

INSTRUCTIONS FOR FILING ARTICLES OF ORGANIZATION FOR A WEST VIRGINIA L.L.C. or P.L.L.C.

www.state.wv.us/sos/

BEFORE you fill out the application: The company name you select will be approved **only** if it is available-- that is, if the name is not the same as and is distinguishable from any other name which has been reserved or filed. If you prepare LLC papers without applying for and receiving a name reservation, you do so at your own risk. A telephone check on availability of a name is not a guarantee. Don't order letterhead & signs until the name is secured.

You may apply for a name reservation in writing, accompanied by a \$15 fee payable to the Secretary of State, mailed to the address shown above. Once approved, the name is protected for 120 days, enough time to prepare and submit the articles. A reservation may be renewed for only one additional 120-day period.

An LLC may now register a trade name with the Secretary of State, but the LLC designation must be included. Remember, there are criminal penalties for doing business under any name other than the one you have registered.

FILLING OUT THE APPLICATION:

Section 1. Enter the exact **name** of the company, and be sure to include one of the required terms: "limited liability company," "limited company," or the abbreviations "L.L.C.", "LLC", "L.C." or "LC". "Limited" may be abbreviated a "Ltd." and "Company" may be abbreviated as "Co." [WV Code §31B-1-105] Professional companies must use "professional limited liability company," "professional L.L.C.", "professional LLC", "P.L.L.C." or "PLLC". [WV Code §31B-13-1303]

Section 2. Check the first box unless your company qualifies as a professional LLC. A professional LLC may be organized only by one or more persons licensed or otherwise legally authorized to provide the same or compatible professional services or to practice together within the state. No person may be a member of the PLLC who is not licensed or otherwise legally authorized to render the professional service for which the PLLC was organized. Only the following professions listed below under the specified articles of Chapter 30 of West Virginia Code may form a PLLC. If you are a member of another profession, please contact your licensing board before attempting to establish your business as a regular LLC.

Attorneys-at-law	[Article 2]	Physicians & podiatrists	[Article 3]
Dentists	[Article 4]	Optometrists	[Article 8]
Accountants	[Article 9]	Veterinarians	[Article 10]
Architects	[Article 12]	Engineers	[Article 13]
Osteopathic physicians	[Article 14]	Chiropractors	[Article 16]
and surgeons		Psychologists	[Article 30]

Important! The secretary of state cannot complete your filing until confirmation is received from the licensing board that the licenses of your members are current and in effect. A PLLC is required to carry at all times at \$1 million of professional liability insurance. [See W. Va. Code §31B-13-1305]

Section 3. A West Virginia domestic limited liability company must have a **designated office** within the state. The designated office need not be the principal place of business, but it must be a physical location (not a P. O. Box) which is continuously maintained throughout the life of the company. Give the street address, city, zip code. You may change the designated office by filing with the secretary of state a statement of change giving the company name, old address and new address for the designated office (fee \$15).

Section 4. Please list the mailing address of your principal office.

Section 5. You are required to maintain an **"agent of process"** in West Virginia who can receive service of a summons or complaint. The agent may be an individual resident of the state, a domestic corporation, another limited liability company or a foreign corporation or foreign company authorized to do business in this state. The law requires a physical address, but for service through the secretary of state, a mailing address is also essential. You may change your agent by filing with the secretary of state a statement of change giving both the current and new agent's name and address (fee \$15).

Section 6. One or more persons may organize a limited liability company consisting of one or more members. The name and address of each organizer and of each member having authority to execute instruments on behalf of the limited liability company is required.

Section 7. An **at-will company** will continue to exist until voluntarily terminated or administratively dissolved. A **term company** is one in which its members have agreed to remain members until the expiration of a term specified in the articles. If neither box is marked or the length of the term not specified, the company will be established as an at-will company.

Section 8. For a **member-managed company**, the authority to transact business and execute instruments is in the hands of the members, and any member may act to carry on the ordinary course of company's business as an agent of the company, unless the member's authority is limited in the articles of organization. For a **manager-managed company**, a manager, who may or may not be a member, is an agent of the company for the purpose of its business. See W. Va. Code §31B, Article 3 for more information about the authority of members & managers.

Section 9. Do not check yes to this question unless and until you have in hand the written consent of those members who are liable for all debts, obligations and liabilities of the company agreeing to the adoption of or to be bound by this provision in the operating agreement. The liabilities may not be assigned on the belief that members will consent.

Section 10. The State Tax Department requests that you describe the **purposes** of the limited liability company clearly to insure you receive all the necessary information about registering with the required state agencies. **Please note that filing articles of organization alone does not qualify you to do business in West Virginia. You must obtain a business license from the Department of Tax and Revenue, and you may be required to meet other licensing requirements to do the type of business you intend.** Attach an extra page if needed.

Section 11. The articles may include provisions permitted to be set forth in an operating agreement [but may not vary the non-waivable provisions of W. Va. Code §31B-1-103(b)] and other matters not inconsistent with law. If any provision of the operating agreement is inconsistent with the articles of organization, the articles control as to persons other than managers, members and their transferees who reasonably rely on the articles to their detriment.

Section 12. Give the number of attached pages to insure your complete filing is recorded.

