

# Secretary of State: Todd Rokita

## Business Services Division

### ! An Entrepreneur's Guide to Starting A Business in Indiana

Dear Future Indiana Entrepreneur:

Thank you for your interest in operating a business in Indiana. The key to future economic prosperity and growth is a strong Indiana business community. We have developed this guide to aid in the formation of your business. While not intended to take the place of legal counsel, it has been developed to enable entrepreneurs to understand certain corporate terms and to aid in the continuing existence of a business in Indiana.

I hope you find the guide informative. [Let me know if this guide has been helpful.](#) Thank you for your interest.

Good luck!



Todd Rokita  
Indiana Secretary of State  
201 State House  
Indianapolis, IN 46204  
(317) 232-6531

If you need any help along the way, please contact our [Business Services Division](#).

### **Business Services Division office hours, telephone numbers, and mailing address**

Secretary of State's Office, Corporations Division  
302 W. Washington Street, Room E-018  
Indianapolis, IN 46204  
Information Line: 317-232-6576  
Fax Back line to obtain forms: 1-800-726-8000  
World Wide Web Page: <http://www.IN.gov/sos/business/corporations.html>  
Office Hours: 8:00 am to 5:30 pm Monday through Friday except state holidays

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### **Choosing a Structure and Forming Your Business**

Below is a brief description of the various forms in which a business may organize under Indiana law. **Caveat:** Formally organizing a business carries both great advantages and legal consequences. Care should be taken when deciding which business form to utilize and while operating the venture. The Corporations Division is eager to help, but cannot offer legal advice. It is strongly suggested that an attorney be contacted for additional guidance.

#### **Informal Associations:**

The following informal business associations require no filing with the Indiana Secretary of State:

- ***Sole Proprietorship***: One person who conducts business for profit. The sole owner assumes complete responsibility for all liabilities and debts of the business.  
**TAX**: The income of the business is reported as part of the owner's personal income.
- ***General Partnership***: Two or more individuals as co-owners of a for-profit business. Partnerships should operate under a written Partnership Agreement to avoid future problems. All partners are responsible for the liabilities and debts of the partnership.  
**TAX**: Partnerships enjoy single taxation. Income is reported as part of each partner's personal income.

### **Formal Associations:**

The following formal business associations require the filing of organizational documents with the Corporations Division of the Secretary of State:

- ***Corporation***: A legal entity which is created by filing Articles of Incorporation. The Corporation itself assumes all liabilities and debts of the Corporation. A corporation is owned by shareholders. A shareholder enjoys protection from the corporation's debts and liabilities.  
**TAX**: Income is taxed twice: 1) at the corporate level; and 2) at the employee level when a wage is paid or at the shareholder level when distributed as a dividend.
- ***S-Corporation***: After filing Articles of Incorporation, a Corporation may seek to obtain S Corporation status for federal income tax purposes. The income of an S Corporation is taxed only once: at the employee or shareholder level. To qualify, the corporation may not have more than 75 shareholders and must meet other certain Internal Revenue Service criteria. The corporation must submit IRS Form #2553 to the IRS. An S-Corporation is considered a corporation in all other respects and is subject to no additional or special filing requirements with the Secretary of State.
- ***Limited Liability Company***: An LLC is a formal association which combines the advantage of a corporation's limited liability and the flexibility and single taxation of a general partnership. An LLC has members rather than shareholders. A member enjoys protections from the liabilities and debts of the LLC. Although not required by law, an LLC should operate under an Operating Agreement which is like a Partnership Agreement.  
**TAX**: If the LLC qualifies under IRS guidelines, it may be taxed only once, like a partnership, at the employee or member level, while not having the same restrictions as an S-Corporation.
- ***Nonprofit Corporation***: A corporation whose purpose is to engage in activities which do not provide financial profit to the benefit of its members. Such corporations must obtain nonprofit or tax exempt status from the IRS and Indiana Department of Revenue to be free from certain tax burdens.
- ***Limited Partnership***: A partnership with at least one General Partner and one Limited Partner. A limited partner's liability is limited to the amount invested, while the General Partner(s) assumes all the liabilities and debts of the partnership.  
**TAX**: The income is taxed in the same manner as a General Partnership.
- ***Limited Liability Partnership***: A General Partnership which elects to operate as an LLP. To operate as an LLP, a Registration must be filed with the Secretary of State. Unlike a General Partnership, the partners in an LLP enjoy protection from many of the partnership's debts and liabilities.  
**TAX**: The income of an LLP is taxed in the same manner as a General Partnership.

