

Legal Aspects of Starting a Business



By Paula F. Montoya, Attorney

When preparing to start a new business, planning and professional advice are key.



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Starting and operating your own business is part of the American dream. In this difficult economy with high levels of unemployment, many of the recently unemployed are establishing and running their own businesses and loving it. However, approximately 50 percent of new businesses fail within the first two years. To be successful, proper planning is critical.

Business Name: You will need to choose a business name. You can use your own name, the names of your partners, a business name or a fictitious name. The name you choose must be registered with the state of Florida. You cannot select a name that is deceptively similar to the name of another business or you may face legal action. You may be able to obtain protection for the exclusive use of your business name, a logo or slogan by registering a trademark with the state, U.S. or worldwide.

Business Plan: To ensure its success, a business plan should be developed to act as a roadmap for your business and provide investors and lenders—whether family members, banks, or private investors—with necessary information about your business and how it will operate.

Type of Entity: You need to decide what type of legal entity the business is going to utilize. There are four basic types of business organization: sole proprietorship, partnership, corporation and limited liability company. Some of the advantages and disadvantages of each type include tax concerns, organizational expenses, control of the business, expansion of the business, and personal liability.

While a sole proprietorship is the simplest form of entity, the owner is personally liable for all business debts. Corporations, limited liability companies, and limited liability partnerships protect owners from obligations they have not personally guaranteed. The form of entity will also determine how earnings will be taxed. C corporations are subject to “double taxation,” they are taxed first at the entity level, and its owners are taxed again on dividends that are distributed. Income from S corporations, limited liability companies, and partnerships are not subject to entity level income tax, and income is taxed to their owners.

Capitalization: Another essential element is adequate capitalization, including both debt and equity. Equity is raised by sale of a business ownership interest (such as shares of stock of a corporation). Equity payments must not be repaid to the investors, while loaned (debt) funds must be repaid. Most business failures result from inadequate capital. Business owners also need to establish banking and/or financial relationships from the outset whether or not the owner plans to borrow from the bank.

Licenses & Zoning: Also consider whether you need a professional and/or occupational license to operate the business. A license must be obtained from the county and/or state. If your business is home-based, other restrictions may apply. There are also zoning regulations in every city and county with which you must comply whether you buy or lease the property where your business operates. This is also true if your business is operated from your home. You should always check zoning requirements before you decide on a location for your business.

Taxes & Insurance: Taxes will affect every aspect of your business. Income, employment, and often sales taxes need to be considered. Business owners and those in control of finances of the business are generally personally liable for all unpaid income, sales, or employment taxes. Proper tax planning is necessary in order to ensure proper deposits are made for federal and state employment, income and sales taxes. You should also make sure the business assets and premises are adequately insured against casualty and theft losses and that workers compensation insurance is in place to cover injured employees.

Good professional advice can make the difference between success and failure. An experienced attorney can help you choose the type of business organization that suits your needs, advise you as to local, state and federal regulations which affect your business, obtain licenses and permits, prepare or review contracts, resolve tax questions, assist in obtaining financing, and give practical advice on many business problems. Your will or estate plan should be revised by your attorney to include your new business interests. **LD**