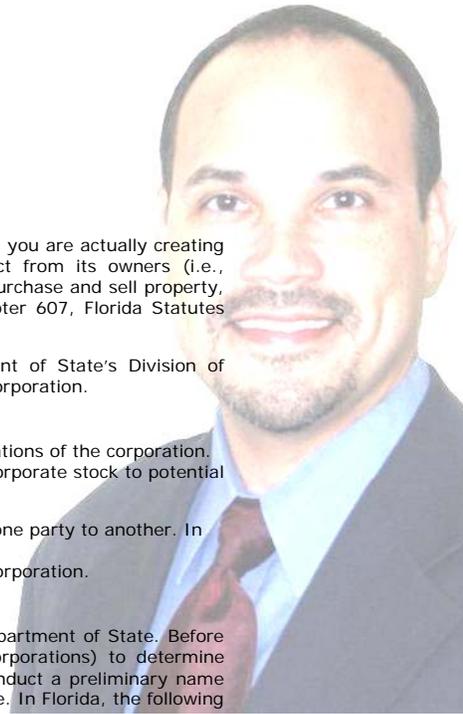




Kenneth Rosa, PA



What is a Corporation?

A corporation is a separate legal entity that is created under state law. When you incorporate a business, you are actually creating an "artificial person" which operates your business as a legal entity which is separate and distinct from its owners (i.e., shareholders). A corporation, like a natural person, can own property, incur debt, enter into contracts, purchase and sell property, sue and be sued, and engage in other such activities in order to further its business purposes. Chapter 607, Florida Statutes ("F.S."), governs the formation and operation of corporations within the State of Florida.

To form a corporation in Florida, you must file articles of incorporation with the Florida Department of State's Division of Corporations and pay the State's filing fees. We are available to assist you in creating your own Florida Corporation.

What are the benefits of operating my business as a corporation?

Limited Liability Protection: Owners of a corporation are not generally responsible for the debts and obligations of the corporation.

Raising Capital: You have greater opportunity to raise money for your business through the issuance of corporate stock to potential investors.

Easy Transfer of Ownership: With ownership of stock, there is relatively easy transfer of ownership from one party to another. In addition, if an owner dies, the corporation's existence will continue.

Tax Advantages: There may be significant tax advantages associated with operating your business as a corporation.

How do I choose a corporate name for my business?

Your "corporate name" is the legal name of your corporate entity that is registered with the Florida Department of State. Before choosing a corporate name, you should check with the Florida Department of State (Division of Corporations) to determine whether your preferred corporate name has already been registered. As part of our service, we will conduct a preliminary name search with the Division of Corporations to make sure your preferred corporate name is not already in use. In Florida, the following guidelines must be followed in using a corporate name:

- The corporate name must contain the word "corporation", "company", or "incorporated" or the abbreviation "corp.", "Inc.", or "Co." so that the corporate name will clearly indicate that it is a corporation, and not a natural person or partnership;
- The corporate name may not contain language stating or implying that the corporation is organized for a purpose other than those purposes which are permitted in Florida's Business Corporations Act (Chapter 607, F.S.) and its articles of incorporation;
- The corporate name may not contain language stating or implying that the corporation is connected with a state or federal government agency or a corporation chartered under the laws of the United States; and
- The corporate name must be distinguishable from the names of all other entities or filings which registered or on file with the Florida Department of State's Division of Corporations (except fictitious name registrations under Section 865.09, F.S.)

What is a "fictitious name" and will I need to register my fictitious name in Florida?

A corporation (or other legal entity, such as an LLC) may conduct its business under a name other than its legal corporate name. For example, the legal name of your Florida business might be "XYZ, Inc." but you operate your business under the "fictitious" name, "Frank's Flowers". Florida law defines a "fictitious name" as any name under which a person transacts business in this State, other than the persons' legal name. (865.09, F.S.).

A fictitious name must be registered with the Florida Department of State, Division of Corporations. The purpose of registration of the fictitious name is to insure that there is public notice of the identity of the owner of the fictitious name. Registration of a fictitious name with the State will not reserve or protect a fictitious name against use by another party, nor does it provide rights to the use of a trade name, trademark, service mark or corporate name.

What is a "C" Corporation?

A "C" corporation is just another name for a regular for-profit corporation. The letter "C" is a federal tax designation and specifically comes from Subchapter C of the Internal Revenue Code. A corporation that is taxed as a "C" corporation is taxed under normal corporate income tax rules, which differs from the tax treatment given to "S" Corporations. "S" corporations are taxed under Subchapter "S" of the Internal Revenue Code.

A "C" corporation is taxed as a separate entity. The distinctive feature of the C corporation is that profits generated by this type entity of are subject to "double taxation". First, profits which are generated by the business will be taxed at corporate income tax rates. Second, if profits of the business are later distributed to its owners, or shareholders, the owners will then report and pay taxes on the profits (or dividends) distributed to them by the corporation. At the end of the year, the C corporation files a corporate income tax return, IRS Form 1120, *Corporation Income Tax Return*, and pays its own income taxes on the profits left in the business.

