

The Ultimate Guide to

Forming an LLC in Florida (2026)

Everything you need to know — from formation to asset protection

The Montilla Law Firm, P.A.

Business Law | Entity Formation | Asset Protection
Orlando, Florida

montillalaw.com | (407) 818-3004 | joel@montillalaw.com

Chapter 1: Why Form an LLC?

If you're starting a business in Florida — or already running one as a sole proprietor — forming a Limited Liability Company (LLC) is one of the smartest legal and financial moves you can make.

Here's why thousands of Florida entrepreneurs form LLCs every year.

Personal Liability Protection

This is the #1 reason. Without an LLC, you and your business are the same legal entity. That means if your business gets sued, creditors can come after your personal assets — your home, your car, your savings.

An LLC creates a legal barrier between your personal assets and your business liabilities. If someone sues your LLC, they can generally only go after the assets inside the LLC, not your personal wealth.

Real-world example: A customer slips and falls at your business. Without an LLC, they could sue you personally and go after everything you own. With a properly maintained LLC, their claim is limited to the LLC's assets.

This protection isn't absolute — courts can "pierce the corporate veil" if you don't treat your LLC as a separate entity (more on that in Chapter 6). But when properly formed and maintained, an LLC provides powerful protection.

Tax Flexibility

LLCs offer something no other entity type can match: complete tax flexibility.

By default, a single-member LLC is taxed as a sole proprietorship (reported on your personal Schedule C), and a multi-member LLC is taxed as a partnership. But here's the key advantage — an LLC can elect to be taxed as:

- Sole proprietorship (single-member default)
- Partnership (multi-member default)
- S-Corporation (by filing Form 2553)
- C-Corporation (by filing Form 8832)

This means you can change your tax treatment as your business grows without changing your legal structure. A corporation doesn't have this flexibility — once you're a C-Corp, switching is far more complicated and can trigger tax consequences.

Florida bonus: Florida has no personal state income tax. That means LLC income that flows through to you personally is only subject to federal income tax and self-employment tax. This is a significant advantage

over states like California or New York.

Professional Credibility

Clients, vendors, banks, and partners take LLCs more seriously than sole proprietorships. Having "LLC" after your business name signals that you're a legitimate, established business. This matters when:

- Opening a business bank account
- Applying for business credit or loans
- Negotiating contracts with larger companies
- Bidding on projects or government contracts
- Building trust with customers

Privacy Options

Florida does require disclosure of LLC members and managers in public filings. However, with proper legal structuring, there are strategies to enhance your privacy — such as using a registered agent service and, in some cases, a holding company structure.

Simplicity

Compared to corporations, LLCs have far fewer formalities:

- No required annual meetings
- No board of directors
- No corporate minutes requirements
- No stock issuance complications
- Simple annual reporting to the state

You still need to maintain your LLC properly (keep finances separate, file annual reports, maintain an operating agreement), but the compliance burden is far lighter than a corporation.

Chapter 2: LLC vs. Corporation in Florida

One of the most common questions we hear: "Should I form an LLC or a corporation?" Here's a detailed comparison under Florida law.

Side-by-Side Comparison

Feature • Florida LLC • Florida Corporation

Liability Protection • Yes — members protected from business debts • Yes — shareholders protected from business debts

Formation Filing • Articles of Organization (Sunbiz) • Articles of Incorporation (Sunbiz)

State Filing Fee • \$125 • \$70

Annual Report Fee • \$138.75 • \$150.00

Annual Report Deadline • May 1 each year • May 1 each year

Tax Flexibility • Can elect sole prop, partnership, S-Corp, or C-Corp • C-Corp by default; can elect S-Corp
Ownership • Members (no limit on number or type) • Shareholders (S-Corp limited to 100 shareholders, US residents only)

Management Structure • Member-managed or manager-managed • Board of directors + officers (required)

Ongoing Formalities • Minimal — operating agreement recommended • Annual meetings, corporate minutes, bylaws required

Charging Order Protection • Strong in FL — exclusive remedy for single-member and multi-member LLCs • Shares can be seized by creditors

Self-Employment Tax • Depends on tax election • S-Corp: only on salary; C-Corp: N/A

Transferability • Governed by operating agreement • Shares freely transferable (unless restricted)

Asset Protection • Excellent in Florida • Moderate — stock can be reached

Best For • Most small businesses, real estate, consulting, asset protection • Businesses seeking investors, planning to go public, or needing stock options

When an LLC Is the Better Choice

For most Florida small business owners, the LLC wins. Choose an LLC when:

