

# Incorporation in California and Affairs After Incorporating

This section explains the procedure to incorporate in California as well as post incorporation operations. There is a big difference between filing articles of incorporation and incorporating. The procedure to incorporate in California is similar to the incorporation process in other states, but not identical.

Incorporation in California takes about one week if done by expedited processing. With normal processing, incorporating takes about a month. Our firm handles the full scope of pre-incorporation and post-incorporation matters, from filing Articles of Incorporation to preparation of all the documents, resolutions and certificates necessary to incorporate.

## Selecting a Name for a California Corporation

The first step to incorporate is selecting the name for the company. If available, the name can be reserved with the California Secretary of State for 60 days. Incorporating protects the name from being used by another corporation in California. The name cannot infringe on a trademark or service mark. To protect the name from use by non-corporate entities, it can be registered as a trademark or service mark which is a separate process.

## California Articles of Incorporation

To incorporate, Articles of Incorporation must be filed with the California Secretary of State. While filing Articles begins the existence of the corporation, it doesn't provide any structure to the entity. The corporation must be completed with Bylaws, the appointment of the Board of Directors, the issuance of stock, and other steps discussed below. There is a big difference between "filing Articles of Incorporation" and "*incorporating in California*".

## Corporate Bylaws

Bylaws commonly include provisions of the law, rules regarding voting and calling meetings as well as other structural and operational issues. The bylaws will provide for the number of Directors on the Board of Directors. The incorporator who executed and filed the articles of incorporation will also execute an Election of Directors documenting the appointment of the initial Board of Directors.

## Organizational Meeting of Directors

To complete the process of incorporating, directors hold the First Meeting of the Board of Directors to elect officers, authorize issuance of stock, adopt the Corporate Bylaws and such other matters as designating the location of corporate office and its place of banking. Minutes (signed by the Secretary of the Corporation) of the organizational meeting must be prepared to provide evidence of the actions authorized by the Board. Many companies will forgo the formality of holding a formal meeting documented by Minutes by having all the Directors execute a "Consent to Action Without Meeting" to document the corporate resolutions.

## Ongoing Affairs After Incorporating

After the articles of incorporation, first meeting of directors, and stock issuance are completed, the formation of the corporation has been formally established. The California Corporations Code, courts, and Internal Revenue Service require observance of formalities in operating a Corporation for the directors and shareholders to have limited liability against claims on the corporation.

## Federal Employer Identification Number

A Federal Tax Identification Number for the company (also called an "EIN" or "Employer ID Number") can be obtained from the IRS for taxation purposes and for opening a corporate bank account. Since a Corporation is a taxpayer, it will file tax returns and maintain evidence that it is operating as an entity separate from its owners. The number is obtained by filing IRS form SS-4.

## Issuance of Stock

If stock is issued in exchange for assets contributed to the corporation, a list of contributed assets should be completed and maintained with the corporate records to document the transfer of assets in exchange for stock. Before stock is issued, a permit must be obtained from the California Department of Corporations. However, if the shareholders of the corporation are limited to less than 35 persons, then it is possible to issue stock by registering with the Dept. of Corporations under Corporate Code Section 25102(f), which is a simplified and common method to issue stock. The company is also required to file an annual Domestic Stock Statement, providing information to the Secretary of State of California regarding the company's principal place of business, as well as the names and addresses of the corporate officers and directors and the company's registered agent for service of process.

## Fictitious Name Statement

If the Corporation will conduct business under a fictitious name, a Fictitious Business Name statement must be filed with the County Clerk in the county of the company's principal place of business. The statement must be filed within forty days of the commencement of business, and within thirty days after filing a Fictitious Business Name Statement, the registrant must publish the statement in a newspaper of general circulation in the same county once a week for four consecutive weeks. An affidavit of publication will need to be filed with the County Clerk's office as proof.

## Business Licensing for a Corporation

Many cities and counties require a license to do business within the city. If a business intends to operate within the incorporated area of a city, the city government may require a business permit. Check the links to each [county website](#) for contact information.

The California agency responsible for administration and enforcement of California corporate, business and personal income taxes is the Franchise Tax Board. This Board will send a "Guide to Corporations Commencing Business in California" (publ. FTB 1060) to new companies if requested.

If the corporation will be selling products in California, it must obtain a seller's permit from the [State Board of Equalization](#). Also, the corporation must pay California sales tax for products it sells.

## Subchapter S Corporation

"Subchapter S Corporation" status is acquired by filing IRS form 2553. This form should be filed within 75 days of the filing of the Articles of Incorporation. All the shareholders of the Corporation must sign the form for the S corporation status to be accepted by the IRS. The S Corporation acceptance from the IRS should be maintained in the corporate records book.

## Registered Agent

In California, there is no requirement for resident director to incorporate. Foreign nationals can act as a director of a California company. However, a California company is required to have a

resident agent in California for acceptance of service of process.

## Summary

This has outlined the basic procedures to incorporate in California. While this should help clarify the incorporating process, it is not intended to be a complete guide. A number of problems can arise from the failure to establish and maintain the corporate structure, such as unanticipated tax liability or shareholder disputes. If a corporation is not properly set up, the business structure may not provide protection from personal liability, and shareholders may be personally liable for the company's obligations.

For more information and direct links to resources about incorporating in California please refer to the California [Resources page](#).