



CORPORATION SERVICE COMPANY®

Best Practices for Corporate Filings: Delaware and New York

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To help you get through the busy season and beyond, we've put together the following guidelines for corporate filing work in Delaware and New York.

Best Practices for Corporate Filings: Delaware and New York

Delaware and New York are states with a high concentration of corporate entities, and filing demands in both tend to be at their highest toward the end of the year.

To help you get through the busy season and beyond, we've put together the following guidelines for corporate filing work in Delaware and New York.

Delaware

Format: Documents must be submitted on 8½" x 11" paper. Documents should have margins of 1" on the sides, 2" at the top and 1½" at the bottom. Black ink should be used.

Legibility: Documents must be legible for acceptance by the state's electronic scanning system.

E-filing: Delaware requires annual reports to be filed electronically. The Division of Corporations' online filing application is available daily between 8 a.m. and 11:45 p.m. ET.

Turnaround times: Delaware takes between three and five business days to process non-expedited filings. You can expect delays during the peak filing months of March, June and December, when filings can take as long as three to four weeks to process. Expedited service is available for any type of filing (more on this below).

Effective dates: Effective dates and times are allowed for corporations (up to 90 days after the file date), limited liability companies (180 days) and limited partnerships (180 days). Any documents submitted that contain an effective date prior to the date of submission must contain the wording "for accounting purposes only."

Leaving the state: Corporate entities that leave the state of Delaware due to dissolution, merger or conversion must file an annual report for the current year. If their documentation contains an effective date in the next calendar year, they must file an annual report for that year as well. Current-year annual reports can be e-filed starting in mid-December. Annual report filings for the next calendar year must be submitted as paper copies. Limited liability companies and limited partnerships are required to pay only the \$250 franchise tax for the current year at the time of filing.

Global filing procedure: Delaware has a "global filing procedure" in place, allowing filers to secure file dates on holidays and weekends for a fee of \$1,000 per filing. To be eligible, the state must receive the filings 24 hours in advance. The state will release evidence the next business day.

Cutoff times

The cutoff time for routine service in Delaware is 9 p.m. Cutoff times for expedited service are:

- 24-hour service: 7 p.m.
- Same-day service: 2 p.m.
- Two-hour service: 7 p.m.
- One-hour service: 9 p.m.
- 30-minute service: 9 p.m.

Limited liability companies and limited partnerships are required to pay only the \$250 franchise tax for the current year at the time of filing.

Preclearance

Preclearance is a way to make sure your documents are acceptable to the state in advance of the actual filing. Preclearance is especially beneficial for rush filings, as it can help reduce the likelihood of rejection. Law firms often request preclearance of documents for more complex actions such as mergers, conversions and restated certificates. Delaware allows preclearance before filing on all document types except annual reports.

When you submit documents for preclearance, the staff at the Division of Corporations will review them for any discrepancies or omissions and then return them with notice of whether or not they are acceptable for filing. The minimum filing fee and any franchise taxes due at the time of filing will be included in the notice.

The only expedited preclearance services available in Delaware are 24-hour and two-hour. Delaware charges \$100 for a 24-hour expedited preclearance and \$500 for a two-hour expedited preclearance. All expedited preclearances must be submitted before 7 p.m. Keep in mind that toward the end of the year (typically by mid-December), 24-hour service for preclearances may be delayed due to high volume.

Submit your filings early to secure the filing date and avoid delays. If a filing is rejected, Delaware will give filers five business days to correct documents and still secure the original date of submission.

Expediting options

Expedited service is available for most Delaware filings—for a fee. The service fees associated with each filing type are listed in Table 1. You may upgrade to same-day, two-hour or one-hour service within normal cutoff times.

Please note that 30-minute service is available for a fee of \$1,500. Only registered agents may file for 30-minute service, however, and they must meet the following criteria:

- The document must be precleared with a clear letter (no errors).
- The precleared document must be the exact document that was submitted.
- All franchise taxes and annual reports must be paid and filed in advance.
- The entity must be in good standing.

