

A blue-tinted photograph of two people shaking hands over a laptop. The person on the left is wearing a dark suit jacket, and the person on the right is wearing a dark top. The background shows a window with blinds.

Business Incorporation 101





Nellie Akalp, CorpNet CEO:

Nellie Akalp is an entrepreneur, business expert, professional speaker, published author, and mother to four amazing kids. Nellie has dedicated her entrepreneurial career to helping other entrepreneurs and business professionals succeed at business ownership.

As CEO and Co-Founder of CorpNet.com, she has helped more than half a million small businesses and licensed professionals get their businesses and clients off the ground. She has developed a strong following within the small business community and has been honored as a Small Business Influencer Champion and was named women entrepreneur of the year by NAWBO.

Today's Agenda

Goal: Learn the ins and outs of business incorporation strategies to best advise your clients

- Importance of Business Incorporation
- Business Entity Refresher Course
- Tax Advantages and Disadvantages
- Which State to Choose
- Steps to Get Started
- Helping Without Providing Legal Advice
- Resources



Importance of Business Incorporation

Benefits of Incorporating

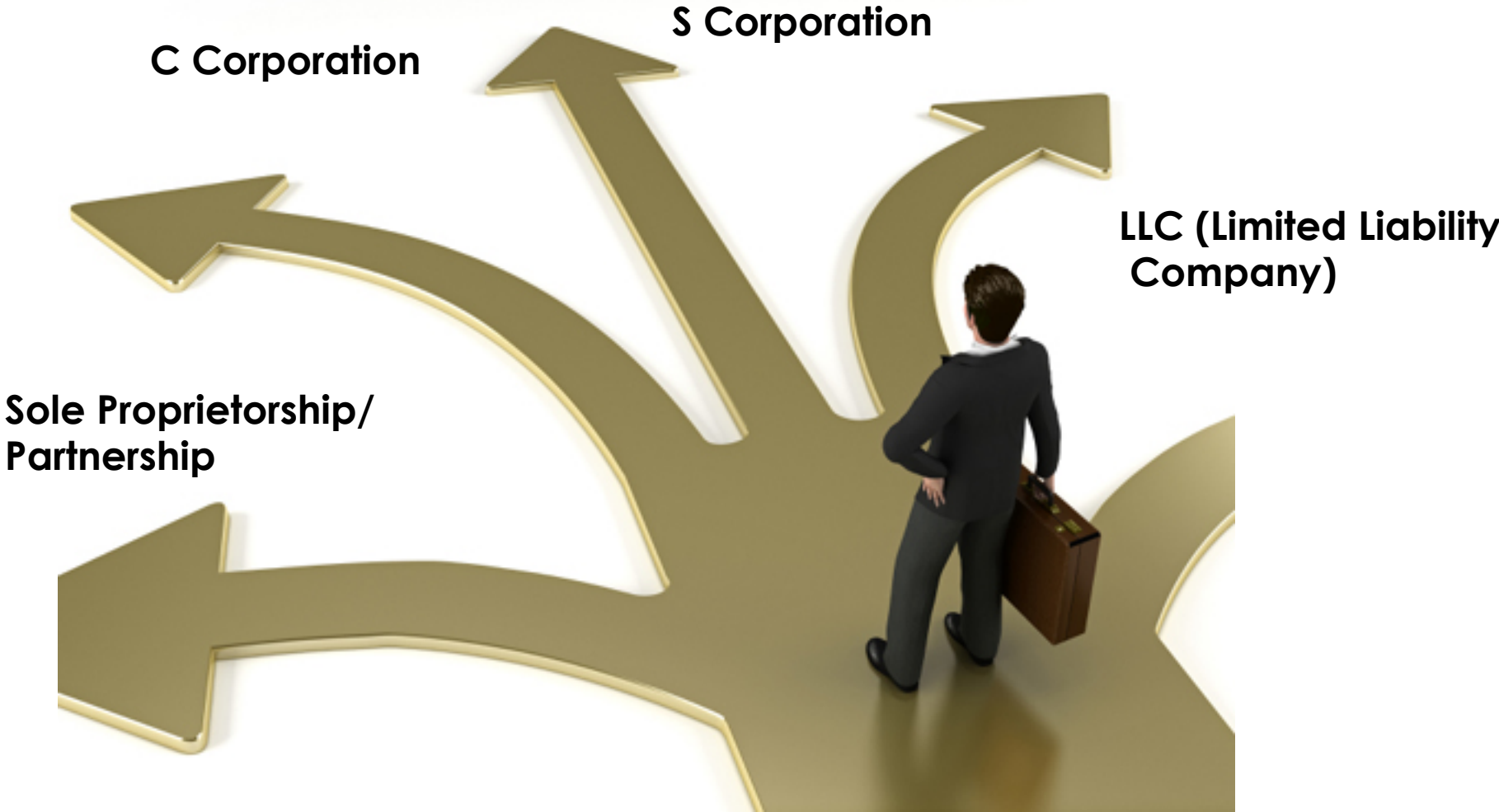
Many of your sole proprietor and general partnership clients may be wondering if it's time to create a formal business structure. If your client is still on the fence, here are some major reasons a small business would choose to incorporate or form an LLC:

