

Establishing a Corporate Entity

The most attractive reason for incorporating is to invoke limited liability to business owners. Incorporation of a business insulates the principals from claims against creditors.

Shareholders, Officers and Directors of a corporation are presumed under the law to not be liable for business obligations, whereas in a sole proprietorship or partnership, the owners are personally liable for business obligations, and as such, their assets may be attached by creditors.

Under the law corporations are separate and distinct legal entities (**a corporation is a person in the eyes of the law**).

How to Incorporate

Incorporating involves setting up three basic elements - Directors, Officers and Shareholders. These elements should be understood before considering how to incorporate a business

- **Shareholders own stock** and are the owners of the corporation. Shareholders elect and remove Directors and will vote on major business decisions such as acquisition of real estate, choosing an income tax structure or entering mergers.
- **Directors are responsible for the general affairs** of the corporation including the appointment and removal of corporate officers. A minimum of one person must serve as a Director.
- **Officers are responsible for day-to-day operations** and can be appointed or removed at any time by the Directors. A corporation must have at least two Officers (a President and a Secretary). One person may simultaneously hold more than one corporate offices. The person may also serve as a Director and be a shareholder. As such, in most states, one person may incorporate a valid, legal corporation.

Incorporation is begun by filing Articles of Incorporation with the appropriate governmental office (usually the Secretary of State, but in some jurisdictions, [Arizona](#) for example, the Articles are filed with the Corporation Commission). The Articles provide basic information to the State and public such as the location of the business and its initial purpose.

After Incorporating

Certain ongoing requirements exist in maintaining a corporate structure after incorporating. The directors must hold an Organizational Meeting after the articles have been filed, and corporate

bylaws must be adopted. The bylaws are the governing body of rules for the business entity to operate. Bylaws will typically set forth the frequency and manner in which meetings of directors and shareholders will occur, under what circumstances directors and officers can be removed, and the duties of the directors and officers.

We can prepare bylaws for you so that the meeting of directors can be held in order to approve the bylaws in as short amount of time as possible after incorporation has started.

Corporate bylaws are not filed with the state office. They are kept in a Corporate Records Book. Being that the Bylaws need to be approved by the directors, it is good practice to have them prepared prior to the Organizational Meeting of the Board

Records of meetings of shareholders and directors must be kept in the Records book. Meetings of shareholders must be held at least annually. In these meetings, the Corporate Bylaws can be amended and stock shares are issued. It is imperative that records of these meetings be maintained in the Corporate Records Book. In the event of a tax audit, or in the event a creditor attempts to "pierce the corporate veil", the minutes provide evidence to the IRS, and to the Court of the corporate entities' existence and propriety. Having corporate minutes can protect you legally and provide evidence to substantiate the legitimacy of the corporation in the event of litigation.

Annual reports must be filed with the State to maintain the corporations' structure. Annual reports discloses the names and addresses of the current officers, directors and shareholders of the corporation. If there have been any changes in officers, directors or shareholders, the annual report includes that information. Failure to file Annual Reports will result in revocation of the business corporate charter.

A Federal Tax Identification number for a corporation is obtained by completing a [Form SS-4](#). from the IRS. You can file the form with the IRS by mail, or by facsimile transmission immediately after incorporating. The address and facsimile numbers for filing the Form SS-4 are printed on the form. After the IRS receives the SS-4, it will notify the corporation that it has been assigned an employer identification number. Generally, this will happen within two to three weeks.

For state specific details please see our page on [California](#) Incorporation and the section regarding incorporating in [Arizona](#).