- You want maximum flexibility with minimal formalities
- Asset protection is a priority (Florida's charging order protection is among the best in the country)
- You're a sole owner or have a small number of partners
- You want the option to elect S-Corp taxation later without restructuring
- You're holding real estate (LLCs are the standard for real estate ownership)
- You value simplicity in day-to-day operations

When a Corporation Might Make Sense

A corporation may be better when:

- You plan to seek venture capital or angel investment (investors prefer stock structures)
- You want to issue stock options to employees (equity compensation)
- You're planning an IPO down the road
- Your business has a complex ownership structure requiring different classes of stock

The Bottom Line

For 90%+ of Florida small business owners, an LLC is the right choice. It offers superior asset protection under Florida law, maximum tax flexibility, and far fewer compliance headaches than a corporation.

Chapter 3: Step-by-Step: How to Form a Florida LLC

Here's exactly what it takes to form an LLC in Florida, from start to finish.

Step 1: Choose Your LLC Name

Your LLC name must be distinguishable from any other entity registered with the Florida Division of Corporations. Requirements:

- Must include "Limited Liability Company," "L.L.C.," or "LLC"
- Cannot include words that suggest it's a different type of entity (e.g., "Corporation," "Inc.")
- Cannot include restricted words (like "Bank" or "Insurance") without additional licensing

How to check availability: Search the Florida Division of Corporations database at [Sunbiz.org](https://www.sunbiz.org) → "Entity Name Search." This is free and takes seconds.

Pro tip: Search broadly. If your desired name is similar to an existing entity, the state may reject it. Also search the U.S. Patent and Trademark Office (USPTO) database to ensure you're not infringing on a registered trademark.

You can optionally reserve your name for 120 days by filing a Name Reservation with the Division of Corporations (\$25 fee), but this isn't required.

Step 2: Designate a Registered Agent

Every Florida LLC must have a registered agent — a person or company authorized to receive legal documents (lawsuits, government notices) on behalf of your LLC.

Requirements:

- Must be a Florida resident with a physical street address (no P.O. boxes), or
- A company authorized to do business in Florida
- Must be available during normal business hours

You can serve as your own registered agent if you have a Florida street address. However, many business owners prefer to use a registered agent service for privacy and reliability.

Step 3: File Articles of Organization

This is the official formation document. File with the Florida Division of Corporations at Sunbiz.org.

Required information:

- LLC name
- Principal office address
- Mailing address
- Registered agent name and address
- Manager or member names and addresses (depending on management structure)
- Effective date (can be the filing date or a future date)

Filing fee: \$125 (online filing)

Processing time: Online filings are typically processed within 1–3 business days. Paper filings can take several weeks.

Step 4: Obtain an EIN (Employer Identification Number)

Your EIN is your LLC's federal tax ID number — like a Social Security number for your business. You need it to:

- Open a business bank account
- File federal tax returns
- Hire employees
- Apply for business licenses

How to get it: Apply online at IRS.gov — it's free and you'll receive your EIN immediately.

Step 5: Draft an Operating Agreement

Florida law does not require an operating agreement, but you absolutely need one. Here's why:

- It defines ownership percentages and member rights
- It establishes how profits and losses are distributed
- It outlines management structure and decision-making authority
- It sets rules for adding or removing members
- It governs what happens if a member leaves, dies, or becomes incapacitated
- It strengthens your liability protection by showing the LLC is a legitimate, separate entity

Without an operating agreement, Florida's default LLC statutes (Florida Revised Limited Liability Company Act, Chapter 605) will govern your LLC. Those defaults may not align with what you actually want.

Critical point: For single-member LLCs, an operating agreement is arguably more important, not less. It's a key document courts look at when deciding whether to respect the LLC's separate legal identity.

Step 6: Open a Business Bank Account

Never — and we cannot stress this enough — never commingle personal and business funds. Open a dedicated business bank account and use it exclusively for LLC transactions.

You'll need:

- Your Articles of Organization (filed and stamped)
- Your EIN confirmation letter
- Your operating agreement
- Government-issued photo ID

Step 7: Obtain Necessary Licenses and Permits

Depending on your business type and location, you may need:

- Local business tax receipt (formerly "occupational license") from your city or county
- State professional licenses (if applicable — e.g., contractors, healthcare, real estate)
- Sales tax registration with the Florida Department of Revenue (if selling taxable goods or services)
- Industry-specific permits (food service, alcohol, etc.)

Orange County and the City of Orlando have their own business tax receipt requirements. Check with your local government.

