CORPORATIONS – FORMATION

HOME STATE (SLIDE 2)

The first step to forming a corporation is choosing the state of formation. The state of formation is called the “home state.” Choosing a home state is important because of the Internal Affairs Doctrine—a legal rule that says the laws of the home state govern disputes of an organization’s internal affairs.\(^1\) Entrepreneurs do not have to form in the state in which they operate, though many do. An entrepreneur can choose to form in one state and operate as a foreign entity in another. If an entrepreneur chooses to form outside of New York but operates in this state, it is a foreign entity and the owners must apply for authority to do business in New York before operating.

No matter where you form, if you are operating in New York, you must comply with the laws of New York. Foreign corporations still pay New York taxes.\(^2\) Foreign corporations must still register as a New York employer, and foreign corporations must still comply with insurance, licensing and other regulatory mandates in New York.

Let’s move on to the individual steps to form a corporation.

TWO PATHWAYS (SLIDE 3)

Depending on the home state, there are two paths for formation:

<table>
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<th>Domestic Corporation(^3)</th>
<th>Foreign Corporation(^4)</th>
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<td>• File Certificate of Incorporation</td>
<td>• Follow formation rules for home state</td>
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<tr>
<td>• Hold incorporators meeting to elect board of directors</td>
<td>• File Application for Authority to do business in New York</td>
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<tr>
<td>• Adopt bylaws</td>
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Domestic corporations are formed by filing the articles of incorporation with the New York Department of State; the cost of incorporation in New York is $125 plus an initial corporate tax placed on authorized shares—the minimum tax is $10. After the articles of incorporation are

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\(^4\) See *id.*
filed, the entity exists. The incorporators are then charged with electing a board of directors and adopting bylaws.

Foreign entities must first form in the home state in which they choose, then apply for authority to do business with the New York Department of State. That application fee is $225. Delaware is a popular state of incorporation. Owners forming in Delaware must retain a registered agent before filing a certificate of formation. Once an application for authority to do business is filed, the corporation is authorized to operate in New York. Incorporators would then elect a board of directors and adopt bylaws, if they had not done so already.

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5 See id.
6 See DEL. CODE. ANN. tit 8, § 132 (2010).