### **Officially Forming Your Business**

To form one of the Formal Associations, organizational documents must be filed with the Corporations Division of the Secretary of State. Although not required, boilerplate forms to form for-profit and nonprofit corporations are available from the Corporations Division. You may obtain forms via our website, by visiting our office, by mail, or by facsimile using the Faxback Line. All cites are to the Indiana Code ("IC"). Each code cite is linked to the appropriate section of the Indiana Code.

- *Corporation and S-Corporation*: To form a Business Corporation, Articles of Incorporation must be filed. The Articles of Incorporation must include the following: [\(IC 23-1-21-2\)](#)
  - the name of the corporation (which must include "Corporation," "Company," "Incorporated," "Limited," or an abbreviation thereof);
  - the name and address of the [Registered Agent](#);
  - the number of shares of stock the corporation is authorized to issue;
  - the name and address of all the incorporators;
  - the original signature of the all the incorporators; and
  - a \$90.00 filing fee.
- *Limited Liability Company*: To form an L.L.C., "Articles of Organization" must be filed. Articles of Organization must include the following: [\(IC 23-18-2-4\)](#)
  - the name of the LLC, which must end with "Limited Liability Company" or "LLC";
  - the period of duration of the LLC;
  - the name and street address of the [Registered Agent](#);
  - if the operating agreement vests management in a manager(s), a statement to that effect;
  - the signature of at least one organizer, member or manager; and
  - a \$90.00 filing fee.
- *Limited Partnership*: To form an L.P., a "Certificate of Limited Partnership" must be filed. No pre-printed forms are available. The Certificate of Limited Partnership must include the following: [\(IC23-16-3-2\)](#)
  - the name of the limited partnership, which must end with Limited Partnership or LP;
  - the address of the office;
  - the name and address of the [Registered Agent](#);
  - the name and business address of all General Partners;
  - the signature of all General Partners;
  - the latest date upon which the partnership is to dissolve (cannot be perpetual); and
  - a \$90.00 filing fee.
- *Limited Liability Partnership* : To form an L.L.P., a "Registration" must be filed. No pre-printed forms are available. The Registration must include the following: [\(IC 23-4-1-45\)](#)
  - the name of the L.L.P., which must end with "Limited Liability Partnership" or "LLP";
  - the address of principal office;
  - the name and address of the [Registered Agent](#);
  - an indication of the nature of the business in which the partnership is engaged;
  - a statement that the Registration is evidence of the Partnership's intention to act as an LLP;
  - the signature of at least one partner; and
  - a \$90.00 filing fee.

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## Nonprofit Corporation

To form a Nonprofit Corporation, Articles of Incorporation must be filed. The Articles of Incorporation must include the following: [\(IC 23-17-3-2\)](#)

- the name of the corporation (which must include "Corporation", "Company," "Incorporated," "Limited," or an abbreviation thereof);
- a statement as to whether the corporation will be a public benefit, religious or mutual benefit corporation;
- the name and address of the [Registered Agent](#);
- the name and address of all the incorporators;
- a statement as to whether the corporation will have members;
- a statement regarding the distribution of assets upon dissolution [\(IC 23-17-22-5\)](#); and
- a \$30.00 filing fee.

If you intend to apply for IRS federal tax exemption as a charitable organization, your articles of incorporation

must contain a required purposed clause and a dissolution of assets provision. Valuable information on 501(c)(3) qualification is on the IRS website [www.irs.gov](http://www.irs.gov). It includes sample articles of the incorporation. Click the "Charities and Nonprofits" link and then the [Life Cycle of a Public Charity](#).

Note: NONPROFIT CORPORATIONS: Before filing or completing Articles of Incorporation, you should first contact the IRS. The IRS will recognize and provide tax exempt status to a nonprofit corporation only if it meets certain criteria and guidelines. The IRS publishes a booklet which is helpful in this process: "Tax Exempt Status for Your Organization" Publication #557. This publication can be obtained by calling 800-829-3676 or by writing your local IRS Forms Distribution Center: IRS; Cincinnati, OH 45999.

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## Requesting Forms

In addition to obtaining forms by visiting our office, requesting by mail and ordering over the information line, you may download them from our webpage or have them faxed to you.

### Web Page Forms

To download from the internet, go to <http://www.IN.gov/sos/forms/index.html>. You will need Adobe Acrobat Reader to view and print the forms. If you do not have it, the link to download it is available on the forms page.

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## Selecting A Name For Your Business

Indiana Law requires that the name of a Corporation, L.L.C., L.P., and an L.L.P. must be distinguishable from the names of other businesses on the records of the Secretary of State's office. To determine if a particular name is available, please call the **NAME AVAILABILITY LINE - (317) 232-6576** or **do a name availability check via our website at [https://secure.in.gov/sos/bus\\_service/online\\_corps/default.asp](https://secure.in.gov/sos/bus_service/online_corps/default.asp)**. This is a preliminary check only. You should not rely, in any way, upon this preliminary information. If the name is available, you may either [file an application](#) to reserve the name for 120 days (\$20.00 fee) or [file documents to organize the business](#) under that name.

