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# Incorporating Your Business FOR DUMMIES®



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# Incorporating Your Business For Dummies®

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# About the Authors

**The Company Corporation** was founded to provide entrepreneurs and small business owners the opportunity to get the same savings and legal benefits enjoyed by the largest corporations in America at a reasonable and affordable cost. Today, The Company Corporation is the largest direct incorporating company in the United States. The company has more than 20 offices strategically located throughout the United States and files corporations, limited liability companies, and other business entities in all 50 states.

According to Dun & Bradstreet Information Services, over 800,000 new corporations were formed in the United States last year. The Company Corporation and its affiliated companies formed over 125,000 of these, which equates to 1 out of every 7 new corporations established in the United States.

The Company Corporation is a subsidiary of the privately held Corporation Service Company (CSC). CSC is an industry leader serving the major corporate law firms and the corporations they represent with public record document filing, retrieval, and registered agent services.

Since 1899, CSC and its affiliated companies have provided incorporation and business services to the entrepreneurial, legal, and corporate communities. In fact, the founders of the company were instrumental in preparing the corporate laws of the State of Delaware, the world-renowned standard for corporate governance.

The Company Corporation was the first incorporation service company to provide easy access to online incorporations. In fact, 60 percent of business formations conducted with the help of The Company Corporation are completed online at [www.incorporate.com](http://www.incorporate.com). The company is the designated incorporation services provider on many prominent small business sites.

The Company Corporation maintains a staff of highly trained personnel skilled in the incorporation process who assist the hundreds of entrepreneurs who call toll-free (888-811-0111) every day to form their companies. These Incorporation Specialists answer state-specific questions as well as numerous calls from business owners abroad in countries all over the world.

In addition to filing corporation and limited liability company formation documents with each state, The Company Corporation services thousands of clients daily, providing a wide range of corporate services including registered agent services, corporate kits, publications, document retrieval, plus many other small business and corporate services. These services include domain name registration; Web site development tools

mail forwarding in Delaware and Nevada; Tax-on-Time® Service in Delaware; and Compliance Watch SM at [www.compliancewatch.com](http://www.compliancewatch.com) Compliance Watch is an online state-specific corporate compliance service designed to help business owners keep track of required corporate formalities.

**Carl R. J. Sniffen:** With a degree in journalism from the University of Kansas and a law degree from the University of Missouri–Kansas City, Carl has been actively engaged in the practice of business law, arbitration, and mediation for more than 20 years. His areas of emphasis include working with small business clients on a variety of business-related issues, nonprofit and tax-exempt entities, and community service organizations.

Carl has written or co-authored a number of business-related books, including *A Company Policy and Personnel Workbook*, *Developing Company Policies*, *The Essential Corporation Handbook*, and *Starting and Operating a Business in Oregon*.

Carl has also written articles for various publications pertaining to tax and legal implications of special events. He has contributed subject matter expertise to The Company Corporation in the development of its Compliance Watch service.

Carl lives, works, and plays in Grants Pass, Oregon, along with spouse Barb, sons Neil and Brian, and wayward dogs Bert and Bailey. Since 1995, Carl has served as the head cross-country coach and assistant track and field coach at Grants Pass High School.

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# About the Technical Reviewer

THE COMPANY CORPORATION IS AN INCORPORATION SERVICE COMPANY AND DOES NOT OFFER LEGAL OR FINANCIAL ADVICE. **Matthew J. O'Toole:** Matthew is a partner of Morris, James, Hitchens & Williams LLP in Wilmington, Delaware. Mr. O'Toole concentrates his practice on corporate and business law, focusing particularly on the organization and operation of Delaware corporations, limited liability companies, general partnerships, limited partnerships, and business trusts. He also advises clients on intellectual property matters, including trademark registration applications and licensing issues. Mr. O'Toole recently served on the Technology Update Committee established by the Council of the Corporation Law Section of the Delaware State Bar Association, which comprehensively reviewed Delaware's General Corporation Law to study and recommend changes to that statute to accommodate current technology. He is a regular speaker at seminars and an author of articles regarding Delaware business entities.