- Liability protection of personal assets
- Separate legal entity
- Added credibility
- Perpetual existence
- Tax flexibility
- Deductible expenses

A blue-tinted background image showing a business meeting. Several people are gathered around a table, looking at documents and a laptop. One person is writing on a document with a pen. The scene is professional and collaborative.

Business Entity Refresher Course

Popular Entity Choices



Sole Proprietorship/Partnership

- Simple to form and maintain; no financial statements or lengthy paperwork to stay compliant
- Simple to tax as income earned by the business is considered income earned by owner
- No separation of personal and business assets
- Owners generally have to sign contracts and paperwork in their own name because the business does not have a separate identity under the law.
- Cannot gain business credit, take out business loans, or raise capital in other ways.



C Corporation



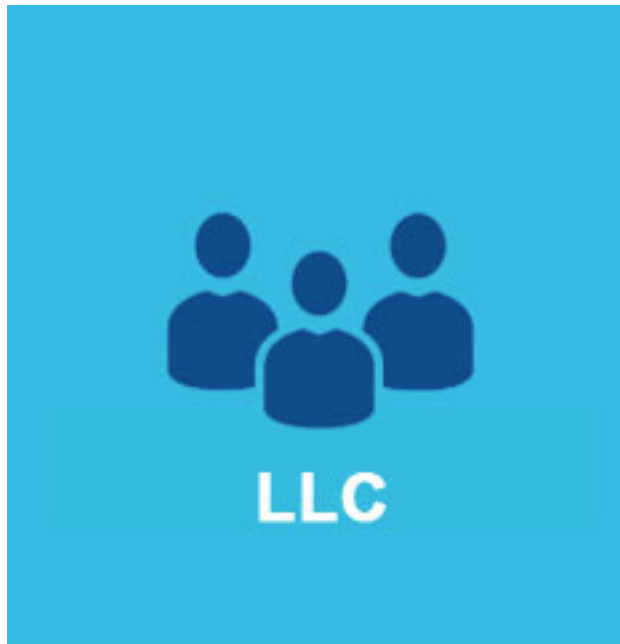
- Owned by shareholders and run by an elected board of directors
- Owners often shielded from personal liability
- Can be subject to “Double Taxation”
- Typically not ideal for small businesses unless they are going public or seeking VC funding

S Corporation

- S Corporation is a C Corporation that elected pass-through tax treatment with IRS
- Must meet strict requirements with the IRS to qualify for S Corporation status
- Owned by shareholders and run by board of directors
- Must hold annual shareholders' meeting and directors' meetings, document key shareholder decisions and file separate corporate income tax return
- Tax designation granted by the IRS that lets corporations pass their income through to their shareholders



Limited Liability Company



- LLC combines elements of a sole proprietorship, partnership and corporation
- Helps shield owners from personal liability
- Less complex to run and manage

