



2201 Post Road, Suite 104, Austin, Texas 78704  
tel. 512/447-7707, ext. 370 • fax. 512/447-3940 • [www.texasbar.org](http://www.texasbar.org) • [info@texasbar.org](mailto:info@texasbar.org)

## Starting a Construction Business

By:  
Callaway Aimone

- (1) **Select a Legal Structure for your business.** Choosing a legal structure is a very important step since your selection will have great financial implications involving issues ranging from tax implications to personal liability. Legal structures you may choose from include sole proprietorships, general partnerships, limited partnerships, limited liability companies, and corporations. The following procedures will help you open and run your construction contracting business as a sole owner/proprietor with no employees.
- (2) **Choose a name for your business.** Check to make sure no one else is using that name. You may check with the County Clerk's office (sometimes they will have a computer system for you to look on). Also check corporate names on the Comptroller's web site at [www.cpa.state.tx.us](http://www.cpa.state.tx.us) by looking at the Franchise Tax Account Status. Alternatively you may pay for an Assumed Name search on the Secretary of State's web site at [www.sos.state.tx.us](http://www.sos.state.tx.us). Once you have chosen an available name, file an Assumed Name (DBA) at the County Clerk's office so that no one else can use the name you choose. Fees are usually around \$10. If you plan to work in more than one county, you should file a DBA in each county.
- (3) **Apply for an Employer Identification Number.** An Employer Identification Number (EIN), also known as a Federal Tax Identification Number, is a nine-digit number that the IRS assigns to business entities. The IRS uses EINs to identify taxpayers that are required to file various business tax returns. EINs are used by employers, sole proprietors, corporations, partnerships, and other forms of businesses. As a sole proprietor, you would need to obtain an EIN if either of the following apply: (1) you pay wages to one or more employees, or (2) you file pension or excise tax returns. For more information on excise tax returns you may go to <http://www.irs.gov/publications/p510/ar02.html>. You may apply for an EIN online at <http://www.irs.gov/businesses/small/article/0,,id=102767,00.html>.
- (4) **Obtain a Texas sales and use permit and tax ID.** Submit an application to the Comptroller's office to obtain a Texas sales and use permit and tax ID. You may download the sales and use tax application online at <http://www.window.state.tx.us/taxinfo/taxforms/00-forms.html> (Sole owners

should complete form AP-157). As a permit holder in the state of Texas you will be required to collect sales taxes and pay sales and use taxes. More state tax information for new businesses is provided by the Texas Comptroller of Public Accounts at [http://www.window.state.tx.us/taxinfo/sales/new\\_business.html](http://www.window.state.tx.us/taxinfo/sales/new_business.html). It is required that your Texas sales and use permit “be prominently displayed in your place of business.”

- (5) **Consider Purchasing Insurance.** Insurance is important to protect your personal assets as well as the assets of those who hire you. Some people will not hire you if you don’t have a reasonable amount of insurance. Liability insurance is required for some state licenses. Additionally, cities may require liability insurance for certain types of work.

(6) **Obtain Necessary Licenses and Permits.**

*State Licenses*

Only specialty contractors, including HVAC, fire sprinkler systems, plumbing, and well drilling/pump installation specialists, need to be licensed in Texas. To obtain these licenses you must pass one or more exams and meet certain requirements. Contracting without the appropriate license may result in fines of up to \$5,000. For more information on how to obtain these specialty contractor licenses, visit: <http://www.contractors-license.org/tx/Texas.html>.

Beginning September 1, 2004, all persons performing electrical work and electrical contractors must be licensed. Cities and counties may require additional licensing for contractors performing construction in their jurisdiction.

*Building Permits*

Most counties and cities require permits for licensed and/or unlicensed contractors to ensure that the plans for construction comply with land use and construction standards. For example, the City of Austin requires a permit for any person, firm, or corporation to erect, construct, enlarge, alter, repair, improve, remove, convert, move, or demolish any building within the City’s zoning jurisdiction. A separate permit is required for each building or structure where work occurs.

*Other Permits for Specific Types of Construction*

Additional permits may be required by the city or state depending on the nature of your work. Examples of specific jobs which may require permits include building driveways connecting to public roads and remodeling historical structures.

The following link provides information on how to get specific licenses and permits from the state of Texas: <http://www.tded.state.tx.us/guide/bt-g.htm>.

## **Texas Residential Construction Commission Act**

### *Builder Registration*

This act imposes registration requirements on all persons and companies that construct, supervise, or manage:

- 1) the construction of a new home;
- 2) material improvements to an existing home (other than improvement solely to replace or repair a roof; or
- 3) improvements to the interior of a home when the cost exceeds \$20,000

The Builder Registration fee is \$125 and is effective for one year. Failure to comply with the Builder Registration Requirements will subject a builder to a fine of up to \$5,000 for each violation.

### *Home Registration*

The Texas Residential Construction Commission Act also imposes registration requirements on individual homes when the builder:

- 1) constructs a new home on or after January 1, 2004;
- 2) enters into an agreement with a homeowner for a “material improvement” to an existing home; or
- 3) enters into an agreement for an improvement to the interior of an existing home for “consideration in excess of \$20,000

The Home Registration Fee is \$30. Failure to register a home may result in a late penalty payment of up to \$500, or even revocation of Builder Registration.

You may download the Builder and Home Registration Forms at:

[http://www.trcc.state.tx.us/brochures/forms\\_index.asp](http://www.trcc.state.tx.us/brochures/forms_index.asp).

## **Underground Facility Damage Prevention Safety Act**

If you are planning to dig 16 inches or deeper using mechanical equipment, you are required to call (800) 545-6005 at least two working days in advance to locate underground pipelines and cables.

## **General Guidelines for Subcontracting**

When hiring a subcontractor for specific jobs, it is beneficial to enter into a written agreement called an independent contractor agreement. The agreement should explain the duties, the time for performing these duties, and compensation. This will prevent confusion and protect you from certain liabilities.

It is important to note that there are guidelines you must follow in a contractor relationship to make sure those you hire are not considered your employees. Failure to identify employees correctly may result in severe consequences including back taxes, interest, penalties, and overtime pay.

Caveat: There are other laws relating to employees, and state/local taxes that are not covered here.

Additional information for small businesses may be found at the following locations:

Federal Taxes: <http://www.irs.gov/businesses/index.html>

Employment Laws: <http://www.tded.state.tx.us/guide>

State Taxes: <http://www.cpa.state.tx.us>

**Legal Assistance to Micro-enterprises Project (LAMP) provides free legal services for qualified low-income residents of the Texas RioGrande Legal Aid service area to start or sustain a small business. LAMP provides useful legal advice and assistance on the laws that may affect proposed and existing businesses, including: formation, contracts, employment issues, tax, health and safety laws, commercial landlord/tenant leases, and lending laws. Texas RioGrande Legal Aid can only represent residents who are lawfully present in the United States. To complete an application, call toll-free: 1-888-988-9996.**