

Entities, Partnerships, & Groups - Choosing The Right Vehicle For You

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About Rimon Law Group, Inc.:

Rimon Law Group is an international professional corporation headquartered in San Francisco, California with attorneys throughout the United States and abroad. Rimon is a full service law firm made up of attorneys with experience from major international companies, law firms and government agencies. Our partners are comprised of former law firm partners and general counsel, with specialties covering the full depth of corporate representation, bringing our clients a comprehensive range of legal specialties and business experience.

Rimon Law Group has been recognized as an innovator in the legal industry since its inception and has been featured in leading publications such as the American Lawyer, Bloomberg, Business Week, the San Francisco Business Times, and the San Francisco Daily Journal. Rimon was among the first law firms to be awarded B corporation certification, marking Rimon Law Group as a leader in the realms of social and environmental responsibility.

Rimon Law Group's clients range from multi-billion dollar Global 100 corporations to early-stage startups and our partners have worked on deals ranging from corporate formations to large public offerings.

About Michael Moradzadeh:

Michael is Rimon Law Group's Director of Strategic Development. He is in charge of strategic partnerships and recruiting for the firm. Prior to Rimon Law Group, Michael practiced general corporate law at Ropes & Gray, LLP in San Francisco. Michael also worked at the United States Attorney's Office in San Francisco. Before law school Michael worked for several high-tech companies including Napster and Check Point Software. Michael also co-founded EZ Web Mall in 1997.

Michael sits on the boards of the Northern California Columbia Alumni Association and the JCRC of San Francisco. Michael is also a fellow of the AJC Diplomat Program, and a member of the Business Section of the American Bar Association, the California Israel Chamber of Commerce, the California Bar Association, and the Columbia Alumni Association.

About Alexander Hamilton:

Alex is a partner in Rimon's San Francisco office. His practice focuses on real estate and transactional law practice, including real property purchases, sales and exchanges, commercial leasing, construction contracts, investment in real estate and business ventures, workouts of troubled loans, restructuring of commercial leases, acquisitions of debt, "green" building, sustainable development and the formation and capitalization of business ventures. He represents a wide spectrum of institutional property owners, sophisticated investors, commercial landlords, commercial tenants, private equity sources, retail companies, software companies and start-up ventures.

Alex is the author of California Real Estate Forms (Miller & Starr) (1st and 2nd Editions – West Group) as well as a contributing author to the Lease Negotiation Handbook (ALI-ABA/AECRE).

Overview



- ❑ Do You Need an Entity?
- ❑ Overview of Business Entities
- ❑ Entity Issues in Real Estate
- ❑ General Considerations

Do You Need An Entity?

Protection from Liability

Continuity of Ownership

Financing Requirement

Fundraising

Control

Statutory Protections

Taxes

Common Forms of Business Entities

- ❑ Sole Proprietorship
- ❑ Corporation
 - C-Corporation or S-Corporation
- ❑ Partnership
 - General Partnership or Limited Partnership
- ❑ Limited Liability Company (LLC)
- ❑ LLP for certain licensed professions (lawyers, doctors, architects, for examples)



Sole Proprietorship

- ❑ Business owned by one person
- ❑ No formal requirements to form or conduct business
- ❑ Unlimited liability for obligations, injuries
- ❑ Pay income tax on operating profits, as an individual, generally at ordinary income rates



Corporation

- ❑ Separate legal entity
- ❑ Formalities – state filings, bylaws, meetings, minutes
- ❑ Ownership and Management
 - Owned by shareholders (can be just one)
 - Managed by directors (can be just one)
 - Run by officers (one person can hold multiple positions)
- ❑ Liability – normally limited to the corporation's assets



Corporation (cont'd)

- ❑ Must file “Articles of Incorporation” with the California Secretary of State
 - \$100 filing fee to CA Secretary of State for filing articles of incorporation
- ❑ Formalities: separate bank accounts, meetings, minutes, etc.
- ❑ Must file annual “Statement of Information” with Secretary of State
- ❑ Must file annual tax returns with IRS and Franchise Tax Board

Corporation (cont'd)

