



LLC Formation Checklist

Forming a business to hold your real estate assets provides several advantages over placing property in your own name including, liability protection, reduced taxes, ownership flexibility and often, an easier and more streamlined process when applying for financing.

While there are several different types of business entities that are suitable for holding real estate including S corporations, partnerships, and trusts, we recommend Limited Liability Corporations (LLCs) for their ease of establishment and ownership flexibility.

The following checklist will assist you in establishing your LLC:

- Build a Team
- Decide Where to Register your LLC
- Choose a Name for Your LLC
- Select a Registered Agent
- Submit Articles of Organization
- Draft an Operating Agreement
- Apply for an EIN
- Open a Bank Account

[] Build a Team

As you will see, the process of establishing your LLC isn't overly complex; but it is a series of important decisions. Perhaps this is your first step towards real estate investing, or maybe you've been doing it for years and want to take advantage of the benefits of forming a business; either way, now is the time to build a team of professionals.

The top two people you'll want on your team are an attorney and a certified public accountant (CPA). If your LLC will be leasing to tenants, you will want to make sure your attorney is familiar with landlord-tenant law and if you're a multi-member LLC you'll want one familiar with operating agreements. The same goes for CPAs, as there are those who specialize in servicing real estate investors. If you don't know any, ask other investors you know or look online, most offer initial consultations for free.

Depending on whether your focus is on fix & flips or building a portfolio of rental properties, you may want to include title and insurance agents, contractors and property managers to your team. There are many nuisances to real estate investing; building a team sets you and your company up for success.

[] **Decide Where to Register Your LLC**

LLCs are established in accordance with state law. You need only form your LLC in one state even if you intend to own property in several. As you will see later in the Operating Agreement task, your LLC will be identified by its name and the state in which it was formed.

When establishing your LLC and deciding where to form it, consider the following: the cost of formation, tax implications, ease of administration and available legal protections as these will all vary depending on the state in which you choose to form your LLC.

The cost of formation can vary by state, but typically filing fees range between \$50 and \$500 and there are additional yearly costs to maintain an LLC. A CPA can provide advice on the tax and administrative costs of maintaining an LLC in different states and help you with this decision.

A couple states offer what is called a series LLC. Series LLCs are a newer type of entity with more complicated formation requirements. Due to their inherent complexity and difficulty in finding lenders who work with this type of LLC it is recommended to create a standard LLC.

Lastly, if you intend for your LLC to hold property in a state different from where you initially formed it, it is important to file a “foreign business registration” with the new state. This does not create a new company but rather informs the new state that your LLC is conducting business within it. This is especially important if your LLC’s properties will have tenants; as failure to register your LLC could lead to the loss of important and vital legal and liability protections.

[] **Choose a Name for Your LLC**

The name of your LLC can be functional like a property address or creative and aspirational; however, each state requires that it be “distinguishable” from other entities.

Like any business, considerations for a name include distinguishability, branding and even the availability of a particular internet domain name. If you intend to engage in marketing efforts to attract customers, tenants or build a brand, then choosing a name that is memorable or easily associated with the type of services you offer is recommended. Alternatively, some owners of real estate prefer anonymity and choose to use more generic names.

Most states offer a link on their state corporation commission or secretary of state website that checks name distinguishability. From this page there is usually a link to the online portal in which you can complete the necessary paperwork to form your LLC.

[] Select a Registered Agent

One requirement of most states is the listing of a registered agent. This is the official contact for the LLC in the state and to whom any official correspondence will be sent. The owner of the LLC, usually called a member and/or manager, can be the registered agent. There are some requirements including being of legal age, available during normal business hours and having a physical address in the state. While an option, especially if your LLC only conducts business in the state you live in, and in which it was formed; it is recommended to hire a registered agent service.

The advantages of a registered agent are that they help ensure legal compliance, provide flexibility, and help maintain your privacy all with online account access. Most registered agents provide their services in most, if not all states, allowing you to select one registered agent for all the states in which your LLC operates. Additionally, many offer services that assist in completing the paperwork to establish your LLC such as the submission of Articles of Organization that we will cover next. Depending on the service and state you've chosen an expedited filing service may also be available.

[] Submit the Articles of Organization

The Articles of Organization, sometimes called a Certificate of Formation or Certificate of Organization, is the main document in which you provide the basic structure and contact information for your LLC. This includes its address, registered agent, its owners and whether it is member-managed or manager-managed.

With regard to members and managers, an LLC has members as opposed to stockholders. Ownership, as spelled out in your Operating Agreement, is divided amongst the LLC's members. One simple distinction between member-managed and manager-managed is that in a manager-managed LLC members of the LLC elect either one of themselves or name a non-member to manage the day-to-day affairs of the

business. This can greatly streamline administrative and financing activities. As spelled out in the operating agreement the members (owners) of the LLC can change who is the manager. A legal professional with experience in operating agreements and LLC structure can assist you with this decision. Regardless of what you choose, make sure your Operating Agreement and your Articles of Organization match in every regard including address, owners and whether member-managed or manager-managed.

The filing fee ranges by state from \$50 to \$500 and most states allow you to do this through their online portal, but you can hire a company that will file the paperwork for you. Many registered agents offer this service for a fee.

[] **Draft an Operating Agreement**

An operating agreement is a legal document that outlines the ownership and member duties and responsibilities of your LLC. It specifies what state the LLC is formed in and lays out procedures for operating the business.

Some states require an operating agreement while others consider it optional. We highly recommend having one especially if you have a multi-member LLC. The operating agreement is where ownership and profit distribution between members is spelled out as well as how new members can be added or subtracted from the LLC and how an LLC can be sold or dissolved. It functions as a blueprint for operations and the main guide for dispute resolution within the LLC. Even for single-member LLCs the operating agreement lends credibility to the company and helps to ensure courts recognize your businesses' entity status.

[] **Apply for an EIN**

An Employer Identification Number (EIN) is like a Social Security number (SSN) for your LLC. It can also be called a Federal Employer Identification Number (FEIN), or Federal Tax Identification Number (FTIN).

An EIN is not required for single-member LLCs that have no employees and are not responsible for paying excise taxes; however, some states and many banks require you to have one. We recommend you obtain one and doing so is quick, easy and free. Follow this [link](#) or search the irs.gov website for "apply EIN".

When completing the application make sure that the name of your LLC exactly matches your articles of organization and operating agreement, letter for letter including commas. You will also have to decide how to tax your LLC such as partnership, S

corporation or disregarded entity and this has important tax implications. We recommend consulting with a CPA to best understand your options.

Lastly, upon completion of the online application, your EIN issuance letter will be displayed. It is imperative to save this document as you will need it to open a bank account or apply for financing and it will not be available again for download or printing.

[] Open a Bank Account

Now that you've successfully formed your LLC you will want to open a bank account. Having a separate business bank account allows you to keep your personal and business transactions separate, protects your personal bank account and finances and helps when filing taxes. Most banks will require your EIN Issuance Letter, a copy of your articles of organization and operating agreement to establish your account.

Having now completed the above business formation checklist there are a few items you may want to do:

- **Apply for a credit card** – this makes keeping track of business expenses easy and you can often earn a variety of rewards as well as build you business' credit.
- **Pick an insurance broker** – regardless of your specific real estate activities your business will almost always require some type of insurance coverage. Identify a broker who offers a range of options that can assist you in liability and property protection.
- **Start a website** - build brand awareness of your business and leverage it to help find fix & flip properties or tenants for your rentals.
- **Identify a property management service** – while having one or two rentals can be self-managed after awhile it may make more sense to outsource this a property management company.

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