

Starting a Business in California

Introduction

This document provides a very broad-brush overview of the many important factors you should consider when starting a business in California. It covers a wide range of useful topics, including trademarks, business structure, legal requirements, and the importance of having a solid business plan. Our hope is that you will use this document as a roadmap and valuable resource as you navigate the often overwhelming process of starting a business.

As you read, you may find it helpful to refer to [Starting a Business Checklist](#) (1), a helpful guide posted by the office of the Secretary of State of California.

Preliminary Steps

Choosing and Preserving a Business Name

TRADEMARK

The first step is determining whether or not your chosen business name has already been registered at the state (California) or federal level. To check, visit the following sites:

- California Secretary of State, [Trademark and Service Mark page](#). (2)
- The “Where Do I Start?” page on the [United States Patent and Trademark Office’s](#) (3) website.

Also be aware that trademark rights can arise even if no one has formally registered a mark.

WEBSITE DOMAIN NAME

For most businesses, the next step is registering a domain name. If your chosen business name is not already trademarked and no one has registered that domain name, you can register it in your name at a reasonable cost. Many online service providers can help you with this process, including:

- www.domain.com
- www.register.com
- www.godaddy.com

These companies are selected at random; this list is not exhaustive. BLG does not necessarily endorse any of these providers. Once you have registered, you will probably also receive an e-mail address associated with your domain. At this point, you may want to find a Web hosting company for your business Web site, as well as a Web/graphic designer and a copywriter to help you get the site up and running quickly and affordably.

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Choosing the Right Business Structure

Next, you should select an appropriate business structure. You must ask yourself if you have any compelling legal, accounting, tax, or financial reasons to choose one of the following business structures:

- Partnership
- Corporation
- Limited Liability Company (LLC)
- Sole Proprietorship

This is a critical decision because the form of doing business can have dramatic effects on how the owners are taxed, and what their exit strategy might be. For more information about these options, review BLG's [Choosing a Legal Structure for Your Business](#) (4).

Writing a Business Plan and Marketing Plan

Preparing and regularly updating a business plan is a vital component of any business startup. Do not skip this step. Keep in mind the old saying: "Failing to plan, is planning to fail." If you are uncertain about how to prepare a business plan or simply want some assistance, there are numerous companies that will help you with the process for a fee. Here are two places to start:

- Small Business Administration's [Small Business Planner](#) (5)
- The Entrepreneur.com® [Starting a Business](#) resource center (6)

Name Availability and Reservation in California

You can perform a preliminary check on the availability of up to three corporate names by writing, calling, or visiting the Secretary of State's office in Sacramento. You can also make a name reservation request over-the-counter at any Secretary of State location or by writing directly to the Sacramento office. To see examples of how to reserve a business name, visit the [Business Portal](#) (7) on the California Secretary of State's Web site. While at this site, you can conduct a [Business Name Search](#) (8) to determine whether your desired business name is already in use by an existing corporation or LLC.

Picking a Location for Your Business

It is often said that there are three critical components to business success: location, location, location. Is the physical location important to your business? Considerations might include the following: where your customers are located, foot traffic in the area (important for a retail store), proximity to similar or complementary businesses, proximity to business services your company will need, aesthetics of the location, cost of operating there, attraction of the area to potential employees, and convenience to public transportation. Once you have made a decision, you will also have to determine if zoning laws for that area permit you to operate

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your particular type of business and whether or not you will need any special permits or variances.

Retaining Outside Advisors

In conjunction with putting together a business plan and determining what type of legal structure is most appropriate for your business, we advise you to actively engage the assistance of skilled advisors. In particular, you should retain the services of a qualified accountant right away. An accountant can fully advise you about the many potential tax pitfalls associated with new business creation. Also important are the relationships you build with a financial advisor, insurance broker, business banker, and attorney. A qualified attorney can work closely with your accountant and other advisors to ensure your business structure best suits your business and personal goals. If you need help selecting these advisors, please contact BLG for referrals.

Formalizing the Legal Structure

Once you have a solid business plan, a registered business name, and have chosen the appropriate legal structure for your business, you are ready to take the next step: formalizing the business structure. We have put together a brief description of the processes and costs (filing fees) associated with the four most common business structures in California:

Forming a Corporation

To create a corporation, you must file Articles of Incorporation with the California Secretary of State in one of three ways: in person in Sacramento or at a regional office, by mail to the main office in Sacramento, or by paying a service to take care of the filing for you. Depending on the method you choose, it can take anywhere from four days to six weeks to receive a conformed copy of your Articles back from the Secretary of State's office.

The Secretary of State's filing fee is generally \$100, but additional fees apply if you file the Articles over the counter (at the Secretary of State's office in Sacramento or a regional office) or request extra conformed copies. However, paying modest additional fees can mean the difference between receiving your filed Articles back from the Secretary of State's office in five or six days, rather than four to six weeks.