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## Continuing Responsibilities

After its initial organization, a formal business association must continue to meet certain statutory requirements.

- Business Entity Reports must be filed biennially along with a \$30.00 filing fee ([\\$22.44 for online filing](#)) for for-profit entities.
- Business Entity Reports must be filed annually with a \$10 filing fee ([\\$7.14 for online filing](#)) for nonprofit entities.
- Whenever the Registered Agent, Registered Agent's address, or Principal Office Address changes, a written notification must be given to the Secretary of State. ([State form 26276](#))

Although you have filed the appropriate documents with the Office of the Secretary of State, you should still contact the following:

- [Internal Revenue Service](#) -- Registration: Businesses must obtain an an Employer Identification Number. You may obtain this number by telephone or by filing Form SS-4 with the IRS. Employer Identification Number (606)292-5467. IRS Information Number (800) 829-1040. Forms (800) 829-3676. Or write: IRS, Cincinnati, OH 45999.
- [Indiana Department of Revenue](#): Indiana imposes various taxes on businesses. For more information contact the Indiana Department of Revenue Taxpayer Services Division, Withholding (317) 233-4016,

Sales Tax (317)233-4015, Corporate Tax and General Information (317) 615-2662. Or visit Room N-105 Indiana Government Center North, 300 North Senate Avenue Indianapolis, IN. 46204 (located just west of the State House).

- [Department of Workforce Development](#): Businesses with employees have numerous responsibilities. An Employer's Desk Guide may be obtained by contacting the DWD at (317) 232-7436 or (800) 437-9136.

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## Important Terms and Information

- **Registered Agent**: All Corporations, Limited Liability Companies, Limited Partnerships, and Limited Liability Partnerships must maintain a Registered Agent and Registered Address within the State of Indiana. The Registered Agent is the legal representative and contact for the business. The Registered Agent cannot be the business entity itself. The Registered Agent may be a person or another formal business association which was incorporated (or qualified) in Indiana and which maintains a valid Registered Agent in Indiana. The business address of the Registered Agent must be identical to the office address. A Post Office Box number is not sufficient unless a rural route number is part of the address.
- **Business Entity Reports**: All Corporations and Limited Liability Companies must file Biennial Reports along with a \$30.00 fee ([\\$22.44 for online filing](#)). As a service the Secretary of State mails a reminder to each entity, but it is the responsibility of the business to file the report. If incorporated in an even year, the report is filed every even year; if incorporated in an odd year, the report is filed every odd year. The report is due during the month in which the entity was incorporated. Filings can be done online through the Secretary of State's Web site: <http://www.in.gov/sos/business/berf2.html>.
- **Nonprofit Corporations** file a Business Entity Report annually along with a \$10.00 filing fee ([\\$7.14 for online filing](#)). This report is filed every year and is due in the month in which the corporation was incorporated.
- **Administrative Dissolution and Revocation**: All Formal Associations are susceptible to administrative dissolution. Grounds for dissolution include failure to file Biennial Reports and failure to maintain a Registered Agent and office. Note: While administratively dissolved the corporation may not carry on any business except that which is necessary to wind up and liquidate its business and affairs. [IC 23-1-46-2\(c\)](#). If the business is administratively dissolved, the business may file an [Application for Reinstatement](#). [IC 23-1-46-3](#).
- **DBAs**: If a business is using a name other than its official name, it must file a Certificate of Assumed Business Name with the county recorder of each county in which it has a place of business, and with the Secretary of State. Example: Smith Brothers, Inc., d.b.a. Smith's Restaurant. ([IC 23-15-1-1](#)). Sole Proprietorships and General Partnerships need only file at the County Recorder level. Example: John Doe operates a business as a Sole Proprietor; d.b.a. John's Plumbing Service.
- **Management**: Management of a corporation is vested in the Board of Directors ([IC 23-1-33-1](#)). Directors are elected at the initial shareholder meeting and subsequent annual shareholder meetings ([IC 23-1-33-3\(c\)](#)). Officers are elected or appointed by the directors (or appointed by a duly elected or appointed officer) in accordance with the by-laws of the corporation ([IC 23-1-36-1](#)). Officers have the powers set forth in the by-laws or those provided by the directors ([IC 23-1-36-2](#)). One person may be the sole director and sole officer.
- **Owner as Employee**: Although a corporation may have only one person running the business and that same person is the sole shareholder, officer and director, he or she is also an employee of the corporation. Such status carries numerous consequences.
- **Authorized Shares**: Every corporation must issue shares of stock. Shares represent ownership of the corporation. The corporation, itself, owns the assets. The number of authorized shares is what may be issued. For example, a corporation may be authorized to issue 1,000 shares, but only issue 200. You may purchase blank stock certificates and issue them to those who own an interest in the corporation. Stock certificates can be purchased at various office product stores.