	Initial Filing Requirements	Annual Compliance Requirements	Registered Agent Required
Sole Proprietorship	None	None	No
General Partnership	None	None	No
Limited Partnership	Initial Filing (Some States)	Annual Reports (Some States)	Yes (Some States)
C Corporation	Articles of Incorporation Initial Report (Some States) Publication Fees (Some States)	Annual Reports (Most States) Annual Meetings Meeting Minutes	Yes
S Corporation	Articles of Incorporation Initial Report (Some States) Publication Fees (Some States) Filing of IRS Form 2553	Annual Reports (Most States) Annual Meetings Meeting Minutes	Yes
Limited Liability Company	Articles of Organization Initial Report (Some States) Publication Fees (Some States)	Annual Reports (Most States)	Yes
Professional Corporation	Initial Filing Initial Report Publication Fees	Annual Reports (Most States) Annual Meetings Meeting Minutes Additional Licensing or Board Certification May Be Required	Yes

Questions to Ask

As you're looking at potential business structures for clients' businesses, there are many factors to consider. Here are some:

- Does your client have personal assets?
- Is your client concerned about personal liability?
- Does your client need to live off of the business' profits each year?
- Does your client want to keep paperwork and administration as simple as possible?
- Does your client want to keep the business 'forever'?





Tax Advantages and Disadvantages

C Corporation - S Corporation - LLC

C Corporation and Taxes

- **Corporate Income Tax Rate May be Favorable:** A C Corp's profits get taxed at the corporate income tax rate. In some circumstances, that might work in the business owners' favor. Depending on the location and shareholders personal tax situation, they might find the corporate tax rate will cost them less than if they were set up as an LLC.
- **Possibly More Tax Deduction Opportunities:** As a C Corp, the business may be eligible for more tax deductions than if it were an LLC, partnership, or sole prop.
- **S Corporation Options for Qualifying C Corporations:** Eligible C Corps may be taxed as an S Corporation enabling them to avoid the sting of "double taxation."

Disadvantage *A Double Tax Hit*

A C Corporation's profits are taxed when they are earned. Then, any of the profits paid as a dividend income to shareholders is taxed again on the shareholder's individual tax returns

Limited Liability Company and Taxes

- **Single Member LLCs:** Taxed as sole proprietorship by default
- **Multi Member LLCs:** Taxed as partnership by default
- **S Corporation Election Option for Qualifying LLCs:** LLC members may elect to have their LLC treated as an S Corporation for tax purposes.
- **Owners Choose How to Distribute Profits:** LLC members may choose how their business will divide the company's profits and losses among its owners allowing for members to consider not only money invested but time and work invested when distributing profits.

Disadvantage

Bigger Self-Employment Tax Burden

All of an LLC's business profits are subject to Social Security and Medicare taxes. This may create an unfavorable financial situation for LLC owners as they must pay self-employment taxes on their distributive share of the LLC's profits, even if invested back into the business.

Members of an LLC cannot be employees of an LLC.

S Corporation and Taxes

- **Lessens the Self-employment Tax Burden on LLC Members:** Only income paid to LLC members on the payroll are subject to self-employment taxes. Profits paid as distributions are not subject to Social Security and Medicare taxes so LLC members may find that the S Corporation election lowers personal tax burden.
- **Enables C Corporations to Avoid Double Taxation:** As an S Corporation, a corporation's profits and losses flow through to shareholders' personal tax returns and are taxed at the individual tax rates. The corporate entity does not pay income tax. Shareholders that are employees of the C Corporation only pay self-employment tax on the wages or salary that the Corporation pays them. Dividend income paid to shareholders is not subject to self-employment tax; those monies are taxed as either ordinary income or qualified dividends.

Disadvantage

May limit Growth Potential

S Corps may not have more than 100 shareholders, so growth potential may be limiting.

Reasonable Compensation Key

An LLC must pay its owners fair compensation for the work they perform to avoid red flags with the IRS.

S Corporations not treated equally at the state level

A person is writing on a check with a pen. The check has the words "PAY TO THE ORDER OF" and "MEMO" visible. In the background, there is a calculator and a pair of glasses. The entire image has a blue tint.

Which State to Choose

Choosing in Which State to Incorporate

- Many clients are unsure in which state they should incorporate or form an LLC
- Some choose their home state while others opt for “business friendly” states like Delaware, Nevada, or Wyoming
- Each state differs in terms of fees, taxes and other details



Variables to Consider

There are many variables clients should consider to find the lowest cost and best option for their situation. These are some **considerations**:

- Formation fees - vary per state from \$50 to \$455
- Annual fees and filings - vary per state from \$0 to \$325
- Franchise taxes - vary per state from \$0 to \$800
- Legal and court system
- Investors
- State corporate income tax - some no corporate income tax, others gross receipts income tax

General Rule



If a business is incorporated in one state but the owner lives and also conducts business in another state (home state) they are responsible for state fees and taxes in **both** locations.

