

Essential document filings for a startup: what, when and how

Forming a corporation is fun and exciting ... until you face all administrative tasks that need to be handled. One of those administrative tasks includes ensuring that certain documents are prepared and filed with government agencies when required.

The filing that are required by corporate, securities and tax laws may seem complex, but founders who keep some basics in mind will find their administrative burden to be lighter.

This article provides a checklist of some key filings for a typical startup.

Corporate filings

Though corporate filings are state-specific and may differ from one state to another, certain events in a corporation's lifecycle will trigger a filing in most states:

Formation and changes in stockholders' rights: When you first form your corporation, you must file what is commonly referred to as the charter. In Delaware, that charter is referred to as a "certificate of incorporation" and in California, the charter is referred to as "articles of incorporation" (for more about considerations in deciding where to incorporate and why Delaware is a preferred jurisdiction, [see our article](#)). The charter sets forth, among other things, the corporation's classes of stock, the rights and privileges of those classes of stock, and the corporation's purpose and agent's address. Over time, as additional classes or series of stock are authorized (such as in connection with a financing), or if the rights, preferences or privileges of any class or series of stock are changed, an amendment to the charter must be filed. If the amendment is extensive, the new charter may be referred to as an "amended and restated" charter.

- **Change in corporate name, purpose or registered agent:** If the corporate name is changed or if the corporation's purpose or registered agent is modified, then an amendment to the charter also needs to be filed.
- **Taxes: annual statement or report.** Unlike the certificate of incorporation which is filed upon formation and then amendments and/or restatements are filed as needed, a corporation must file an annual report or annual Statement, well, annually. This is typically due before the corporation's annual taxes can be paid (see this article on [Annual Franchise Taxes](#) for additional information). You can file an annual report or statement online easily.
- **Doing business in another state.** If your corporation does business in any state other than its state of incorporation (see this article on [foreign corporation qualification](#)), you must file a qualification to do business in every such state. If you have a foreign corporation that does business in California, you must also file an information statement within 90 days following the date of incorporation. Other states may have other requirements.

Federal securities filings

Now that you know which filings are needed to comply with corporate governance standards, let's look at the filings required

by federal and state securities laws. Any time a corporation issues any securities, whether stock, options to purchase stock or compensatory equity awards, warrants or convertible notes, the corporation must comply with both federal and state securities laws.

At the federal level, complying with securities laws requires either registering the issuances or grants of shares with the SEC (a burdensome, complex and expensive process) or finding an exemption from registration (the way to go for startups and most private companies). While there are a number of different exemptions available under federal securities laws, certain exemptions require a securities filing:

- **Sale of securities: Form D.** The Securities and Exchange Commission requires companies to file a Form D when it issues securities in a private placement under Regulation D, including offerings made under Rule 506, one of the most frequently used securities law exemption. Form D is simple. It must also be filed within 15 days of the first sale with each state in which purchasers of the securities reside. Note that Form Ds are publicly available. Some stealth startups choose to rely on other securities law exemptions to avoid having to file a Form D.

State securities filings

For purposes of this section, we're going to continue to assume your corporation is subject to California state corporate law. The following are common securities filings that fulfill California state securities law requirements.^[1]

- **Sale of securities: 25102(f) notice.** The 25102(f) notice can be done easily online or by your legal team, but it must be filed every time a corporation issues stock.
- **Issuance of option grants and other compensatory equity: 25102(o) notice.** At the federal level, corporations frequently rely on the Rule 701 securities law exemption for compensatory equity issuances (including stock option grants), which does not require a filing. In California, however, your corporation would have to file a 25102(o) notice. The 25102(o) notice can be filed online and must be filed within 30 days following the initial issuance of any security under the corporation's option plan. Additionally, a new 25102(o) notice must be filed whenever the corporation increases the number of shares reserved under its option plan.

[1] Consult with your attorney on filings required by the laws of the state in which the recipient of the securities resides.

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