

Forming an LLC in California

This is a “do” list of the typical steps in forming an LLC in California

1. Choose your business name.

Choose a name that distinguishes your LLC from others. You can check the Secretary of State web site’s State’s **business name database** to see if the name you want is available or similar to other LLC names. There also is a form on the site to request reservation of the name you choose, which will keep it available while you are forming your LLC. Your name must identify your company as an LLC. Most businesses choose to use “LLC” or “L.L.C.” following their chosen business name. There are other acceptable variations, but these are the ones used most commonly.

Your name may be registered as a federal and/or state trademark if you do or intend to do business on a statewide or national basis. Begin with a name search of the federal trademark database (US Patent and Trademark Office) in addition to your California search.

2. Prepare and File Articles of Organization.

The Articles of Organization is the LLC’s statement of its essential entity facts. I would prefer to draft your AO, but you may use the form available on the Secretary of State’s website. You will pay a fee is **\$70** to the Secretary of State to file your Articles of Organization. The Articles must include the name of an agent for service of process. This is a person or entity who agrees to accept process (usually a Summons and Complaint) if the LLC is sued. The requirements are printed on the **LLC-1 form** on the Secretary’s website.

3. Prepare an Operating Agreement

California is one of the states that requires LLCs to have an Operating Agreement as part of their formation process. Oddly, the agreement may be oral, but why would you do that?

The OA is analogous to the bylaws of a C corporation. The typical issues covered are: facts about the initial membership, how meetings are conducted, management structure of the company, capital contributions from each member, how profits and losses will be allocated, how new members will be admitted or existing members withdrawn, and perhaps “buy-sell” provisions to give members the first option to purchase a retiring member’s interest. If you are forming a multimember LLC, the content of your operating agreement should be the product of a collaboration of the forming members and, hopefully, with the benefit of legal counsel.

4. File Your Initial Statement of Information (LLC-12)

Owners of a newly formed LLC need to file an initial **Statement of Information** with the Secretary of State within 90 days of filing the articles of organization. The filing fee is \$20. This is form LLC-12, which can be prepared and filed online on the Secretary’s website.

5. Tax and Regulatory Requirements.

Tax ID. The LLC is a separate taxpayer, so you must obtain an Employer Identification Number (EIN) from the IRS. This can be done via its **online application** or by filing **Form SS-4**. There is no filing fee. The assigned tax ID number is available immediately to online filers. If the LLC has one member, he or she may use his or her own Social Security number; an EIN is needed for a single-member LLC only if it elects to be taxed as a corporation. An EIN also is required if the LLC has more than one member and/or has employees.

Minimum Franchise Tax. One of the significant costs of doing business as an LLC in California is the minimum franchise tax charged to LLCs. The amount is **\$800**, but may be more for higher annual income LLCs. The minimum tax is separate from

any income, self-employment, or payroll tax.

The minimum tax is paid annually with the LLC's report of income on **FTB Form 568**. These returns are due by the 15th day of the 4th month after the close of the LLC's taxable year. For details, see the California Franchise Tax Board's **Limited Liability Company (LLC) page**.

There may be other informational returns that you will have to file annually or semi-annually with either the IRS or the state. For more information, check out the **IRS Guide To Information Returns and California Franchise Tax Board's Information Returns page**.

For many, this \$800 minimum tax could be a significant impediment to forming an LLC in California, especially if you have little or no expected income from your online publishing activities.

Employee withholding. If you will be paying at least \$100 to an employee or employees in a quarter (this does not include owners unless you have elected to have your LLC taxed as a corporation), you are subject to employment taxes and must register for a California employer account number within 15 days of paying that \$100.

You can register and get an account number online directly on the web site for the **Employment Development Department**. You must pay these taxes quarterly.

For more information on being an employer, including tax information, see the **California Employer's Guide**. You will need to report the employee's Social Security number with your payroll filings; each employee will need to provide you with a signed **Form W-9** for this purpose.

Right to Work. Whenever you hire an employee in California, you must inform both the IRS and the State of California. The IRS details all of the necessary steps, including verifying work eligibility and withholding allowances certificates, on its page entitled **Hiring Employees**. You can find information for the state level in the

California Employer's Guide and on the website for **California's New Hire Reporting Program**.

Employee Insurance. If you have any employees in California, you must carry workers' compensation insurance for each. You can find more information on the **Division of Workers' Compensation** web site.

Business licenses. Depending on what type of business your LLC is engaged in and where it is located, you may need to obtain other local and state business licenses. For more information, go to **CalGold** on the California Office of Business and Economic Development website.

7. Bank Accounts.

Keep your business's finances separate from your personal accounts. A good way to do this early on is by opening a bank account for your business. You will probably need a Tax ID number (EIN), a copy of the articles of organization, and a resolution identifying authorized signers if those names are not listed in the articles.

8. Ongoing Requirements.

California LLCs must file a Statement of Information (Form LLC-12) with the Secretary of State every two years after the original Statement of Information is filed (see above). The filing fee is **\$20**. The form is available on the Secretary's website.

Section 17058 of the California Corporations Code requires that certain documents be kept at the LLC's principal office. These are specifically required to be hard copies. A copy of these requirements follows on the next page, for your reference.

Use this as a reference and a guide through the formation process, and a checklist of actions and records that will keep your LLC in good standing. This list is not complete. You will find additional information on the many online links herein. This is a lively

topic, so you can find many well-written articles on LLCs on the web.

California Corporations Code §17058

(a) Each limited liability company shall maintain in writing or in any other form capable of being converted into clearly legible tangible form at the office referred to in subdivision (a) of Section 17057 all of the following:

(1) A current list of the full name and last known business or residence address of each member and of each holder of an economic interest in the limited liability company set forth in alphabetical order, together with the contribution and the share in profits and losses of each member and holder of an economic interest.

(2) If the articles of organization contain the statement described in subdivision (b) of Section 17151, a current list of the full name and business or residence address of each manager.

(3) A copy of the articles of organization and all amendments thereto, together with any powers of attorney pursuant to which the articles of organization or any amendments thereto were executed.

(4) Copies of the limited liability company's federal, state, and local income tax or information returns and reports, if any, for the six most recent taxable years.

(5) A copy of the limited liability company's operating agreement, if in writing, and any amendments thereto, together with any powers of attorney pursuant to which any written operating agreement or any amendments thereto were executed.

(6) Copies of the financial statements of the limited liability company, if any, for the six most recent fiscal years.

(7) The books and records of the limited liability company as they relate to the internal affairs of the limited liability company for at least the current and past four fiscal years.

(b) Upon request of an assessor, a domestic or foreign limited liability company owning, claiming, possessing, or controlling property in this state subject to local assessment shall make available at the limited liability company's principal office in California or at the office required to be kept pursuant to subdivision (a) of Section 17057 or at a place mutually acceptable to the assessor and the limited liability company, a true copy of business records relevant to the amount, cost, and value of all property that it owns, claims, possesses, or controls within the county.