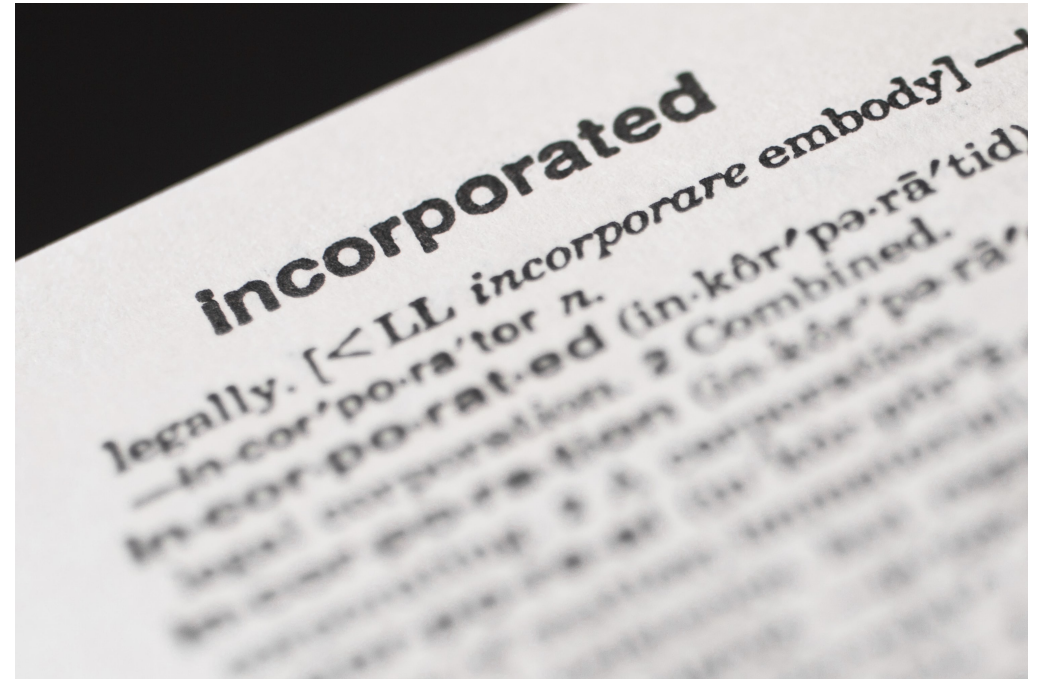
If a business has fewer than five shareholders, more advantageous to incorporate or form an LLC **only in home state**.



Steps to Get Started

Steps to Incorporate a Business

- Comply with licensing and zoning laws
- Conduct a business name search
- Name a registered agent
- Draft Articles of Incorporation
- File Articles of Incorporation with the state
- Write up corporate bylaws
- Apply and obtain Federal Tax ID Number
- Start a corporate records book
- Hold your first board meeting
- Complete additional federal and state requirements
- Stay compliant annually by filing Initial/Annual Reports



Steps to Form a Limited Liability Company



- Choose a name
- File Articles of Organization
- Choose a registered agent
- Decide on member vs manager management
- Create operating agreement
- Apply and obtain Federal Tax ID Number
- Comply with other tax and regulatory requirements
- Out of state LLC registration if necessary and applicable
- Stay compliant annually by filing Initial/Annual Reports

Steps to Elect S Corporation Tax Status

- Entity must first be incorporated as a C Corporation or have filed as an LLC
- A C Corporation electing S Corporation status must submit and file IRS form 2553 signed by all shareholders
- An LLC electing S Corporation status must submit and file IRS form 2553 signed by all shareholders
- An LLC electing to be taxed as a C Corporation must submit and file IRS Form 8832 signed by all shareholders



A man in a dark suit stands with his back to the camera on a sandy beach. The background is a bright, hazy sky. Numerous white, rectangular papers or documents are scattered in the air around him, appearing to be blowing in the wind. The entire scene is overlaid with a semi-transparent blue filter.