- Two Categories of Corporations for Tax Purposes
 - “S Corporation”
 - Often referred to as a “small business corporation”
 - “C Corporation”
 - If a corporation is not an S corporation, it is a C corporation
 - All public corporations (General Motors, IBM, Boeing) are C corporations

Corporate Taxation – C Corporation

- ❑ C corporation is a separate taxpayer
- ❑ Tax is based on C corporation's net income
- ❑ C corporation distributes its profits to its shareholders (i.e., “dividends”)
- ❑ Two levels of tax:
 - C corporation pays tax on net income
 - Shareholders pay tax on dividends



Corporate Taxation – S Corporation

- ❑ No federal income tax imposed on S corporation
- ❑ Owners (shareholders) pay tax individually on their share of the S corporation's profits
- ❑ Owners (shareholders) can deduct S corporation's losses (losses, what losses?) on their personal income tax returns
- ❑ State income tax imposed on S corporation:
 - Currently greater of \$800, or 1.5% of S corporation's net income

S Corporation (cont'd)

- To Qualify as S Corporation:
 - Must file “S election” with IRS
 - No more than 100 shareholders
 - Shareholders must be individuals, qualified trusts, or charities
 - Shareholders must be U.S. citizens or permanent residents
 - May have only 1 class of stock
 - All shares must have identical economic rights
 - Shares may have different voting rights

General Partnership

- ❑ A business conducted by 2 or more people
- ❑ Each partner has unlimited liability for debts and obligations of the business
- ❑ Partnership does not pay federal income tax
 - Each individual partner pays tax on his or her share of partnership income
- ❑ Maximum flexibility in sharing profits and losses

General Partnership (cont'd)

- ❑ No formal state filing requirement to form general partnership
- ❑ Must file annual tax returns with IRS and Franchise Tax Board
- ❑ Written Partnership Agreement is highly recommended.
 - If there is no written partnership agreement, “default rules” of California partnership law may govern the partnership



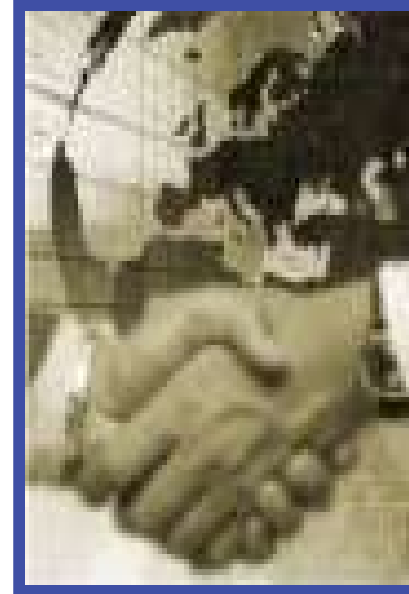
Limited Partnership

- Similar to General Partnership Except:
 - General partner has unlimited liability for partnership obligations
 - Each limited partner's liability for partnership obligations is limited to its contributions to the partnership
 - Limited partner should not participate in management or control of partnership.
 - Limited partner that participates in management or control of partnership may be treated as general partner

Limited Partnership (cont'd)

□ Filing Requirements:

- Must file Certificate of Limited Partnership with the CA Secretary of State
- Name must include “limited partnership” “L.P.” or “LP”
- Initial \$70 filing fee
- Must file annual tax returns with IRS and Franchise Tax Board
- Must pay \$800 California franchise tax each year
- Must have Limited Partnership Agreement (written or verbal)
- Written Limited Partnership Agreement is highly recommended
 - If there is no written limited partnership agreement, “default rules” of California limited partnership law may govern the partnership



Limited Liability Company (LLC)

- ❑ Separate legal entity
- ❑ Name must include Limited Liability Company, L.L.C., or “LLC”
- ❑ May not engage in banking, insurance, trust company business or render professional services
- ❑ Owners are referred to as “members”
- ❑ LLC may have one member, or multiple members
- ❑ No limitations on ownership; members can be individuals, entities, etc.
- ❑ Fewer formalities to follow than a corporation, and more flexible management structure
- ❑ Members can manage LLC, or appoint a “manager” to manage LLC
- ❑ Liability limited to the LLC’s assets; members are not liable for LLC’s obligations

Limited Liability Company (cont'd)

