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**Article: A guide to opening a business in California, Part 1**

**By:** Christopher A. Kerosky

The following is a series of articles on the process of starting and managing a business in California. It is designed for the small business owner who may not be familiar with California law or procedures. I will attempt to provide the reader with a step-by step guide through the primary tasks necessary to legally register your business and start operations in this state.

**First Step: Choosing a Proper Business Form and Registering Your Business.**

One of the most important and sometimes most difficult decisions is the proper legal form for your business. There are four basic legal forms, each described below: the sole proprietorship, the partnership, the corporation and the limited liability corporation (LLC).

Generally, the decision should be made with reference to several factors: simplicity and cost of organization; control and decision-making; taxes; and responsibility for the debts and other potential liabilities of the business. In another article, I deal in depth with the differences between each, but I will describe the basic differences here.

A sole proprietorship has the advantage of simplicity, requiring less registration and paperwork. Also, the income of the business is treated as income of individual for tax purposes, which makes tax return preparation a bit easier. However, there is no protection from personal liability for the owner. The debts of the business are treated as debts of individual, including liability due to accident or injury.

A partnership also does not require formal registration or continuous meetings and minutes, as with a corporation. However, a written agreement between partners is strongly advisable. Like a sole proprietorship, the income of the partnership are not separately taxed. But, again, the partners are not shielded from liability. There are now limited liability partnerships (LLPs) which do provide limited protection for liability, although not as complete as with a corporation or LLC.

Corporations and Limited Liability Corporations are very similar. Both require corporate documents to be drawn up, usually by a lawyer. Both require registration with the state described below.

With corporations, certain legal documents must be kept on an ongoing basis, such as shareholders meeting minutes, records of stock transactions. Formation of an S corporation requires an additional filing with the IRS. With LLCs, the ongoing paperwork is not as demanding.

With both LLCs and S corporations (used by most small businesses), income is treated as the income of its shareholders just like a sole proprietorship. With larger C corporations, income

of business is not treated as income of individual for the tax purposes. Only dividends paid to shareholders [or salary paid to employees] is treated as income. On the case of payment of dividends, this can subject the company to double taxation under certain circumstances.

One of the principal advantages of LLCs and S corporations is that the debts of the business are not treated as the debts of individual partners. A corporation can go bankrupt even while its shareholders remain solvent. Most importantly, the shareholders are shielded from the liability of the corporation as long as the corporate formalities are followed.

Once you have decided which business form you will use, it may be necessary to register your business with the state of California. Corporations or LLCs need to file special registration papers with the California Secretary of State. For corporations, the necessary papers are called Articles of Organization. Limited liability partnerships file a Limited Liability Partnership Registration form.

The Secretary of State must approve all names before they can be registered. The main criteria that the Secretary of State's office applies is that they ensure that your proposed name is not already taken by another entity of the same type. A business entity in California may not use a name that is already registered to another existing business entity of the same type. Before you file your registration documents with the Secretary of State, it is worth it to check your potential names to see if they are available. If they are, you can immediately reserve one of them. You can do so through the Secretary of State's office in person or at the telephone numbers or websites listed below.

#### **California Secretary of State Offices**

Name check phone number is 916-653-6814

Online at [California Secretary of State](#)

Sacramento Headquarters  
1500 11th Street  
Sacramento, CA 95814  
(916) 657-5448

Los Angeles Branch  
300 S. Spring Street, Room 12513  
Los Angeles, CA 90013  
(213) 897-3062

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**CHRISTOPHER A. KEROSKY** is a partner with Wilson Purves in the law firm of KEROSKY PURVES & BOGUE, with offices located in San Francisco, Santa Rosa, Ukiah, Napa, Walnut Creek, San Jose, San Rafael and Sacramento. Mr. Kerosky has been an attorney licensed to practice law in California for 25 years. He is a graduate of UC Berkeley (Boalt Hall) School of Law and a former trial lawyer for the Civil Division of the U.S. Department of Justice in Washington D.C. For 9 years, he has been honored as one of Northern California's top lawyers by San Francisco Magazine, "Super Lawyers" edition. Mr. Kerosky speaks English, Spanish and Polish and has also working knowledge of Russian.

**WARNING: The article above is not intended to be a substitute for legal advice. We recommend that you get competent legal advice specific to your case.**