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## Chapter 3

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*What Kind of License Should You Get?*

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*How Should You Structure Your Business?*



In California, there are several types of dealership licenses that you can obtain, including:

- New Motor Vehicle Dealer License: This license allows you to sell new vehicles from a franchised manufacturer.
- Used Motor Vehicle Dealer License: This license allows you to sell used vehicles, including cars, trucks, and motorcycles.
  - Motorcycle Dealer License: This license allows you to sell new or used motorcycles.
  - Recreational Vehicle Dealer License: This license allows you to sell new or used recreational vehicles, such as RVs and motorhomes.
- Wholesale Dealer License: This license allows you to buy and sell used vehicles to other dealerships.
- Auto Broker Endorsement: This license allows you to act as a middleman between a buyer and a seller of a vehicle, and you receive a commission for facilitating the sale.

It's important to note that each type of dealership license requires specific requirements and documentation, so it's crucial to thoroughly research and understand the process before applying for any license.

## **Retail Dealer License**

In California, the requirements for a used retail dealer license include:

1. Location: You must have a commercial business location that is zoned for automotive sales and includes an office space and a display area.
2. Business License: You must obtain a valid business license from the city or county where your dealership is located if it is a requirement of that city or county.
3. Insurance: You must obtain a \$50,000 surety bond or certificate of deposit
  1. It is not necessarily required but it is recommended that you get Garage Keepers Liability Insurance as well. For questions on Bonds or Insurance please reach out to Mike Gonzales at Magic 98 Insurance and let him know Garrett from California Dealer Academy sent you
4. Background Check: You must undergo a background check and fingerprinting.
5. Pre-Licensing Course: You must complete a pre-licensing course approved by the Department of Motor Vehicles (DMV).
6. DMV License Application: You must submit a completed DMV License Application, including all required documentation and fees.

Additionally, the DMV may conduct an on-site inspection of your dealership to ensure that it meets all state requirements. It's essential to understand and meet all the requirements before applying for a used retail dealer license in California.

It is important to understand that a retail car dealer can also sell vehicles on a wholesale basis as well. You can sell any kind of used vehicle that your physical retail location has room for regarding parking and storing the vehicles at your licensed location.

A retail dealer can purchase vehicles from any source, anywhere from the public, dealer to dealer or from a dealer auction. The retail dealer is allowed to sell to the public as well, if it meets the requirements of retailing a vehicle, which we will get into a little bit later in class.

Retail dealers are allowed to get an Auto Broker endorsement for their license as well.

### **Auto Broker Endorsement**

In California, an Auto Broker endorsement is an additional endorsement that can be added to a retail car dealer license. This endorsement allows a licensed retail car dealer to act as a middleman between a buyer and a seller of a vehicle and receive a commission for facilitating the sale.

An Auto Broker endorsement allows the dealer to provide services such as finding a specific vehicle for a buyer, negotiating the sale price on behalf of the buyer, arranging for financing, and handling paperwork related to the sale. The endorsement also allows the dealer to sell vehicles that they do not have in their inventory.

It's important to note that while an Auto Broker endorsement allows a dealer to act as a middleman in vehicle sales, they are still required to adhere to all state regulations related to the sale of vehicles and must maintain a valid retail car dealer license.

This is typically done with used retail car dealers that would like to be able to broker new vehicles that are sold directly from new car dealers. It is important to remember that a new motor vehicle can only be sold by a licensed new car dealer and, instead of having a title, are registered with a certificate of origin.

Any dealer that acts as an Autobroker must fill out an OL 75 which logs the activity that an Autobroker has completed.

Auto Brokers who have an endorsement on their Retail Dealer License in California are required to comply with certain requirements when conducting their business.

Auto Brokers are required to provide a written agreement to their clients that outlines the terms and conditions of the brokerage agreement. The written agreement must include the following information:

1. The name and address of the Auto Broker.
2. The name and address of the buyer and seller of the vehicle.
3. The year, make, and model of the vehicle.
4. The purchase price of the vehicle and any fees associated with the sale.
5. A statement that the buyer is responsible for the sales tax, registration fees, and any other fees associated with the purchase of the vehicle.
6. The amount of commission that the Auto Broker will receive for their services.

Additionally, the law requires Auto Brokers to disclose any financial interest that they have in the transaction, such as ownership of the vehicle or an interest in the dealership that is selling the vehicle.

Failure to comply can result in penalties, fines, and suspension or revocation of the Auto Broker's endorsement. Therefore, it is important for Auto Brokers to understand and comply with this section of the law to conduct their business legally and avoid any legal issues.

## **Wholesale Dealer License**

In California, a wholesale dealer license is a type of dealer license that allows a person or business to buy and sell vehicles at wholesale prices. This license is also known as a wholesale-only dealer license.