Entity Conversions

Time for a Change

If you and your client have determined switching entities could benefit the business, there are different steps to make the switch depending on the entity and state.



- Some states allow an entity change via a statutory conversion filing with the Secretary of State
- Some states require a dissolution of the original business and a change to the company name
- Another option is an inter-entity merger

C Corp to S Corp

- Some C Corporations want to avoid double taxation but want liability protection so they file as an S Corp
- S Corps can pass corporate income, losses, deductions, and credits through to shareholders for federal tax purposes
- File IRS Form 2553 by March 15th
- If deadline is missed, client can get extension via form 7004 or the business will be taxed as C Corp until the next tax year

LLC to C Corp

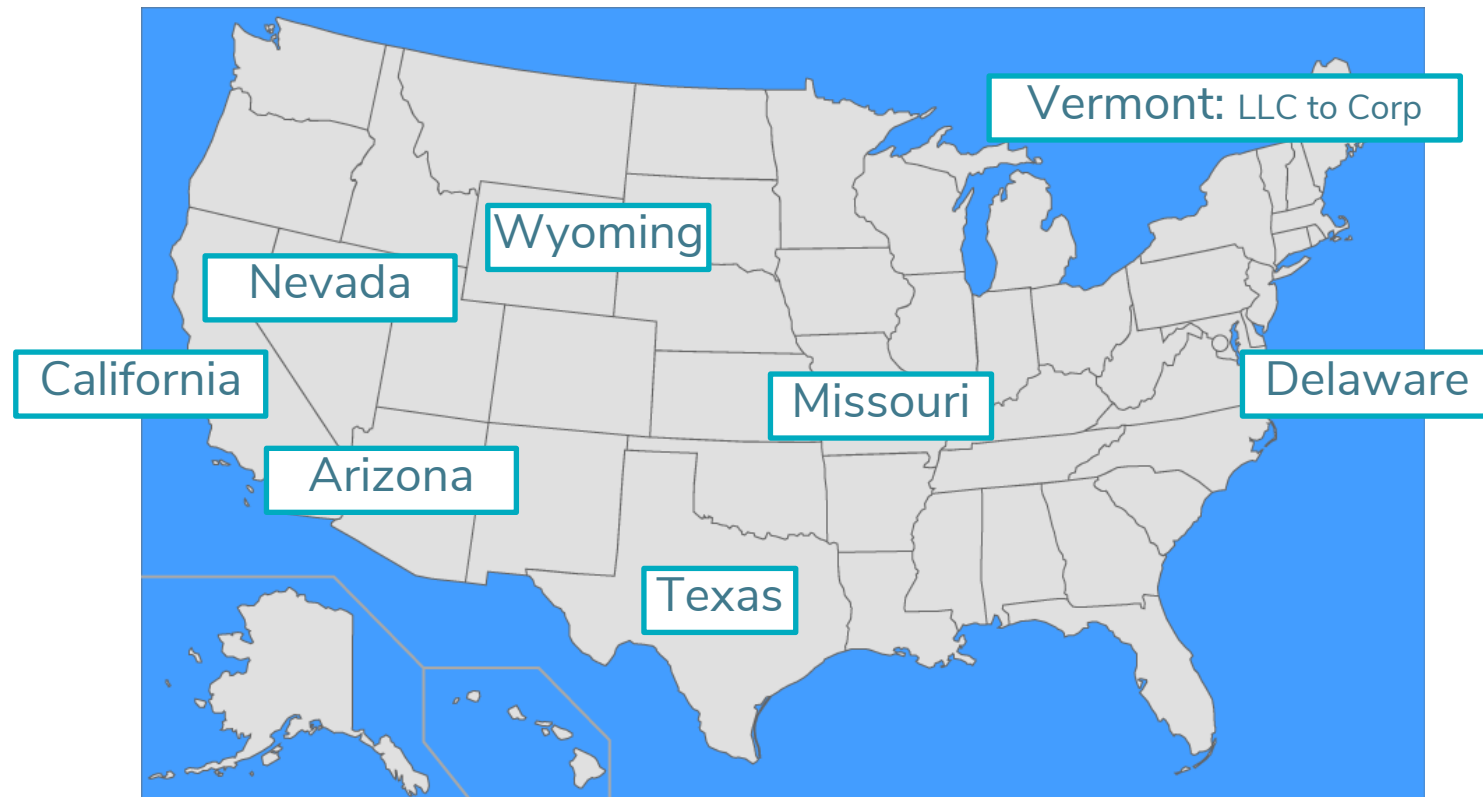
- Switch from LLC to C Corp to sell stock, attract investors, and/or go public
- Members of the LLC must agree to change the business structure
- Next follow the corporate laws in the state the LLC is registered
- If in a state that allows statutory conversion, that document is filed with the state and all assets are transferred so no new entity needs to be formed
- In other states, client can create new C Corp then make the original LLC a subsidiary or a DBA of the newly formed C Corp
- Another option is dissolving the original entity and forming a new one. More complicated as assets and liabilities also must be ‘dissolved’ and reformed