After you have received your Articles, the next step is to conduct an initial meeting of the shareholders and directors. It is at the shareholder's meeting that a board of directors is elected, and a set of bylaws is adopted. The bylaws provide the rules by which the corporation is governed, and address everything from how meetings are conducted, the way in which officers and directors are elected, and the rights and obligations of the shareholders, officers and directors. It may also be desirable for the shareholders to adopt a buy-sell agreement to govern whether and how shares are permitted to be sold or transferred. Read the [Buy-Sell Agreement](#) (9) article on this website for more information about buy-sell agreements.

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If you would like BLG to assist you with your corporate formation, you can find a discussion of what the process will entail by reading [Forming a Corporation Through BLG](#) (10) on this website.

Forming an S-Corporation

In addition to meeting the California state requirements pertaining to a regular corporation discussed above, a small business corporation that wishes to elect to be taxed as an “S” corporation must also file a Form 2553 with the IRS. A California Franchise Tax Board Form 3560 is no longer required. Rather, the IRS Form 2553 is binding upon the state of California.

Forming a Limited Liability Corporation (LLC)

To create an LLC, you must file Articles of Organization with the California Secretary of State in one of three ways: in person at their office in Sacramento, by mail to the office in Sacramento, or by paying a service to take care of the filing for you. Note that filing is not permissible in one of the regional offices. Depending on the method you choose, it can take anywhere from four days to six weeks to receive a conformed copy of your Articles back from the Secretary of State’s office.

The Secretary of State’s filing fee is generally \$70, but additional fees apply if you file the Articles over the counter at the Secretary of State’s office in Sacramento or request extra conformed copies. However, paying modest additional fees can mean the difference between receiving your filed Articles back from the Secretary of State’s office in five or six days, rather than four to six weeks.

After you have received your Articles, the next step is to conduct an initial meeting of the members. It is at the members’ meeting that a manager is elected (if the LLC is a manager-managed LLC), and an operating agreement is adopted. The operating agreement provides the rules by which the LLC is governed, and addresses everything from how meetings are conducted, voting rights of members, the way in which managers are elected and profits and losses are to be shared, whether and how units are permitted to be sold and transferred, what happens to the assets of the LLC upon dissolution, and the rights and obligations of the members, managers and officers (if the LLC has a manager(s)).

If you would like BLG to assist you with your LLC formation, you can find a discussion of what the process will entail by reading [Forming a Limited Liability Company \(LLC\) Through BLG](#) (11) on our website.

Forming a Partnership

There are no formalities associated with the formation of a general partnership. Once two persons associate together in a business for profit, they become, by default, a partnership in the eyes of the law. Their “partnership agreement”, in the absence of any express written agreement, becomes that which is set forth in the Uniform Partnership Act.

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If you wish, you may file (but it isn't mandatory) a Statement of Partnership Authority with the Secretary of State's office. You can access the online version of this form ([Form GP-1](#) (12)) on the Secretary of State's website. The fee for filing this Statement is \$70.00. Another type of partnership is the limited partnership. For a limited partnership, you must file a Certificate of Limited Partnership with the Secretary of State's office. You can access the online version of the form ([Form LP-1](#) (13)) on the Secretary of State's website. For more information about California limited and general partnerships, visit the [Business Portal](#) (14) on the Secretary of State's website.

Licenses, Permits, and Registrations

Federal Level

EMPLOYER IDENTIFICATION NUMBER (EIN)

First, you will need an EIN for federal tax filing purposes. You will probably want an EIN even if you are doing business as a sole proprietor because it will enable you to limit how often you must divulge your personal Social Security number. You can obtain an EIN online at the [IRS website](#) (15).

State Level

FRANCHISE TAX BOARD

You will need to clarify with the Franchise Tax Board (FTB) what taxes apply to your business and what your filing obligations will be. The results may surprise you. For instance, even though an S corporation is not taxed for federal tax purposes, California subjects S corporations to an annual tax equal to the greater amount of 1.5% of the corporation's net income or \$800.

An LLC is subject to an annual tax of \$800 regardless of its income or deductions. It is also subject to an annual fee based upon total gross revenue attributable to California. The fee varies with the level of income, starting at \$900 once California gross revenue reaches \$250,000. The maximum fee is \$11,790 once the LLC reaches \$5 million in California gross revenue. Learn more by reviewing the Franchise Tax Board's Form 568 and its instructions, also referred to as the [Limited Liability Tax Booklet](#) (16).

SALES AND USE TAX - BOARD OF EQUALIZATION

If your business involves selling tangible personal property, you will probably have to apply for a seller's permit with the State Board of Equalization (BOE). You can register in person or by mail. To register in person, simply go to one of the BOE's field offices. For a list of where these are, visit the [BOE website](#) (17). You can obtain an application to submit by mail by calling the BOE at (800) 400-7115. If you have any questions, you can speak with a

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representative by calling (800) 735-2922. You may also print applications directly from the website.

Additionally, you may need to contact the BOE to determine whether you are responsible for any fuel, alcohol, tobacco, environmental excise, or other special taxes and fees. These special taxes fall under the BOE's Special Taxes Program. For more information, visit the [Special Taxes](#) (18) page on the BOE's website.

WORKERS' COMPENSATION

If you have employees, you must purchase workers' compensation insurance. You can find out more about workers' compensation insurance on the [Department of Industrial Relation's](#) (19) website.