With a wholesale dealer license, you can only buy and sell vehicles to and from licensed dealers or other wholesale dealers. Wholesale dealers are not allowed to sell vehicles to the general public or advertise their vehicles for retail sale.

Some of the advantages of having a wholesale dealer license include the ability to buy and sell vehicles without having to pay sales tax, access to dealer-only auctions, and the ability to purchase vehicles from other states and countries.

To obtain a wholesale dealer license in California, you must meet certain requirements that are similar to a retail car dealer, however you are not required to maintain display area parking. Additionally, you must complete a pre-licensing course and pass a written examination, submit an application, pay the required fees, and pass a background check.

Some of the location benefits for a wholesale license is that it can be done from a residential property as long as it meets the zoning requirements for the city you're operating in and the entrance point of the room being used for licensed activity has direct entry points from the outside.

It's important to note that wholesale dealers are subject to specific regulations and must adhere to all laws related to the sale and transfer of vehicles in California.

## **Business Entity Structures**

In California, there are several different types of business entity structures available for entrepreneurs and business owners. Here are the most common ones:

1. **Sole proprietorship:** This is the simplest and most common form of business entity, where an individual operates a business as an individual.
2. **Partnership:** A partnership is a business entity in which two or more individuals share ownership of the business.
3. **Limited Liability Company (LLC):** An LLC is a hybrid entity that combines the benefits of a corporation and a partnership. It offers limited liability protection to its owners, while still allowing them to participate in the management of the business.
4. **Corporation:** A corporation is a separate legal entity that is owned by its shareholders. It offers limited liability protection to its owners and can raise funds by issuing stock.
5. **Nonprofit Corporation:** A nonprofit corporation is a type of corporation that is organized for charitable, educational, religious, scientific, or other public purposes. It does not have shareholders and cannot distribute profits to its members.

Each type of business entity structure has its own advantages and disadvantages, and the decision on which structure to choose depends on several factors such as liability protection, tax implications, and the size and complexity of the business. It is recommended to consult with a business attorney or accountant before choosing a business structure.

## **Sole Proprietorships**

A sole proprietorship is a business entity in which an individual owns and operates the business. Here are the advantages and disadvantages of a sole proprietorship:

### **Advantages:**

1. **Easy and inexpensive to set up:** Unlike other business entities, there are no legal formalities or fees required to set up a sole proprietorship. It can be established by simply registering the business name and obtaining any necessary licenses and permits.
2. **Complete control:** As the sole owner, the individual has complete control over the business and can make decisions without any interference.
3. **Tax benefits:** The income and expenses of the business are reported on the individual's personal tax return, which allows for a simpler and more flexible tax structure.
4. **Flexibility:** A sole proprietorship can be easily dissolved or modified, making it a flexible option for businesses that may need to adapt to changes in the market.

### **Disadvantages:**

1. **Unlimited personal liability:** The owner of a sole proprietorship is personally liable for all business debts and obligations. This means that if the business is sued or incurs debt, the owner's personal assets could be at risk.
2. **Limited ability to raise capital:** Since the business is owned by one individual, it may be difficult to raise capital through investments or loans.
3. **Limited skills and resources:** A sole proprietor may not have access to the same resources or expertise as larger businesses, which could limit the growth potential of the business.
4. **Lack of continuity:** If the owner becomes incapacitated or dies, the business may dissolve, which could result in a loss of assets and customer base.

Overall, a sole proprietorship is a simple and flexible option for small businesses, but it also carries significant risks due to unlimited personal liability. Business owners should carefully consider their options and seek professional advice before choosing a business entity.

## **General Partnership**

A general partnership is a business entity in which two or more individuals share ownership, management, and profits of a business. Here are the advantages and disadvantages of forming a general partnership:

### Advantages:

1. **Easy and inexpensive to set up:** Like sole proprietorships, general partnerships are relatively easy and inexpensive to set up. Partnerships can be established through a simple agreement between the partners, and there are no legal formalities or fees required to set up a partnership.
2. **Shared responsibility and decision-making:** In a general partnership, the partners share the responsibility of running the business and decision-making. This can be beneficial for businesses that require multiple perspectives and skills.
3. **Tax benefits:** A general partnership is not taxed as a separate entity, and profits and losses are reported on the individual partners' tax returns. This can lead to a simpler and more flexible tax structure.
4. **Increased access to resources:** With multiple partners, a general partnership can benefit from increased access to resources such as expertise, capital, and customer base.

