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**CHOICE OF ENTITY DEVELOPMENTS FOR CALIFORNIA  
ENGINEERS, LAND SURVEYORS AND CONTRACTORS**

**Engineers and land surveyors can now use LLPs, and should use them instead of general partnerships. Contractors are no longer prohibited from using LLCs, but should consider carefully whether to use an LLC or a corporation.**

Here are two bits of “choice of entity” news:

**1. Engineers and land surveyors in California can use LLPs** (Chapter 634.). Add them to the short list of accountants, attorneys and architects who can use the “registered limited liability partnership.”

There is no sunset for law or accounting LLPs. But architects cannot use LLPs after December 31, 2011 – unless the Legislature acts to drop or extend the sunset date. This sunset date has been extended at least once before. For engineers and land surveyors, the sunset date is *December 31, 2015*.

The law applies to civil, electrical and mechanical engineers. (The civil engineers must be licensed in Califor-

nia before 1982, but that is not a change in the law.)

The errors and omissions coverage requirements are similar to other LLPS. However, the minimum coverage for five or fewer professionals is \$2 million instead of \$1 million.

The new rules became effective on September 30, 2010. The bill was sponsored by the American Council of Engineering Companies. Similar bills had been introduced in 2003 and 2005, but were not enacted.

Bottom line for engineers and land surveyors: Engineers and land surveyors operating as general partnerships should evaluate the cost of insurance. If it is not substantially more coverage than they are currently carrying, or if the cost of the required cov-

erage is not too high, they should run, not walk, to convert to LLPs, even in the face of the sunset provision, which will probably be extended.

**2. Contractors in California can use LLCs.** (Chapter 698.) They are the only profession that the statute allows to use limited liability companies.

The rules for contractor LLCs are similar to those for corporations that render construction services. However:

- Each LLC acting as a contractor must post a \$100,000 bond to cover employees whose wages or benefits are not paid by the LLC. For union employees, the bond also covers the welfare and pension fund contributions and contributions to apprentice programs. The bond must be in place for two years, but the Registrar of Contractors can extend the time period. An LLC's license will not be renewed while a judgment in excess of the bond remains unsatisfied.
- If the responsible contractor has a dispute pending about a payment, the contractor must post a bond to cover the possible judgment before the LLC's license can be issued or renewed.

The bond must remain in place for at least a year or, if later, until the debts are satisfied.

- The contractor LLC must maintain between \$1 million and \$5 million of errors and omissions coverage, depending on the number of licensed contractors in the LLC's business.
- Several types of administrative failures can result in automatic suspension of the LLC's contractors license. This can result in personal liability of the licensed contractors in the LLC's business (even if they are not members of the LLC) or inability of the LLC to get paid for its work.

The new law seems to make using an LLC for a contractor a big, constant hassle. The contractor risks personal liability – or not getting paid for his work -- if he does not have the LLC comply with a long list of rules. The LLC for a contractor seems to be a much worse entity than an LLP is for an accountant, attorney, architect, engineer or land surveyor. This is contrast for the LLC for others, which is a breeze.

The Contractors' License Board is directed to begin processing applica-

tions for licenses for LLCs no later than January 1, 2012.

Bottom line for contractors: A contractor should probably opt for an S corporation rather than try to comply

with all the unfavorable rules for an LLC. Perhaps over the years the contractors associations will be able to tame this beast in the Legislature. As enacted, the LLC is probably too risky to use for a contractor's business.

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