- **Piercing the Corporate Veil:** It is important to treat the corporation or formal association as a separate and distinct entity. Failure to do so may allow a creditor to pierce the corporate veil and subject a shareholder's personal assets, such as bank accounts and other property, to the satisfaction of the debts and liabilities of the corporation. Note: Treating the corporation like a corporation includes, among other corporate acts, issuing stock certificates which represent share ownership, electing directors and officers, filing the biennial report, keeping annual shareholder meeting minutes and maintaining a corporate bank account and financial records.
- **Life span of a Corporation:** Filing Articles of Incorporation marks the official beginning of a corporation. The official end to a corporation is effective only upon the filing of Articles of Dissolution. Although a corporation may stop doing business, it is still necessary to meet all statutory requirements such as business entity reports, until it is voluntarily dissolved.
- **Small Business Development Centers and the Indiana Economic Development Corporation** These offices aid persons starting or currently operating small businesses. Workshops and conferences are available on taxes, accounting and business planning. The Indiana SBDC provides assistance to minority and women-owned businesses. You can locate the office nearest to you by accessing their website.

Indiana Small Business Development  
 One North Capitol, Suite 900  
 Indianapolis, IN 46204  
 (317) 234-2082  
[www.isbdc.org](http://www.isbdc.org)

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### What the Business Services Division Does Not Do

- Tax matters: contact the [IRS](#) or [Indiana Department of Revenue](#).
  - Issue Employer Identification Numbers: please contact the [Internal Revenue Service](#), or [Indiana Department of Revenue](#).
  - Stock Ownership: no records are kept which reflect ownership of shares;
  - Investigate Corporate Fraud: contact the [Attorney General, Consumer Protection Division; Securities Division of the Secretary of State](#) (317) 232-6681, an attorney, or a consumer advocate group.
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### Business Owner's Guide to State Government

Persons interested in starting a business may find additional information at the [Business Owner's Guide to State Government](#).

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### Indiana Department of Administration Minority and Women's Business Enterprises Division

The Minority and Women's Business Enterprises Division (M/WBED) was created in order to ensure that Minority- and Women- owned businesses are given an equal opportunity to participate in the state purchasing process. The office is governed by the Governor's Commission on Minority and Women's Business Enterprises. Each year the Commission votes on contracting goals, which set the level of participation for minority- and women-owned firms on state contracts.

Their office reviews applications for certification, provides advocacy services and training opportunities and monitors state contracts for compliance.

In order to be certified as a Minority-owned or Women-owned Business, a minority or women (or both) must:

- Own 51% of the business
- Possess the expertise required
- Control the business enterprise
- Be a U.S. Citizen

The Minority and Women's Business Enterprises Division provides advocacy services and training to its clients. Training opportunities and public outreach events are planned to keep the certified firms educated about the state purchasing process and contracting opportunities.

The M/WBED has recently established a Compliance Unit in which state contracts are randomly monitored to ensure that contract participation goals are being attained. In addition, they will investigate concerns that arise out of contract relationships. The Department of Administration has the authority to impose sanctions on contractors that are found in non-compliance.

Their program actively promotes, monitors, and enforces the state's M/WBE participation goals. If you feel that your firm would be eligible for certification, please feel free to contact their office at 317-232-3061. You can visit their website for more information at [www.in.gov/idoa/minority/](http://www.in.gov/idoa/minority/).

#### **TAX PACKET**

THE SECRETARY OF STATE DOES NOT ISSUE FEDERAL IDENTIFICATION NUMBERS OR DETERMINE WHETHER A CORPORATION WILL HAVE AN "S" OR A "C" CORPORATE TAX STATUS. THE SECRETARY OF STATE CANNOT GIVE ADVICE REGARDING TAX ISSUES. THESE ISSUES MUST BE DISCUSSED WITH THE INTERNAL REVENUE SERVICE.

[Register online with the Department of Revenue to collect Indiana taxes, such as sales tax, food and beverage tax, and more...](#)

For more information, please contact the Internal Revenue Service at 1-800-829-1040.

For IRS Forms Contact 1-800-829-3676

For IRS Online Information: [www.irs.gov/](http://www.irs.gov/)

#### **Additional Resources**

- [Regional Development Company](#)
- [Business Women Connect](#)