### Disadvantages:

1. **Unlimited personal liability:** Like a sole proprietorship, partners in a general partnership are personally liable for all business debts and obligations. This means that if the business is sued or incurs debt, the partners' personal assets could be at risk.
2. **Shared profits:** The profits of the business are shared among the partners, which could lead to disagreements and conflicts over the distribution of profits.
3. **Lack of continuity:** A general partnership may dissolve if one of the partners decides to leave or dies. This could result in a loss of assets and customer base.
4. **Potential for disagreements:** In a general partnership, partners may have different opinions and approaches to running the business, which could lead to conflicts and disagreements.

Overall, a general partnership can be a good option for small businesses that require multiple perspectives and skills, but it also carries significant risks due to unlimited personal liability. Business owners should carefully consider their options and seek professional advice before choosing a business entity.

## **Corporations**

1. C Corporation: A C Corporation is a separate legal entity that is owned by its shareholders. It offers limited liability protection to its owners and can raise funds by issuing stock. Some of the benefits and disadvantages of a C Corporation are:

### Benefits:

- Limited liability protection for shareholders
- Ability to raise capital through stock sales
- Perpetual existence
- Tax-deductible expenses

### Disadvantages:

- Double taxation of profits
- Complex and expensive to set up and maintain
- Stringent legal and regulatory requirements
- Shareholder disagreements and conflicts

2. S Corporation: An S Corporation is a corporation that elects to be taxed as a pass-through entity, meaning that the income and losses are passed through to the shareholders and reported on their personal tax returns. Some of the benefits and disadvantages of an S Corporation are:

### Benefits:

- Limited liability protection for shareholders
- Pass-through taxation
- Perpetual existence
- Tax-deductible expenses

### Disadvantages:

- Restrictions on ownership and number of shareholders
- Limited ability to raise capital through stock sales
- Complex and expensive to set up and maintain
- Shareholder disagreements and conflicts



3. Close Corporation: A Close Corporation is a corporation that is owned by a small group of shareholders who are often family members or close friends. Some of the benefits and disadvantages of a Close Corporation are:

Benefits:

- Limited liability protection for shareholders
- Flexible management structure
- Simplified legal and regulatory requirements
- Perpetual existence

Disadvantages:

- Limited ability to raise capital through stock sales
- Shareholder disagreements and conflicts
- Limited number of shareholders

4. Benefit Corporation: A Benefit Corporation is a corporation that is legally required to consider the interests of multiple stakeholders, including employees, customers, the environment, and the community, in addition to the interests of shareholders. Some of the benefits and disadvantages of a Benefit Corporation are:

Benefits:

- Socially responsible business practices
- Increased transparency and accountability
- Ability to attract socially conscious investors and customers
- Protection from shareholder lawsuits

Disadvantages:

- Limited availability of legal protections
- More complex legal and regulatory requirements
- Potential conflicts between social and financial goals
- Limited availability of tax incentives

Overall, the type of corporation that a business owner chooses depends on several factors such as liability protection, tax implications, and the size and complexity of the business. It is recommended to consult with a business attorney or accountant before choosing a business structure.

## **Limited Liability Companies**

In California, there are several different types of limited liability companies (LLC) available for entrepreneurs and business owners. Here are the most common types and their benefits and disadvantages:

1. **Single-member LLC:** A single-member LLC is an LLC that has only one owner. Some of the benefits and disadvantages of a single-member LLC are:

### Benefits:

- Limited liability protection for the owner
- Pass-through taxation
- Flexibility in management and operation
- Ease of formation and maintenance

### Disadvantages:

- Limited ability to raise capital
- Difficulty in obtaining financing
- No protection against lawsuits and claims related to personal actions

2. **Multi-member LLC:** A multi-member LLC is an LLC that has two or more owners. Some of the benefits and disadvantages of a multi-member LLC are:

### Benefits:

- Limited liability protection for all members
- Pass-through taxation
- Flexibility in management and operation
- Ability to raise capital through additional members

### Disadvantages:

- Potential for conflicts among members
- Difficulty in decision-making among members
- No protection against lawsuits and claims related to personal actions

3. Series LLC: A series LLC is an LLC that can be used to create multiple series, or individual LLCs, within one larger entity. Each series can have its own assets, liabilities, and members. Some of the benefits and disadvantages of a series LLC are:

Benefits:

- Limited liability protection for each individual series
- Lower formation and maintenance costs compared to multiple individual LLCs
- Greater organizational flexibility

Disadvantages:

- Not all states recognize or allow series LLCs
- Complex legal and regulatory requirements
- Potential for legal and financial complications if a series is sued or experiences financial difficulty.

Overall, the type of LLC that a business owner chooses depends on several factors such as liability protection, tax implications, and the size and complexity of the business. It is recommended to consult with a business attorney or accountant before choosing a business structure.

Regardless of what entity you are forming, a business attorney can be a welcomed ally in formulating your business and advising you on what the best course of action will be for you and your business.