C Corp to LLC

- The change from C Corp to LLC results in less paperwork and more flexible organization structure, but it is a complicated transition
- The IRS considers this switch a monetary transaction - client “sells” the assets of the C Corporation and is taxed on any assets that have appreciated in value
- One this switch is made, it is not easy to go back to a C Corp

State Specific Details on Making the Switch

As mentioned, each state has its own rules on how to make an entity change. Check with your exact state for details. The following states currently allow Statutory Conversion filings:



A woman with long dark hair and glasses is shown from the chest up, shrugging her shoulders with her hands held out to the sides. She has a neutral, questioning expression. The background is a solid teal color with numerous white question marks scattered throughout. The text "How can you help without giving legal advice?" is overlaid in white, bold, sans-serif font across the center of the image.

How can you help without giving legal advice?

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You Can Safely Help Clients

You may give advice about the effects a business structure will have on clients' tax obligations. Example questions you can answer:

- Will pass-through taxation, S Corporation tax treatment, or taxation as a corporation be most beneficial financially to a client who is forming an LLC?
- What options does a general partnership have if its owners want to lower their self-employment tax burden?
- Which states offer the most favorable tax rates for a corporation?

Topics to Avoid

You may not give advice about liability ramifications of the various business entity types. Example questions you should avoid:

- What are the personal liability advantages of changing from a sole proprietor to an LLC?
- What should clients include in their operating agreement?
- Which state will offer the most favorable legal environment for a corporation?

Debunking the “legal advice” Myth

Accountants, CPAs, Bookkeepers, Business Coaches and other professionals can take information from a client and transfer it to the state via the required business registration documents.

The person who is preparing and filing the paperwork is **merely acting as a scribe**. Forms you can help with are:

- Articles of Organization
- Articles of Incorporation
- DBA (Fictitious Name) applications
- Trademark applications
- Annual reports
- Registered agent renewals



Helpful Resources

Our Tools Are Your Resources

Corporate Name Search

B.I.Z. Registration

Our platform, The Business Information Zone®, stays on top of corporate compliance tasks and filing due dates so you can save time and money and do what you do best - run your business.

Business Structure Wizard

Find the Best Business Structure for Your Company

General Structure & Management

Business Finances

Looking Forward

Business Purpose

Liability & Lawsuits

Your Taxes

1

2

3

4

5

6

Meeting Minutes Templates

The Launch Blog: Expert Advice from the CorpNet Team

CorpNet Partner Program

Offer Business Formation and Corporate Compliance services to your clients in all 50 states. Your Client. Your Brand. We do all of the work.

Reseller vs. Referral

Ongoing Partner Support

- Dedicated account manager
- White label offering
- Onboarding and personalized support throughout program usage
- Worry free business filing and compliance monitoring
- Economical services for clients
- Proactive alerts and filing due dates from CorpNet's online BIZ portal
- Easy access to view and print official documents.

Business Formation Guidance

Business formation decisions don't have to be challenging. We provide easy to follow graphs and tables to guide you along the way.

Checklists, Guides, and Tools





**Nellie Akalp, Presenter
Founder & CEO, CorpNet.com**

www.corpnet.com

info@CorpNet.com

(888)449-2638

Twitter.com/corpnet Facebook.com/corpnet/

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