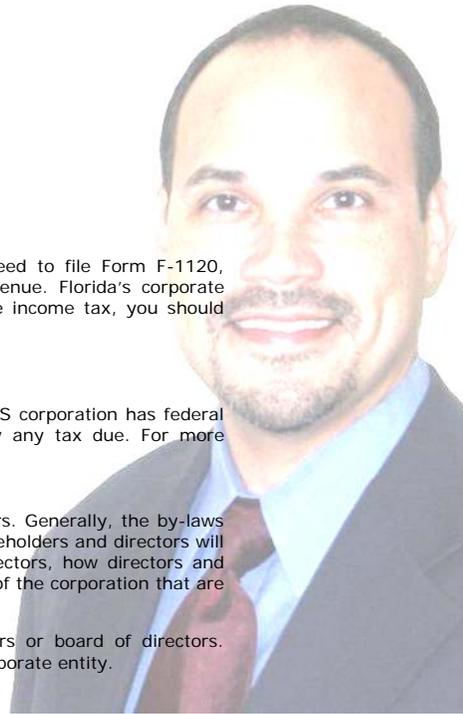
What is an "S" Corporation and how do you create an "S" Corporation?

An "S" corporation is a corporation that qualifies for special tax treatment. The "S" refers to a federal tax designation and comes from Subchapter S of the Internal Revenue Code. The tax treatment of S corporations differs from that of C corporations. Unlike C corporations, S corporations are "pass through" tax entities and are not subject to double taxation. In a nutshell, this means that the profits generated by an S corporation are not taxed at the corporate entity level at all. Instead, all of the profits of an S corporation "pass through" the entity and are reported on the individual tax returns of its owners, or shareholders. This pass through tax treatment is probably the most attractive feature of an S corporation. An S corporation must annually file Form 1120S, U.S. Income Tax Return for an S Corporation, with the IRS.

Forming an "S" corporation essentially requires a two-step process. First, like with any other corporation, you must file articles of incorporation with the State in order to bring "life" to your corporation. Then, to convert the new entity into an S corporation, the shareholders must sign and file an S corporation tax election by filing Form 2553, Election by a Small Business Corporation, with the IRS. The Form must be submitted to the IRS within the first 2 and ½ months of forming your corporation. If you incorporate with us, we can furnish to you the IRS Form 2553 (and the form's instructions) at no extra charge.



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Are regular corporations subject to taxation in the State of Florida?

Corporations doing business in Florida may be subject to Florida's corporate income tax and will need to file Form F-1120, Corporate Income/Franchise and Emergency Excise Tax Return, with the Florida Department of Revenue. Florida's corporate income tax rate is 5.5% on income above \$5,000. For more information regarding Florida's corporate income tax, you should contact the Florida Department of Revenue or a tax professional.

Is an "S" corporation subject to taxation in Florida?

S corporations are generally not required to file a Florida corporate income tax return. However, if an S corporation has federal taxable income, the S corporation is required to file a Florida corporate income tax return and pay any tax due. For more information, you should contact the Florida Department of Revenue.

What are corporate by-laws?

The by-laws are the internal rules by which the corporation will be operated by its directors and officers. Generally, the by-laws cover, among other things, where and when shareholders' and directors' meetings will be held, how shareholders and directors will be notified of meetings, how directors will be elected, who is entitled to vote, the powers of the directors, how directors and officers may be removed, and any other provisions for managing the business and regulating the affairs of the corporation that are not in conflict with the articles of incorporation or state (Florida) law.

The By-laws of the corporation should be adopted at the organizational meeting of the incorporators or board of directors. (607.0206, F.S.) It is important to adopt a set of by-laws in order to maintain the legal status of your corporate entity.

How many directors and shareholders are required in Florida?

In Florida, one person may serve as the sole director, officer and shareholder of a corporation. (607.0803, F.S.).

Does my corporation need a registered agent?

Florida law requires the designation of a registered agent and registered office of the corporation. (607.0505, F.S.) The role of the registered agent is to receive legal papers (service of process) and other official notices on behalf of the corporate entity. A registered agent may be an individual (such as an officer of the corporation or its attorney) or a business which provides registered agent services. The registered office of the registered agent must have a Florida physical address.

What is a shareholders agreement and do I need one?

A shareholders agreement is a contract entered into among the shareholders (owners) of the corporation in order to define their respective rights and responsibilities with respect to one another and to the corporation. A shareholders' agreement also serves the purpose of providing a mechanism for resolving disputes between and among shareholders of the corporation. While Florida law does not require shareholders to enter into a shareholder agreement, from a practical point of view, it may be advantageous to have a shareholders agreement. A business attorney may assist you in preparing a shareholders agreement for your corporation.

What is a stock certificate?

Stock is issued to a corporation's shareholders (owners) to show that they own a part of the business enterprise. The term stock is used interchangeably with the term "share". A stock certificate is a document which evidences a person's ownership of stock in a corporation.

Thinking about giving your business a legal form? Contact us for a free no strings attached consultation.



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