Step 8: File Your First Annual Report

Florida requires every LLC to file an annual report with the Division of Corporations between January 1 and May 1 each year. The fee is \$138.75.

Important: This applies even in your first year if your LLC was formed before January 1. If you formed your LLC on December 15, 2025, your first annual report is due by May 1, 2026.

If you miss the deadline, there's a \$400 late fee. If you fail to file altogether, the state will administratively dissolve your LLC.

Quick Reference: Florida LLC Formation Checklist

- Search and choose your LLC name (Sunbiz.org)
- Designate a registered agent
- File Articles of Organization (\$125)
- Obtain an EIN from the IRS (free)

- Draft a comprehensive operating agreement
- Open a dedicated business bank account
- Obtain required local and state licenses
- Set a calendar reminder for annual report (due by May 1, \$138.75)

Chapter 4: Charging Order Protection — Florida's Secret Weapon

This chapter covers one of the most compelling reasons to form your LLC in Florida specifically. If asset protection matters to you, pay close attention.

What Is a Charging Order?

A charging order is a court order that allows a creditor to intercept distributions (payments) made from an LLC to a member. It does not give the creditor:

- Ownership of the LLC
- Voting rights or management control
- The right to force distributions
- Access to LLC assets directly

Think of it like a garnishment on your LLC distributions. The creditor can only collect if and when the LLC makes a distribution to you.

Why Florida Is One of the Best States for Charging Order Protection

Here's where it gets powerful. Under Florida Statute § 605.0503, the charging order is the exclusive remedy a creditor has against a member's interest in an LLC. This applies to both multi-member and single-member LLCs.

This is a critical distinction. In many states, courts have ruled that creditors of a single-member LLC can simply seize the entire LLC — essentially ignoring the charging order protection. Florida does not allow this.

Florida Statute § 605.0503(4): "This section provides the exclusive remedy by which a person seeking in the capacity of a judgment creditor to enforce a judgment against a judgment debtor, including any judgment debtor who may be the sole member... may satisfy the judgment from the judgment debtor's transferable interest..."

What This Means in Practice

Scenario: You own a single-member LLC that holds a rental property worth \$500,000. You personally get

into a car accident and are found liable for \$300,000 in damages.

- In many other states: The creditor might be able to seize your LLC membership interest outright, gaining control of the LLC and its assets (the rental property).
- In Florida: The creditor's only remedy is a charging order. They can intercept distributions you take from the LLC, but they cannot force the LLC to make distributions, cannot seize the rental property, and cannot take control of the LLC.

This effectively makes your LLC a fortress for the assets inside it.

The "Reverse Veil Piercing" Protection

Some states allow "reverse veil piercing" — where a creditor of an individual member can reach through and grab LLC assets. Florida courts have been highly resistant to this theory. Combined with the exclusive charging order remedy, Florida offers some of the strongest LLC asset protection in the nation.

Maximizing Your Charging Order Protection

To make the most of Florida's charging order protection:

1. Maintain strict separation between personal and LLC finances
2. Have a comprehensive operating agreement that governs distributions
3. Don't guarantee LLC debts personally (this creates a direct personal obligation that bypasses the LLC)
4. Keep adequate LLC records and treat the LLC as a real, separate entity
5. Consider using separate LLCs for different assets or business lines
6. Work with an attorney to structure your holdings properly

Why People Form LLCs in Florida (Even If They Live Elsewhere)

Florida's charging order protection is so strong that business owners from other states sometimes form Florida LLCs to hold their assets. While there are complexities to this strategy (you may still need to register as a foreign LLC in your home state), it illustrates just how powerful Florida's protections are.

Important Caveats

Charging order protection is not bulletproof:

- It does not protect against debts of the LLC itself (only personal debts of a member)
- Fraudulent transfers — if you move assets into an LLC to avoid an existing creditor, courts will unwind the transfer
- The IRS can still collect federal tax debts (charging order protection doesn't apply to tax liens)
- Proper LLC maintenance is essential — if you don't treat the LLC as separate from yourself, a court

may disregard it entirely

Chapter 5: S-Corp Election — When It Makes Sense

One of the most common questions Florida LLC owners ask: "Should I elect S-Corp status?" The answer depends on your specific numbers.

What Is an S-Corp Election?

An S-Corp election (IRS Form 2553) doesn't change your legal structure — your LLC remains an LLC under Florida law. It only changes how the IRS taxes your LLC.

Without the election, all LLC profits are subject to self-employment tax (15.3% — covering Social Security and Medicare) in addition to income tax.

With the S-Corp election, the LLC must pay you a reasonable salary (subject to payroll taxes), but any profits above that salary can be distributed to you as a distribution — which is not subject to self-employment tax.

