement](#) section now.

LIMITED LIABILITY OPTIONS

Limited Liability Company (LLC)

A Limited Liability Corporation (LLC) offer a more formal business structure than a DBA. Like the name suggests, they too offer limited liability, protecting the personal assets of the owner(s) from losses, company debts, or court rulings against the company.

LLCs are not required to have annual meetings, board meetings, or notes from any of these meetings. The owners (also known as members) of the LLC may run the day-to-day business or choose a manager to do so. The operating agreement will establish who has the authority to conduct specific transactions on behalf of the LLC. If this structure changes, it is important to amend the operating agreement to note the changes.

Profits go directly to the owner(s) as personal income (the same “pass-through” as an S corporation discussed on Page 10).

How an LLC Pays Taxes

The [IRS says](#), “Depending on elections made by the LLC and the number of members, the IRS will treat an LLC as either a corporation, partnership, or as part of the LLC’s owner’s tax return... [a] domestic LLC with at least two members is classified as a partnership for federal income tax purposes unless it files Form 8832 and affirmatively elects to be treated as a corporation. For income tax purposes, an LLC with only one member is treated as an entity disregarded as separate from its owner, unless it files Form 8832 and elects to be treated as a corporation.”

An LLC offers numerous tax benefits compared to a DBA. Consult with your CPA about which formation will maximize your tax benefits.

Establishing an LLC in Alabama

To establish a LLC in Alabama, you’ll need to file the [Domestic Limited Liability Company Certificate of Formation](#) with your county and the state. You’ll also need to file a [form](#) to reserve the name of your LLC. (You can check that your desired name is available [here](#).) The form will be submitted along with the Certificate of Formation. (Your LLC’s name must include the words “Limited Liability Company” or the abbreviations “L.L.C.” or “LLC.”)



The Certificate of Formation will require the name of the LLC, the name and address of the registered agent, and the type of LLC being formed (if applicable).

Like with the DBA, a sole proprietorship LLC will not require an **operating agreement**, but an LLC with more than one member will require one.

Partnerships

Investopedia says a partnership “is a formal arrangement by two or more parties to manage and operate a business and share its profits.” In general, partnerships are easier to set up than LLCs or corporations and may not be subject to the same rules and regulations as LLCs or corporations.

The IRS notes that while a partnership does not pay income tax, it “must file an annual information return to report deductions, gains, losses, etc., from its operations.” Each partner then reports their share of the partnership’s income or loss on their personal tax return.

Four types of partnerships exist: general partnership, limited partnership, limited liability partnership, and limited liability limited partnership.

The state requirements for articles of organization differ for the four types of partnerships and are discussed in the sections below. However, as all partnerships have more than one member, each will require an **operating agreement**.

General Partnership

A general partnership does not enjoy limited liability, meaning your personal assets could be at risk if your partnership is sued or goes into debt.

The State of Alabama does not require you to submit any official formation documents like it does with corporations, LLCs, and limited liability partnerships. Like with a DBA, you will, however, need to check the **Business Entity Records** to make sure another business isn’t already using your desired name.

LIMITED LIABILITY OPTIONS



Limited Liability Partnership

Investopedia notes that limited liability partnerships (LLPs) are common structure for professionals like accountants, lawyers, and architects. “This arrangement limits partners’ personal liability so that, for example, if one partner is sued, the assets of the other partners are not at risk.”

Like LLCs, an LLP is a pass-through entity in which the tax responsibility is passed through the partnership to the individual partners.

To establish an LLP in Alabama, you’ll need to file the **Domestic Limited Liability Partnership Statement of Limited Liability Partnership** with your county and the state. You’ll also need to file a **form** to reserve the name of your LLP. (You can check that your desired name is available [here](#).) The form will be submitted along with the Certificate of Formation. (Your LLP’s name must include the words “Limited Liability Partnership” or the abbreviations “L.L.P.” or “LLP.”)

The Statement of Limited Liability Partnership will require the name of the LLP, the street address and mailing address of the principal office, a statement of purpose for the LLP, the names and addresses of the organizers.

Limited Partnership

A **limited partnership is a hybrid approach**. One of the partners is designated as a general partner, who has full liability for the partnership’s debts. At least one other partner is a silent partner, “whose liability is limited to the amount invested” and is not generally involved in the day-to-day operations of the business. The State of Alabama does not require you to submit any official formation documents, except the **Name Reservation Request Form**. (You can check the **Business Entity Records** to make sure another business isn’t already using your desired name.)