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# Dedication

To all the visionary entrepreneurs and business owners in the world who have the “great ideas” and the determination to bring them to the marketplace.



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# Authors' Acknowledgments

**The Company Corporation:** In preparing *Incorporating Your Business For Dummies*, The Company Corporation relied on the advice and assistance of a number of talented individuals whose contributions made this book possible. First and foremost, we'd like to thank Carl R. J. Sniffen for contributing his valuable legal expertise in writing this book. Special recognition is also due to Lori Goldman from The Company Corporation for her ongoing insight and editorial contributions and suggestions, and to Stephen Demarest, Associate General Counsel for The Company Corporation and CSC for his thoughtful and professional review of the manuscript. A special thank-you goes to our Chairman Dan Butler and CEO Bruce Winn for guiding our company into its second 100 years of service to the business community.

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A final acknowledgment goes to the staff of Incorporation Specialists at The Company Corporation who respond to thousands of queries each month from entrepreneurs all over the United States and abroad who need help starting their companies. Equipped with knowledge and confidence, they are dedicated to providing exceptional customer service and exceeding customer expectations.

**Carl R. J. Sniffen:** Writing is a challenge. Thanks to my wife Barb and sons Neil and Brian for putting up with me for so many years and for their never-ending love, encouragement and support. Thanks also to my many business clients who never hesitated to tell me, "Explain it in a way that I can understand." I need to thank Ali Rapose who helped me survive a few computer crashes during this project and traveled the Internet to retrieve articles of incorporation from every state. Finally, thanks to the Grants Pass High School cross-country and track athletes who provide a wonderful respite from business law and always manage to keep me on my toes.

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# Introduction

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*Incorporating Your Business For Dummies* is for anyone planning to start a business, anyone already in a start-up, or anyone who has been operating a successful business for some time.

For incorporation, the benefits are many, and here are just a few:

- ✓ Enhanced protection of your personal assets
- ✓ The possibility of tax breaks that may mean the difference between success and failure of a small business
- ✓ The image of your business with “Incorporated” in your name, creating a sense of permanence

But incorporation may not be for everyone. We recommend you discuss the pros and cons with your legal and financial advisors.

## What You Shouldn't Expect

Imagine standing on top of Oregon's Mount Thielsen. At more than 9,000 feet in elevation, you can see for miles and miles. You observe all of the surrounding peaks. You can also see well enough to know that there are hundreds of valleys, ravines, and ridges that lie below the peaks. While you can make out the peaks in some detail, it's harder to see what's in the valleys. In fact, the only way to find out for sure would be to climb down from the mountain and walk through and explore the valleys.

In this book, time and space only allow us to observe the peaks of corporate law. We are limited in our ability to cover the depths. For example, we touch upon securities law, but make no attempt to take you through the complex web of state and federal laws and regulations.

Many other laws and regulations have an impact on corporations and their activities. These include laws and regulations in the areas of criminal law, tax law, environmental law, employee benefits and employment law, international law, and more.

The information contained in this book is general. There is no way to tailor it to meet all of your personal and business needs and interests. We provide basic information —

don't hesitate to use your professional team to provide you with information specific to your situation. The information contained in this book isn't intended to provide you with legal advice. Only your lawyer can do that.

Each state has its own corporation law. You would be well served to familiarize yourself generally with the corporation law of your state. Many states now publish their corporation laws on the Internet. Each state also has a court system that has been employed to interpret that state's corporation law. Even if two states have the same statute, it's possible that courts in each state have interpreted those laws differently.

Each state has its own laws regarding professional corporations, limited liability companies, limited liability partnerships, limited partnerships, general partnerships, and a variety of other available entities. Other than a few references to most of these entities this book will not address these business entities in any detail. You also won't find any discussion about nonprofit corporations, another creation of state law, or tax-exempt entities.