The Math: When S-Corp Election Saves Money

Example without S-Corp election:

- LLC net profit: \$150,000
- Self-employment tax (15.3%): ~\$21,068
- Federal income tax (24% bracket): ~\$36,000
- Total tax burden: ~\$57,068

Example with S-Corp election:

- Reasonable salary: \$70,000
- Payroll tax on salary (15.3%): ~\$10,710
- Distribution (remaining \$80,000): \$0 self-employment tax
- Federal income tax on all \$150,000 (24% bracket): ~\$36,000
- Total tax burden: ~\$46,710

Annual savings: ~\$10,358

The General Rule of Thumb

Consider an S-Corp election when your LLC's net profit consistently exceeds \$50,000–\$60,000 per year after paying yourself a reasonable salary. Below that threshold, the administrative costs and complexities

often outweigh the tax savings.

Costs and Complexities of S-Corp Election

The S-Corp election isn't free. You'll need to factor in:

- Payroll processing: You must run actual payroll, withhold taxes, and file quarterly payroll tax returns (Form 941)
- Reasonable salary requirement: The IRS scrutinizes S-Corp salaries. If your salary is unreasonably low, the IRS can reclassify distributions as salary and assess back payroll taxes plus penalties
- Annual tax return: S-Corps file Form 1120-S (a separate business return), which is more complex than a Schedule C
- State requirements: Florida imposes no state income tax on S-Corp distributions, but you still need to comply with Florida reemployment tax (unemployment) requirements if you have employees
- Accounting costs: Expect to pay \$1,500–\$4,000+ more per year for bookkeeping and tax preparation

When NOT to Elect S-Corp Status

- Your LLC profits are under \$50,000/year
- You have significant business losses (S-Corp loss deduction rules are more restrictive)
- You're a real estate investor using passive losses (S-Corp status can complicate this)
- You have only one revenue stream and low overhead
- The added complexity isn't worth the modest tax savings

How to Make the Election

1. File IRS Form 2553 — must be filed by March 15 of the tax year you want the election to take effect (or within 75 days of formation for new LLCs)
2. All LLC members must consent and sign
3. The IRS will send a confirmation letter
4. Begin running payroll and filing quarterly returns

Important: This is a tax decision with significant implications. We strongly recommend working with both an attorney and a CPA before making the S-Corp election.

Chapter 6: Common Mistakes to Avoid

We've helped hundreds of Florida business owners form and maintain LLCs. Here are the mistakes we see most often — and how to avoid them.

Mistake #1: Not Having an Operating Agreement

We covered this in Chapter 3, but it bears repeating: an operating agreement is essential. Without one, you're governed by Florida's default statutes, which may not reflect your intentions. Courts also look at operating agreements when deciding whether to respect your LLC's separate legal status.

Mistake #2: Commingling Personal and Business Funds

This is the #1 way to lose your liability protection. If you use your LLC's bank account to pay personal expenses — or deposit business income into your personal account — you're giving a future plaintiff ammunition to "pierce the corporate veil" and reach your personal assets.

Rules to live by:

- Separate bank accounts, always
- Pay yourself a salary or documented distribution — don't just transfer money
- Use a business credit card for business expenses
- Never pay personal bills from the LLC account

Mistake #3: Missing the Annual Report Deadline

Your Florida LLC annual report is due by May 1 every year. The fee is \$138.75.

- Miss the deadline? \$400 late fee.
- Don't file at all? The state will administratively dissolve your LLC, meaning you lose your liability protection until you reinstate (which costs even more).

Set a calendar reminder. Every year. January 1.

Mistake #4: Using a Formation Service Without Legal Review

Online formation services (LegalZoom, ZenBusiness, Incfile, etc.) will file your Articles of Organization for you — but they won't draft a real operating agreement, won't advise you on tax elections, won't explain charging order protection, and won't structure your LLC for your specific situation.

Filing the Articles is the easy part. The legal strategy behind how your LLC is structured, governed, and taxed is where the real value lies.

Mistake #5: Choosing the Wrong Management Structure

Florida LLCs can be either:

- Member-managed: All members participate in day-to-day operations and decision-making
- Manager-managed: One or more designated managers run the LLC; other members are passive

investors

Choosing the wrong structure can create problems with authority, banking, and contracts. Your operating agreement should clearly define who can sign contracts, access bank accounts, and bind the LLC.