Section 13. You may accept the date of filing as your effective date, or assign a future date and time when the company will be activated. If the date you give is more than 90 days after the filing date, the active date will be the 90th day after filing. If you do not specify a time, the filing is effective at the close of business on that date. **Important! The secretary of state cannot accept the filing for a specific date if all requirements are not met by that date -- such as receipt of complete and correct articles and fee or receipt of proof of licensing. If you request a specific date and have not met the requirements by that date, the effective date will be the date on which all requirements are met.**

Section 14. The articles must be signed by a person in one of the four categories listed in section 14. If a person acts as attorney-in-fact for the company in signing this or other documents, the power of attorney need not be filed with the secretary of state but must be kept by the company. The signature must be acknowledged before a notary -- be sure the notary uses a seal for purposes of recordation.

NOTICE: W. Va. Code §31B-2-211 requires every limited liability company to file an annual report between January 1 and April 1 of each year following the calendar year in which you begin business in WV and pay a \$25.00 attorney-in-fact fee. Failure to file may result in administrative dissolution. Forms are mailed, but the company is responsible for filing even if forms are not received.

FILING THE ARTICLES AND PAYING THE FEE

If you file only ONE copy with an original signature, you will not receive a stamped copy of the articles with your certificate unless you request and pay for a certified copy.

If you file TWO copies with original signature, we will return a stamped original to you at no additional cost.

Fee for filing Articles of Organization:	\$100.00
Attorney-in-fact fee (from chart)	+
Add \$15 for each certified copy of Articles requested	+
Amount enclosed payable to <u>Secretary of State</u>	

Fee Schedule for Atty-in-Fact.

These fees are prorated based on the month in which application will be received

JAN	100%	\$25.00	JUL	60%	\$15.00
FEB	100%	\$25.00	AUG	50%	\$12.50
MAR	100%	\$25.00	SEPT	40%	\$10.00
APR	90%	\$22.50	OCT	30%	\$ 7.50
MAY	80%	\$20.00	NOV	20%	\$ 5.00
JUN	70%	\$17.50	DEC	10%	\$ 2.50

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WEST VIRGINIA
ARTICLES OF ORGANIZATION
OF LIMITED LIABILITY COMPANY

CTRL # _ _ _ _ _

We, acting as organizers according to West Virginia Code §31B-2-202, adopt the following Articles of Organization for a West Virginia Limited Liability Company:

1. The name of the West Virginia limited liability

company shall be: [The name must contain one of the required terms such as "limited liability company" or abbreviations such as "LLC" or "PLLC"--see instructions for list of acceptable terms.]

2. The company will be an:

☐

LLC

☐

professional LLC for the profession of _____

3. The physical address (not a PO box)
in West Virginia of the initial **designated office** of the company will be:
[need not be a place of the company's business]

Street: _____

City/State/Zip: _____

WV

4. The mailing address of the principal office will be:

Street/Box: _____

City/State/Zip: _____

5. The name and street address of the person to whom notice of process may be sent is:

Name: _____

Street: _____

City/State/Zip: _____

The mailing address of the above agent of process, if different, is:

Street/Box: _____

City/State/Zip: _____

6. The name and address of each organizer and of each member with signature authority (attach additional page).

Name

No. & Street

City, State, Zip

<u>Name</u>	<u>No. & Street</u>	<u>City, State, Zip</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. The company will be:

☐

an at-will company, for an indefinite period.

☐

a term company, for the term of _____ years.

8. The company will be: ☐ member-managed. [Professional LLCs, please list all members on attached sheet to assure compliance with licensing requirements.]
☐ manager-managed, and the name and address of each initial manager is listed below. [Attach extra sheet if needed.]

9. All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations or liabilities of the company. ☐ NO— All debts, obligations and liabilities are those of the company.
☐ YES -- Those persons who are liable in their capacity as members for all debts, obligations or liability of the company have consented in writing to the adoption of the provision or to be bound by the provision.

10. The **purposes** for which this limited liability company is formed are as follows:
 (Describe the type(s) of business activity which will be conducted, for example, "real estate," "construction of residential and commercial buildings," "commercial printing," "professional practice of architecture.")

11. Other provisions which may be set forth in the operating agreement or matters not inconsistent with law:
 [See instructions for further information; use extra pages if necessary.]

12. The number of pages attached and included in these Articles is _____.

13. The requested effective date is: ☐ the date & time of filing
 [Requested date may not be earlier than filing nor later than 90 days after filing.] ☐ the following date _____ and time _____

14. **ACKNOWLEDGMENT:** [Articles must be signed in the name of the company by a: (1) manager of a manager-managed company; (2) member of a member-managed company; (3) person organizing the company, if the company has not been formed; or (4) attorney-in-fact for any of the above. **Documents with photocopied signature cannot be accepted.**]

I, the undersigned, for the purpose of forming a limited liability company under the laws of the State of West Virginia, do make and file this "Articles of Organization" in the name of an on behalf of the company.

Name [print or type]

Title/Capacity

Signature

[Signer must acknowledge the signature before a notary, and notary must apply seal for document to be recorded.]

STATE OF _____, COUNTY OF _____;

I, _____, a Notary Public, hereby certify that _____

_____, whose name is signed to the foregoing Articles of Organization, this day personally appeared before me and acknowledged his/her signature.

My commission expires _____, Notary Public

Articles prepared by _____, (address) _____

SEAL