## About This Book

This book will serve as a valuable resource. Refer to it often as you trek the hills and valleys of the incorporation trail. With *Incorporating Your Business For Dummies* you'll:

- ✔ **Get value.** You will learn what you need to know to form a corporation and keep it in compliance. Expect to gain a good understanding of the essential basics without the fluff or legal mumbo jumbo.
- ✔ **Save time.** This book gets to the point. It is organized so that you can go directly to where you think you need to go. Where sections overlap, you will be directed to earlier or later chapters to fill in the missing information. You'll find sample forms to help you as you go forward. Use as much as you like; skip as much as you like.
- ✔ **Save money.** Whether you do it yourself or use a service company or an attorney, you'll be better informed about the choices available to you. If you hire out part of the work, you know what questions to ask.
- ✔ **Have fun.** Creating a new corporation can be a challenge, but it's not brain surgery. Don't take it too seriously, and you'll do fine. We've included enough anecdotes, stories, and quotes to help lighten the journey.

## What You're Not to Read

Whenever you see the Technical Stuff icon, the information that follows is for your convenience. It's not essential for your understanding of the subject at hand. In fact, you may skip it if you like. You'll still get the main ideas presented in the book with a little less detail. Can you incorporate yourself and understand what you need to do to keep your corporation in good standing without the Technical Stuff material? Yes!

## Foolish Assumptions

At the outset, we make certain assumptions about you and the things you find important. How dare we? Let us count the ways:

- ✔ You aren't a lawyer. If you are, where were you in law school? As you'll see, you may want a lawyer or other professional from time to time to assist you with such things as securities law, mergers or acquisitions, and maintaining or defending against lawsuits.
- ✔ Simplicity is a virtue. The KISS (keep it simple, stupid) principle sits right below the Golden Rule (do unto others as you would have them do unto you). Corporations can be simple and straightforward or they can be complex. We'll focus on simpler models with guidance and direction for those who seek a more complex structure.
- ✔ You have a life. Your priorities include family and your business. Learning everything there is to know about corporations may not be high on your list. Running a business is an exhausting, time-consuming task. Focus on it. After all, there are only so many hours in a day (24, if you did not already know).
- ✔ You are comfortable with a certain amount of risk in your life. Consider the risk spectrum, which is set forth below. It looks like this:

No Risk \_\_\_\_\_ High Risk

Very few folks are at the No Risk level. You can't possibly contemplate beginning a family or your own business without being somewhere to the right on this spectrum.

Other folks like to throw caution to the wind in everything that they do. Evel Knievel comes to mind. Put them on the High Risk side of the spectrum. Most people, however, fall somewhere in the middle. For these individuals, measured risks are acceptable. They make decisions after they carefully consider the potential plusses and minuses of a particular action. This book will help you make an informed, risk-reducing decision about the pros and cons of incorporation and whether it's right for you. It's important to know where you fall on this spectrum, recognizing that you may find yourself at different places depending upon the activity involved.

# How This Book Is Organized

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Effort has been made to provide useful, straightforward information in a logical order. Like most subjects, corporations can't be put into isolated boxes. There is much overlap. You will be referred from time to time to earlier or later chapters to help fill in important information. Feel free to go directly to chapters that are most important to you. We won't mind.

# Part I: Is a Corporation Really for Me?

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It would be presumptuous of us to presume that a corporation is for everyone. In this part, we provide a brief history of corporations and introduce you to the key benefits of incorporation. We also give you an introduction to corporate basics: corporate statutes, articles of incorporation, and bylaws. You'll meet the key players: shareholders, the board of directors, and officers. You'll discover the differences between a C corporation and an S corporation, and decide which one is right for you.

You'll meet other forms of business entities, one of which may be better suited to you than a corporation. We also highlight the key differences between corporations and other business entities.

If you're going to incorporate, you need to know where. In this part, you'll discover what you need to know about picking your state of incorporation. What factors should be considered in choosing your place of business? What impact do modern corporation laws have on this decision? What does it mean to "do business," especially in today's economy? We also give you some information about the leading state for incorporating: Delaware.

Finally, this part leaves you with a checklist that identifies key components to the incorporation process and can serve as your personal springboard into other chapters of interest.



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