Table 1—Expedited services, Delaware Division of Corporations

Expedited Service	State Cutoff Time	DE State Additional Expedited Fee
30-minute service	9 p.m.	\$1,500 if 30-minute time met; otherwise, \$1,000
One-hour service	9 p.m.	\$1,000 per filing
Two-hour service	7 p.m.	\$500 per filing
Same-day service	2 p.m.	\$100 minimum, \$200 maximum

New York

Backer: New York requires all corporate filings to be accompanied by a cover sheet or “backer.” The backer must include:

- The document’s name (e.g., “Articles of Incorporation of [Company Name]”)
- The statute under which it is being submitted for filing
- The filer’s name and address

Back-dating: Filings cannot be back-dated.

Online filing: Online filing is available for basic formations (corporation and LLC) and general purpose/basic stock structure. When filing online, evidence is available to the submitter within hours. Evidence provided online is in black-and-white format only.

Turnaround times: Requests for service on a non-expedited basis, including the filing of documents, are usually completed within seven business days, excluding mailing time.

Rejected filings: Rejected filings will not hold their filing date.

LLC qualifications: LLC qualification filings must list home state information for the entity, including a valid address and the issuing state’s official’s name and title as they appear on the good standing certificate.

LLC publication: New York law requires LLCs to publish a copy of their articles of organization or a notice related to the formation of the LLC in designated newspapers within 120 days of the effective date of their initial articles of organization.

Notices must include the principal place of business as well as the signer’s name and capacity (member, manager or authorized person). The clerk of the county in which the office of the LLC is located must designate the newspapers these notices appear in. Each newspaper will be able to provide the business with an affidavit of publication. The LLC must then submit a Certificate of Publication, with the affidavits of publication of the newspapers attached, to the New York Department of State, Division of Corporations, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231, along with a fee of \$50.

Stock amendments: Stock amendments must list rate of change as appropriate.

Cutoff times

New York strictly adheres to cutoff times, especially at year-end. Cutoff times are as follows:

Routine service: 3:30 p.m.

Please note: Documents presented on the “last run” are not looked at or “clocked in” until the next business day, meaning that 24-hour, 48-hour and routine service can be slightly impacted.

24-hour service: 3:30 p.m.*

Same-day service: 11:15 a.m.

Two-hour service: 1:45 p.m.

*24-hour service is typically closer to 48 hours for any evidence.

If filers wish to expedite the processing of corrected, resubmitted documents, they must pay another nonrefundable expedited processing fee.

When the state returns the documents, it will indicate if there are any other issues with them.

Expediting options

Table 2—Expedited services, NY Division of Corporations

Expedited Service	State Cutoff Time	NY State Additional Expedited Fee
Two-hour service	1:45 p.m.	\$150
Same-day service	11:15 a.m.	\$75
24-hour service	3:30 p.m.	\$25

Please note: The expedited service fees listed above apply separately to filing processing and the provision of certified evidence, so, for example, the total expedited fees for a 24-hour filing/evidence copy would be \$50. You may “mix and match” expedited services, such as same-day service for the filing and 24-hour service for the certified evidence copy. You may not do the reverse, e.g., 24-hour service for the filing and same-day service for the certified evidence copy.

You must provide payment for expedited processing separately from the document filing fee. Expedited processing fees are nonrefundable. In the event that filings are deficient, the Department of State reserves the right to retain the fee for the expedited processing service. The state will send the filer a letter noting the deficiencies within the timeframe of the expedited processing requested.

If filers wish to expedite the processing of corrected, resubmitted documents, they must pay another nonrefundable expedited processing fee.

Preclearance

Preclearance for filings is not available in New York. As an alternative, firms can submit filings unsigned and with the backer removed, with the understanding that they will be rejected. When the state returns the documents, it will indicate if there are any other issues with them. All standard fees will apply.

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