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# CHOOSING A LEGAL STRUCTURE FOR YOUR BUSINESS

Attribute	Sole Proprietorship	C Corporation	S Corporation	Limited Liability Company	Limited Partnership	General Partnership	Limited Liability Partnership
<b>General Considerations</b>							
<b>Formation Formality</b>	No formalities necessary. However, filings may be necessary with the FTB, BOE, or EDD.	File Articles with the SoS; adopt bylaws. Additional filings may be necessary with the FTB, BOE, or EDD.	File Articles with the SoS; adopt bylaws. File S election with IRS and FTB. Additional filings may be necessary with the FTB, BOE, or EDD.	File Articles with the SoS. Additional filings may be necessary with the IRS, FTB, BOE, or EDD.	File Certificate of Limited Partnership with the SoS. Additional filings may be necessary with the FTB, BOE, or EDD.	Statement of Partnership may be filed with the SoS but isn't required. Additional filings may be necessary with the FTB, BOE, or EDD.	Registration of Limited Liability Partnership may be filed with the SoS. Additional filings may be necessary with the FTB, BOE, or EDD.
<b>City and County</b>	You should consider the following: 1) business license; 2) special permit or licenses; 3) zoning restrictions; and, 4) fictitious business name filings.						
<b>Liability of Owners</b>	Personal liability for debts of business.	S/H's liability limited to capital invested.	S/H's liability limited to capital invested.	Member's liability limited to capital invested.	GPs jointly and severally liable for debts of the P-Ship; LP's liability limited to capital invested.	GPs jointly and severally liable for debts of the P-Ship.	Limited liability for partners; insurance mandated by law.
<b>Intellectual Property</b>	Take care to protect your business's intellectual property, e.g. copyright, trademark, and patent rights. Also ensure that the new business name doesn't violate other businesses' intellectual property rights. Search at state and federal level.						
<b>Ongoing Formalities</b>	No specific formalities adhere.	Abide by corporate formalities, articles, bylaws, and buy-sell agreement.	Abide by corporate formalities, articles, bylaws, and buy-sell agreement.	Abide by LLC Act, articles, operating agreement, and buy-sell agreement.	Abide by the LP-Ship Act, Certificate of LP-Ship, P-Ship agreement, and buy-sell agreement.	Abide by P-Ship Act, partnership agreement, and buy-sell agreement.	Abide by P-Ship Act, partnership agreement, and buy-sell agreement.
<b>Number of Owners</b>	One.	No restrictions.	One to 100.	No restrictions.	At least one GP and one LP.	At least two partners.	At least two partners.
<b>Type of Owner(s)</b>	N/A	Any.	Only U.S. citizens and residents; some trusts and corporations.	Any, so long as no professional license is required.	Any.	Any.	Lawyers, accountants, and architects only.
<b>Classes of Ownership</b>	N/A	Multiple classes ok.	Only one class of stock permitted.	Multiple classes ok.	Multiple classes ok.	Multiple classes ok.	Multiple classes ok.
<b>Compensation</b>	N/A	Salaries must be "reasonable" for S/H-employees.	Salaries must be "reasonable" for S/H-employees.	Reasonable salary requirement may be applicable if capital is a material income-producing factor; limited participation in fringe and retirement benefits.			
<b>Benefits &amp; Retirement</b>	Generally limited to plans for self-employed.	S/H-officers qualify for fringe benefits, and for participation in retirement plans.	Fringe benefits includable in 2% S/H's income; retirement plan restrictions for S/H-employees.	Limited participation in fringe and retirement benefits.			
<b>Governance Among Owners</b>	Sole proprietor has sole control.	Shareholders vote for directors; directors elect officers; "buy-sell" agreement addresses rights of assignees.		Member or manager- managed. If no operating agreement, statute controls.	Managed by GP; if no P-Ship agreement, statute controls.		

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<b>General Considerations - continued</b>							
<b>Transfer of Interest</b>	Freely transferable.	Generally transferable; "buy-sell" agreement can prevent impermissible S/Hs.		Generally transferable; what rights transferee has depend on consent of other owners; "buy-sell" agreement allows for succession planning upon death, disability, divorce, or departure. Permissible transferees restricted with Limited Liability Partnerships.			
<b>Death of Owner</b>	Estate takes over the business.	Estate continues as a S/H; entity itself continues unaffected, subject to any buy-sell agreement.		Estate continues as an owner, subject to any buy-sell agreement.			Only certain partners are permissible.
<b>Tax Law Considerations</b>							
<b>Tax Year</b>	Calendar year.	Calendar or fiscal year, with restrictions.	Usually a calendar year.				
<b>Method of Accounting</b>	May generally use the cash method of accounting.	May generally use the cash method of accounting.	May generally use cash method unless a "tax shelter."	May generally use the cash method unless the business has a C corporation as an owner (in certain circumstances), is a "tax shelter," or keeps inventories.			
<b>Sale of Business Assets</b>	Can't sell "business" - looked at as a sale of individual assets.	Sale of assets results in corporate level gain for a C corporation; not usually for S corporation; taxable to S/Hs upon liquidation.		Sale proceeds are taxed to the owners; non-taxable to the extent of basis in the business interest. Restrictions on permissible buyers of a Limited Liability Partnership.			
<b>Sale of Equity in Business</b>	Can't sell "business" - looked at as a sale of individual assets.	Generally, capital gains to S/Hs; basis in stock for buyer (but not in assets).		Generally results in combination of ordinary income and capital gain to seller; upon election, inside asset basis can be increased for buyer.			
<b>Special Allocations of Income or Loss</b>	N/A	N/A	No.	Yes.			
<b>Deduction of Losses</b>	No restrictions.	No.	Owners may deduct losses to the extent of basis in the interest. For partnerships, basis may include an owner's allocable share of business debt.				
<b>Taxes - Federal</b>	Flow-through of income and deductions.	Income and deductions taxed at the corporate level; taxed again as a dividend.	Income and deductions flow through to be included on S/H returns.	Generally, income and deductions flow through to be included on owner returns. Limited Liability Companies may be taxed as partnerships, or as corporations upon special election.			
<b>Taxes - California</b>	Flow-through of income and deductions.	Tax at the corporate level; taxed again as a dividend. Minimum franchise tax is \$800 (except first year).	Annual franchise tax is the greater of 1.5% of net income, or \$800 (except first two years).	Annual \$800 LLC tax, plus, a stepped tax on gross income.	Income and deduction flow through to partners; yearly franchise tax of \$800 for Limited Partnerships and Limited Liability Partnerships.		

<b>Legend</b>					
<b>Federal and State</b>	BOE	Board of Equalization (CA)	<b>Acronyms</b>	CA	California
	EDD	Employment Development Division (CA)		GP	General Partner
	FTB	Franchise Tax Board (CA)	LP	Limited Partner	
	IRS	Internal Revenue Service (US)	LP-Ship	Limited Partnership	
	SoS	Secretary of State's Office (CA)	P-Ship	General Partnership	
			S/H	Shareholder	
			US	United States	

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