

# California LLC Formation

There is a big difference between filing Articles of Organization and **forming an LLC in California**. This section explains the procedure of California Limited Liability Company formation as well as ongoing affairs of the Company. Steps to form an LLC in California are outlined, together with business licensing and taxation considerations.

## Background

Since California's enactment in 1996 of The Beverly-Killea Limited Liability Company Act which provides for the formation of the [limited liability company](#), this form of business has become a popular alternative to incorporating. In 1997, the IRS began to allow LLCs to elect tax treatment. Now, by default, a Limited Liability Company is taxed as a partnership, (with pass-through tax treatment ) unless the members specifically designate to be taxed at the entity level in the same manner as a corporation.

California has amended the Beverly-Killea Act to expressly authorize the formation of a single-member LLC. State law also now allows for perpetual duration of a limited liability company existence. At the bottom of this page are links to many governmental agencies and publicly available information to support the statements made in this writing. These [California LLC Resources](#) include forms, licensing agencies, the California Corporations Code which governs the LLC and the Secretary of States office.

## Forming an LLC in California

The creation of an LLC begins with filing of articles of organization and the execution of an operating agreement by the members of the company. The Articles of Organization are filed with the California Secretary of State's Office and disclose:

- the name of the limited liability company;
- the LLC's purpose;
- the agent for service of process
- a description of the type of business that constitutes the principal business activity of the limited liability company;
- a statement to indicate if the LLC will be managed by: one manager; more than one manager; a single member; or all limited liability company members.

Articles for the LLC need to be filed in the Sacramento California office of the [Secretary of State](#). The San Diego and Los Angeles locations only accept corporate articles of incorporation for filing. The filing fee is \$70, with an additional fee charged for expedited services. The

effective date which the existence of the Limited Liability Company begins is the date of the filing of the Articles of Organization.

While filing Articles of Organization begins the legal existence of the LLC, it doesn't provide any structure to the entity.

## **Limited Liability Operating Agreement**

In California all LLC's are required under state law to have a Limited Liability Company Operating Agreement (see code 17050). The operating agreement may be entered either before or after the filing of the articles of organization and should address at least the following items:

- The rights and duties of members;
- Contribution of cash, property, or services by members and other issues relating to capital structure;
- Maintenance of accounting records and delivery of financial reports and tax information to the members;
- Distributions of profits to the members;
- Allocations of losses;
- Management duties;
- Meetings of members and managers;
- Voting requirements;
- Disposition or assignment of ownership interests of members;
- Termination, expulsion, withdrawal and admission of members;
- Dissolution of the LLC;
- Procedures for amending the operating agreement.

## **Statement of Information**

Under Calif. Corporation Code §17060, the LLC must file with the Secretary of State a Statement of Information (Form LLC 12) within 90 days of the filing of the Articles of Organization. The Statement of Information includes:

- The names and addresses of the managers if manager managed, or of the members if member-managed.
- A statement of the nature company's business activity,
- The name and address of the agent for service of process, and
- The address of the company's principal business office.

## **Annual Franchise Tax**

Every Limited Liability Company (LLC) that is doing business in California or that has Articles of Organization accepted or a Certificate of Registration issued by the Secretary of State's office that IS NOT taxed as a corporation must pay an annual franchise tax of \$800. The tax is paid to the California Franchise Tax Board and is due on or before the 15th day of the fourth month of the company's taxable year.

## Fictitious Name Statement

If the Company 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 Clerks office as proof.

## Business Licensing

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. Links to each [county website](#) appear elsewhere on this site.

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 on request.

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

## Summary

While this has provided a basic overview of common issues and procedures to form a California LLC, it is not intended to be a complete guide, but only to cover main points and to show the differences between filing Articles of Organization and forming a legitimate Limited Liability Company.

For more information and direct [links to resources](#) about forming a California LLC please refer to the California Resources page. Please also see: [Formation and Operation of a Limited Liability Company in California](#). to form an llc.