



STACEY L. ROMBERG
ATTORNEY AT LAW

SMALL BUSINESS, ESTATE PLANNING & PROBATE

WWW.STACEYROMBERG.COM INFO@STACEYROMBERG.COM 206.784.5305

Disclaimer

This information is intended to provide a general overview of legal issues facing small businesses. It is not intended to constitute legal advice.

Business Law Essentials: Overview

- Legal Structure
- Trade Names
- Contracts
- Commercial Leases
- Other Legal Issues
- Selecting an Attorney

Legal Structure

- Sole Proprietorship
- Partnership
- Corporation
- Limited Liability Company (LLC)

Legal Structure: Sole Proprietorship

- Common, simple type of business ownership for one person business
- No protection from individual liability

Legal Structure: Sole Proprietorship

- Tax: Income flows through to individual
- Appropriate entity for many businesses

Legal Structure: Sole Proprietorship

- Do you have adequate insurance coverage for reasonably foreseeable business risks?
- Is a sole proprietorship advantageous from a tax perspective?

Legal Structure: Partnership

- Similar to a sole proprietorship, but two or more people own the business
- Need a partnership agreement prepared by attorney (A handshake is not enough!)

Legal Structure: Partnership

- No protection from individual liability
- Tax: Income flows through to individuals

Legal Structure: Partnership

- Partnership generally not recommended entity
- Incur legal expenses for proper set up

Legal Structure: Corporation

- Formed by filing Articles of Incorporation with Secretary of State
- One or more individuals can create
- Offers protection from individual liability

Legal Structure: Corporation

Tax:

C Corporation: Two levels of federal income tax. Business income is taxed, then shareholder dividends are taxed.

Legal Structure: Corporation

Tax:

S Corporation: Not a separate tax paying entity. Income and losses pass through to shareholders per their ownership percentages. Entity must meet certain requirements to qualify for S status.

Legal Structure: LLC

- Formed by filing Certificate of Formation with Secretary of State
- One or more individuals may be members
- Offers protection from individual liability

Legal Structure: LLC

- Tax: LLC not recognized for federal tax purposes. Can select how to be taxed. Default is taxation as a disregarded entity.
- Relatively new entity as opposed to corporation
- More flexible form of business entity

Legal Structure: Selection

1. Evaluate your risk
2. Seek accounting advice
3. Seek legal advice
4. Evaluate your business relationships

Legal Structure: Selection

Step 1: Evaluate Your Risk

- Analyze your own business for potential risks.
- Seek advice from a commercial insurance broker and business attorney.

Legal Structure: Selection

Step 1: Evaluate Your Risk

- The riskier the business, and/or the more difficult it is to obtain insurance coverage, the more likely a corporation or LLC is needed.
- Commercial Insurance + Business Entity = Dual Layers of Protection

Legal Structure: Selection

Step 2: Seek Accounting Advice

- See a CPA
- Determine whether a corporation or LLC results in tax savings for your unique business.

Legal Structure: Selection

Step 3: Seek Legal Advice

- An attorney should create any business entity except for sole proprietorship. Why?

Selecting a Business Entity

Step 3: Seek Legal Advice

- Properly established and maintained business provides protection against lawsuits
- Legal documents needed to define relationships between business owners

Legal Structure: Selection

Step 4: Evaluate Your Business Relationships

Breaking up is hard to do! You need to trust your fellow partner, LLC member or corporate shareholder.

Trade Name

- Defined: “The name under which a business firm operates.” May differ from name of business entity.
- Trade names are registered by completing Sections 2, 3, 4 and 6 of Master Business Application.

Trade Name

- Just because you've registered it doesn't mean it's yours!
- If your trade name is important, retain "IP" (intellectual property) counsel to complete proper registrations.

Contracts

- Use written agreements for key business relationships!
- You will likely use “template” contracts for your business.
- Don't forget employment contracts and independent contractor agreements.

Contracts

- Draft agreements to the best of your ability (form books, internet, etc.).
- Make sure your attorney reviews and finalizes all contracts prior to use.

Commercial Leases

Step 1: Shop for the perfect space!

Step 2: Negotiate the basic lease terms:

- Is the base rent acceptable?
- Additional amounts owed (percentage rent, operating expenses, etc.)?
- Term of lease?
- Option to renew?

Commercial Leases

Step 3: Obtain copy of written lease. Read every word.

Step 4: Make sure attorney reviews lease prior to your signature.

Commercial Leases

Note: Lease review and negotiation takes time! Reserve attorney in advance. Budget at least 3-4 hours in billable time.

Other Legal Issues

- Maintenance of corporation/LLC
- Shareholder Agreements
- Operating Agreements

Other Legal Issues

- Admitting new shareholders or members
- Facilitating the exit of shareholders or members
- Succession Planning
- Mergers & Acquisitions

Selecting an Attorney

- Ask Questions!
- Will work be billed hourly or by flat fee?
- What extra costs will be involved? (ex. Secretary of State's filing fees, minute book, copying, postage, faxes, etc.)

Selecting an Attorney

- How often does attorney bill? Monthly? At end of project?
- What is the attorney's level of experience?
- Most Important Question: Can you work with this attorney on a long term basis? Do you want this attorney on your team?

The background is a solid teal color. It features several white geometric elements: a vertical line on the left side with a dot at the top; a horizontal line near the bottom with a dot at the right end; a series of eight dots in a horizontal row in the upper right quadrant; and several overlapping white rectangular outlines of varying sizes and positions.

Questions?



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