Limited Liability Limited Partnership

What a name. [Investopedia says](#) that a limited liability limited partnership (LLLP) is a limited partnership “that provides a greater shield from liability for its general partners.”

To establish an LLLP in Alabama, you’ll need to file the [Domestic Limited Liability Limited Partnership Certificate of Formation](#) with your county and the state. You’ll also need to file a [form](#) to reserve the name of your LLLP. (You can check that your desired name is available [here](#).) The form will be submitted along with the Certificate of Formation. (Your LLLP’s name must include the words “Limited Liability Limited Partnership” or the abbreviations “L.L.L.P.” or “LLLP.”)

The Certificate of Formation will require the name of the LLLP, the name and address of the registered agent, the name(s) and address(es) of the general partner(s).

OPTIONS FOR CORPORATIONS



Corporations

According to [Investopedia](#), a corporation is “a legal entity that is separate and distinct from its owners.” Corporations have many of the same rights that individuals have. They can enter contracts; they can loan and borrow money. They can sue (and be sued). They can hire people, own property, and pay taxes.

A corporation is created by a shareholder or a group of shareholders pursuing a common goal. Most often that goal is to return a profit to its shareholders. A corporation will have annual meetings, a board of directors (and meetings for those directors), resolutions, minutes from meetings, and more. The board of directors appoints the leaders who will run the corporation on a daily basis.

A corporation enjoys limited liability, meaning the shareholders are not personally liable for the company’s debts while they can receive profits in the form of dividends and stock appreciation.

C Corporations Versus S Corporation – A Difference in Tax Status

Also known as a “C corporation,” corporations pay taxes on its net income. According to the [IRS](#), “the profit of a corporation is taxed to the corporation when earned, and then is taxed to the shareholders when distributed as dividends. This creates a double tax. The corporation does not get a tax deduction when it distributes dividends to shareholders. Shareholders cannot deduct any loss of the corporation.”



Corporations can choose to be taxed as an “S corporation,” passing income, losses, deductions, and credits through to shareholders for federal tax purposes. Shareholders then report the flow-through of income and losses on their personal tax returns. The [IRS notes](#) that “S corporations are responsible for tax on certain built-in gains and passive income at the entity level.”

Establishing a Corporation in Alabama

To establish a corporation in Alabama, you’ll need to file the [Domestic Business Corporation Certificate of Incorporation](#) with your county and the state. You’ll also need to file a [form](#) to reserve the name of your corporation. (You can check that your desired name is available [here](#).)

The form will be submitted along with the Certificate of Incorporation. (Your corporation’s name must include the word “Corporation” or “Incorporated” or the abbreviations “Corp.” or “Inc.”)

The Certificate of Incorporation will require the corporation’s street address, the name and address of the registered agent, a statement of purpose for the corporation, the amount of stock the corporation is issuing, and the name and address of the incorporator(s).

Starting a corporation requires a corporate resolution.

AGREEMENTS & RESOLUTIONS

Beyond the Forms: Operating Agreements/Corporate Resolutions

Of course, there's more to getting your business off the ground than simply filling out the required forms.

As discussed above, operating agreements are required for DBAs or LLCs with more than one member and for all partnerships. Corporations require corporate resolutions. Here, we use "operating agreements" broadly to include corporate resolutions.

According to [Investopedia](#), the operating agreement outlines the decision-making structure – for both financial and functional decisions – the business will follow as well as how profits will be shared. Without one, your business will follow the default rules in place for Alabama.

Depending on the type of business you decide to create, you may need to address the following in your operating agreement:

- Each person's ownership (%)
- Person's responsibilities and voting rights
- Duties and powers of the members
- Profit and loss distribution of the members
- Rules for meetings and votes
- Provisions for managing and regulating the business
- Defining the powers of the board of directors and shareholders
- Provisions eliminating or limiting the liability of directors and shareholders
- Buyout and buy-sell provisions
 - Including what happens in the event of a member's death
 - Terms for expelling a member
 - Terms for introducing a new member

We Are Here to Help

Avadian's Business Services team is here to help. We love to help people as they pursue their dreams of creating a successful business.

Of course, we have products and services like checking and savings accounts and merchant services that help you pay bills and send invoices, but we also have a lot of accumulated wisdom and experience.

We'd love to chat with you about how we can help you get your business off the ground.

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