- ❑ LLC with one member is “disregarded” for federal tax purposes, and treated as sole proprietorship
 - Member may elect to have LLC treated as corporation
- ❑ LLC with two or more members is generally treated as partnership for tax purposes, and each member pays tax on his or her share of the LLC’s income
 - Members may elect to have LLC treated as corporation
- ❑ Maximum flexibility in sharing profits and losses

Limited Liability Company (cont'd)

- ❑ Must file Articles of Organization with the Secretary of State
 - \$70 initial filing fee
 - \$800 annual tax due to CA Franchise Tax Board
 - First year tax of \$800 payable within 4 months of formation
 - Also subject to annual fee, payable to CA Franchise Tax Board, based on LLC's gross income (maximum fee is \$11,790, if gross income exceeds \$5 million)
- ❑ Formalities: must have an “Operating Agreement” (written or verbal), BUT meetings, minutes are not required
- ❑ Written Operating Agreement is highly recommended
 - If there is no written agreement, “default rules” of California LLC law may govern the LLC
- ❑ Must file annual “Statement of Information”
- ❑ Must file annual tax returns with IRS and Franchise Tax Board

S-Corporation or LLC?

	S-Corp	LLC
Liability	Limited	Limited
Ownership	Limited to individuals, certain trusts, charities; No more than 100 shareholders	Unlimited
Management	Board and officers	Flexible --- Members or Managers
Annual State taxes	1.5% of net income Minimum: \$800 Maximum: N/A	Based on gross income Minimum: \$800 Maximum: \$12,590

Choosing a Name

- ❑ May reserve name with Secretary of State before filing Articles of Incorporation, Articles of Organization, or Certificate of Limited Partnership
- ❑ Secretary of State will reject Articles or Certificate if proposed name is:
 - Confusingly similar to, or same as, the name of another corporation, LLC or partnership

Choosing a Name (cont'd)

- Check name availability in other states if plan to operate the business outside of California
- Avoid trademark infringements

Real Estate Issues

- ❑ **Structuring for a 1031 Exchange**
 - ❑ **What is a 1031 Exchange?**
 - ❑ **Advantages**
 - ❑ **Disadvantages**
 - ❑ **Using an intermediary**
 - ❑ **Choice of entity**



Real Estate Issues (cont'd)

- ❑ **Creating Single Purpose Entities (SPE)**
 - ❑ **What is a Single Purpose Entity**
 - ❑ **Why a lender cares**
 - ❑ **Why you care**

Real Estate Issues (cont'd)

❑ Understanding tenancies in common (TIC)

- What is a TIC?
- Advantages
- Disadvantages
- Tax reasons
- Practical reasons



General Considerations

- ❑ State License or Permit
 - Determine whether your activity requires a state license, permit or registration (i.e., alcoholic beverage license, electronic repair license, cosmetology license, etc.)
 - See www.calgold.ca.gov
- ❑ City/County License or Permit
 - Many cities, counties require business to register with tax collector
- ❑ Fictitious Business Name Statement
 - If you operate your business under a fictitious name or “d/b/a” you must file a Fictitious Business Name Statement with the county recorder, and publish notice in a local newspaper
- ❑ Qualify in other states where you do business

General Considerations (cont'd)

- ❑ **Insurance**: Maintain appropriate insurance
- ❑ Liability Insurance
 - For injuries to third parties
- ❑ Automobile Insurance
 - For injuries to third parties, where automobile involved
- ❑ Workers' Compensation Insurance
 - For injuries to employees
- ❑ Errors & Omissions/Professional Malpractice Insurance
 - For service businesses
- ❑ Directors & Officers Insurance
 - If you operate as a corporation, LLC or limited partnership
 - Health insurance?

General Considerations (cont'd)

- ❑ Got Employees?
 - State and Federal Payroll Taxes & Withholding Obligations
 - Register with California Employment Development Department
 - Register with Internal Revenue Service
- ❑ Conducting Business As A Corporation, Limited Partnership or LLC?
 - Make sure third parties are aware you are acting as agent for corporation, limited partnership or LLC
 - On all contracts and correspondence, identify the entity, and then yourself as agent.
For example:
 - ABC Company, Incorporated
 - By: Jane Smith, President

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