Mistake #6: Ignoring the Registered Agent Requirement

If your registered agent changes address, resigns, or becomes unavailable, you must update this information with the state promptly. Failure to maintain a valid registered agent can result in your LLC being unable to receive critical legal notices — including lawsuits.

Mistake #7: Personally Guaranteeing Everything

One of the main benefits of an LLC is limited liability. But if you personally guarantee your LLC's lease, loans, and credit lines, you've effectively waived that protection for those obligations. Be strategic about when you sign personal guarantees, and negotiate to limit them whenever possible.

Mistake #8: Forgetting Multi-State Compliance

If your Florida LLC does business in another state, you may need to register as a foreign LLC in that state. "Doing business" can include having employees, a physical office, or even significant sales in another state. Failure to register can result in penalties and the inability to bring lawsuits in that state's courts.

Mistake #9: Not Planning for the Unexpected

What happens if a member dies, becomes disabled, or wants to leave the LLC? What happens if members disagree on a major decision? Without an operating agreement that addresses these scenarios, you could face costly litigation or even dissolution of the LLC.

Mistake #10: DIY Tax Elections

Making the S-Corp election (or any tax election) without understanding the full implications — reasonable salary requirements, payroll obligations, loss limitation rules — can result in IRS audits, penalties, and unexpected tax bills. Always consult with a qualified attorney and CPA.

Chapter 7: Why You Need an Attorney

You can absolutely file your LLC paperwork yourself. The Sunbiz website makes it straightforward, and the IRS EIN application is free and instant. So why hire an attorney?

Because Formation Is the Easy Part

Filing the Articles of Organization is like buying a house — the purchase is just the beginning. The real work is in:

- Structuring the LLC properly for your specific business, ownership, and asset protection needs
- Drafting a comprehensive operating agreement that protects you and your co-members
- Advising on tax elections that could save you thousands of dollars per year
- Implementing asset protection strategies like charging order protection, holding company structures, and proper entity separation
- Ensuring compliance with Florida's ongoing requirements

Because Mistakes Are Expensive

Fixing a poorly structured LLC after the fact — or worse, after a lawsuit — costs far more than doing it right the first time. We've seen business owners spend tens of thousands of dollars in legal fees trying to unwind problems that could have been prevented with a proper formation and a \$1,500 attorney engagement.

Because Your Situation Is Unique

Every business owner has a different:

- Risk profile
- Tax situation
- Number and type of owners
- Long-term goals (sell the business? Pass it to children? Take on investors?)
- Industry-specific regulatory requirements

A one-size-fits-all template can't account for these variables. An experienced attorney can.

Because Florida Law Has Nuances

Florida's LLC statute (Chapter 605, Florida Revised Limited Liability Company Act) was significantly revised in recent years. The charging order protections, default rules for member duties, and dissolution provisions all have nuances that generic online guides don't cover.

An attorney who practices Florida business law understands these nuances and can use them to your advantage.

What We Do at The Montilla Law Firm

At The Montilla Law Firm, P.A., business entity formation is a core part of our practice. When you work with us, you get:

- A complete entity formation package — not just filed paperwork, but a comprehensive operating agreement, EIN application assistance, and guidance on tax elections
- Asset protection planning — we help you structure your LLC to take full advantage of Florida's charging order protections
- Ongoing support — annual report reminders, compliance guidance, and a relationship with an attorney who knows your business
- Flat-fee pricing — so you know exactly what you're paying before we start

We don't just file your LLC. We help you build a legal foundation for your business.

Next Steps — Schedule a Free Consultation

Ready to form your Florida LLC the right way?


Schedule a free consultation with The Montilla Law Firm, P.A. We'll discuss your business, your goals, and the best entity structure for your specific situation.

Contact Us

The Montilla Law Firm, P.A.

Orlando, Florida

 Email: joel@montillalaw.com

 Website: montillalaw.com

 Phone: (407) 818-3004

Schedule online: montillalaw.com/contact

The Montilla Law Firm, P.A. — Business Law, Estate Planning & Probate — Serving Orlando and all of Florida.

Disclaimer: This guide is provided for general informational purposes only and does not constitute legal advice. Reading this guide does not create an attorney-client relationship with The Montilla Law Firm, P.A. Every business situation is unique, and you should consult with a qualified attorney before making legal or tax decisions. Florida law is subject to change, and the information in this guide is current as of 2026. For

the most up-to-date information, consult the Florida Division of Corporations at Sunbiz.org and a licensed Florida attorney.

Ready to Form Your Florida LLC?

Schedule a FREE consultation with The Montilla Law Firm, P.A.

joel@montillalaw.com

(407) 818-3004

montillalaw.com/contact