EMPLOYMENT-RELATED TAXES

If you have employees, you will need to apply for a California employer identification number with the Employment Development Department (EDD). This number is in addition to the federal EIN you have already obtained. A California business is generally subject to payroll taxes when it pays more than \$100 in wages to one or more employees within a calendar quarter. Once a business reaches this threshold, it must register with the EDD within 15 days.

Employers are responsible for reporting wages paid to employees, for paying Unemployment Insurance (UI) and Employment Training Tax (ETT) on those wages, and for the withholding and remittance of State Disability Insurance (SDI) and Personal Income Tax (PIT) due on wages paid to employees. The EDD rules also mandate that all new employees must be reported to the New Employee Registry within 20 days of their start date. Keep in mind that there are reporting rules which relate to independent contractors as well. There is much more information available about the EDD requirements on the [EDD's website](#) (20).

DEPARTMENT OF CORPORATIONS

Any issuance or sale of securities (such as units in an LLC or shares of stock in a corporation) in California may trigger the application of state securities registration requirements with the Department of Corporations, Franchise Investment Law, Personal Property Brokers Law, and/or Escrow Law requirements. You may obtain more information at the website of the Department of Corporation's [Securities Regulation Division](#) (21).

Local Level

BUSINESS LICENSE & FICTITIOUS NAME FILING

To obtain a business license and register a fictitious name for your business, visit the city/county clerk/recorder's office where the principal place of business is located. The city and/or county clerk's office can also help you determine what other local requirements, such as

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zoning laws or building permits, may apply to your business. Find information about your specific county at the [California State Association of Counties](#)' (22) website.

Certain cities allow you to search the fictitious name filings online. To see an example of one of these search tools, visit the [Fictitious Business Name Search Menu](#) (23) on the San Francisco County's Office of the County Clerk website. Once you have filed a fictitious business name, the registration lasts for five years. However, you must renew the business license each year.

OTHER PERMITS OR LICENSES

To determine what other licenses or permits you might need for your business, log onto the [CalGOLD](#) (24) (California Government: On-Line to Desktops) website, type in your business name, and explore what other permits apply to your specific business type. You may also wish to contact the Department of Consumer Affairs, which issues certain kinds of professional licenses, such as those issued to dentists, psychologists, and barbers. More information is available at the [Department of Consumer Affairs](#)' (25) website.

Miscellaneous

Intellectual Property

The intellectual property assets associated with your business are important assets which must be protected. You should consider registering your trademark or service marks, registering any copyrighted material you have created, and applying for a patent if you have developed a patentable asset. For information about trademarks, go to the Trademarks section of the [U.S. Patent and Trademark Office](#)'s(26) website. To learn more about patents, go to the Patents section of the same website. For copyright information, visit the [Library of Congress](#)'s(27) website.

Business Insurance

We also recommend that you speak with a commercial insurance expert—preferably one familiar with your industry—to explore what types of insurance coverage you will need to protect yourself and your business. An insurance consultant can help you ensure you have adequate insurance for the risks involved in your business without needlessly spending money on premiums for policies with overlapping coverage. You may also want to consider adding a business rider to your homeowner's policy.

Bank Account

Before meeting with the banker, be sure to find out exactly what legal documentation the bank will need to open your account(s).

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Links

1. <http://www.sos.ca.gov/business/resources.htm>
2. <http://www.sos.ca.gov/business/ts/ts.htm>
3. <http://www.uspto.gov/web/trademarks/workflow/start.htm>
4. http://buchananlawgroup.com/documents/starting_a_business/choosing_a_legal_structure_for_your_business.html
5. <http://www.sba.gov/smallbusinessplanner/index.html>
6. <http://www.entrepreneur.com/bizstartups/index.html>
7. <http://www.sos.ca.gov/business/>
8. <http://kepler.sos.ca.gov/list.html>
9. http://buchananlawgroup.com/documents/starting_a_business/the_buy_sell_agreement.html
10. http://buchananlawgroup.com/documents/starting_a_business/forming_a_corporation_through_blg.html
11. http://buchananlawgroup.com/documents/starting_a_business/forming_an_llc_through_blg.html
12. <http://www.sos.ca.gov/business/gp/forms/gp-1.pdf>
13. <http://www.sos.ca.gov/business/lp/forms/lp-1.pdf>
14. <http://www.sos.ca.gov/business/>
15. <http://www.irs.gov/businesses/small/article/0,,id=102767,00.html>
16. http://www.ftb.ca.gov/forms/07_forms/07_568bk.pdf
17. <http://www.boe.ca.gov/>
18. <http://www.boe.ca.gov/sptaxprog/spprograms.htm>
19. http://www.dir.ca.gov/dwc/dwc_home_page.htm
20. <http://www.edd.ca.gov/eddhome.htm>
21. <http://www.corp.ca.gov/SRD/default.asp>
22. <http://www.csac.counties.org/>
23. <http://services.sfgov.org/bns/start.asp>
24. <http://www.calgold.ca.gov/>
25. <http://www.dca.ca.gov/>
26. <http://www.uspto.gov/>
27. <http://www.loc.gov/index.html>

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