

## Table of Contents

|                                                  | Page |
|--------------------------------------------------|------|
| CHAPTER 1 CHOOSING YOUR FORM OF BUSINESS.....    | 1    |
| Sole Proprietorships .....                       | 1    |
| Advantages of a Sole Proprietorship .....        | 2    |
| General Partnerships.....                        | 2    |
| Advantages of a General Partnership.....         | 3    |
| Disadvantages of a General Partnership .....     | 3    |
| Limited Partnership.....                         | 4    |
| Advantages of a Limited Partnership .....        | 4    |
| Disadvantages of a Limited Partnership .....     | 4    |
| C Corporation .....                              | 5    |
| Advantages of a C Corporation.....               | 5    |
| Disadvantages of a C Corporation .....           | 6    |
| S Corporations.....                              | 6    |
| Advantages of an S Corporation.....              | 7    |
| Disadvantages of an S Corporation .....          | 7    |
| Limited Liability Company (LLC).....             | 8    |
| Advantages of a Limited Liability Company .....  | 8    |
| Making The Right Choice .....                    | 9    |
| Comparisons at a glance .....                    | 9    |
| Checklist .....                                  | 9    |
| The Need For Funding .....                       | 9    |
| Other Determining Factors.....                   | 10   |
| Alter Ego Liability.....                         | 11   |
| The Answer.....                                  | 11   |
| CHAPTER 2 BUSINESS PLANS .....                   | 12   |
| Why A Business Plan? .....                       | 12   |
| Key Sections of a Business Plan .....            | 13   |
| The Executive Summary .....                      | 13   |
| Company Description or Business Overview .....   | 14   |
| Products & Services.....                         | 14   |
| Market Information .....                         | 15   |
| Do's & Dont's For Business Plans .....           | 16   |
| Competitive Analysis.....                        | 16   |
| Operational Plan or Operational Strategies ..... | 17   |
| Management & Ownership .....                     | 18   |
| Funding Tip .....                                | 18   |
| Sales & Marketing.....                           | 19   |
| Pricing .....                                    | 19   |
| Marketing .....                                  | 20   |
| Targeting Your Audience .....                    | 21   |
| Financial Plan .....                             | 21   |
| Review Your Business Plan.....                   | 22   |

- Balance Sheet
- Projected Profit and Loss Statement
- Projected Cash Flow Statement

You should include month-by-month details for your cash flow projections and income statement for the first year of business. Then follow up with quarterly information for two more years.

The financial plan will also include the start-up budget and operations budget, indicating what you need to launch the business and how much you will need to keep the business going on an ongoing basis. Include: salaries, wages, insurance costs, accounting costs, equipment costs, legal fees, taxes, cost of goods sold, advertising and promotional expenses and all other pertinent costs in each of your two budgets.

### ***Review Your Business Plan***

Once you have completed your business plan, go back and review your work. Make sure that you:

- Include all major sections
- Include a Table of Contents listing where each section can be found
- Cover all key points in clear and concise language
- Proofread carefully for spelling and grammar
- Fact check to make sure all data is accurate and all claims are substantiated
- Eliminate any extraneous information
- Have clearly visible contact information on a cover page and at the end of the document
- Present all graphs or charts in a clear and easy to read manner
- Have not over-estimated your financial projections or underestimated your time frame for launching the business

Remember, this document is typically designed to attract investors and also to provide a blueprint for the business. It should illustrate the goals, objectives, strategies and means of operations for the new business. It should, therefore, be presented in a professional manner. Neatness and attention to detail indicate that you are serious about this business endeavor.

### ***A Mini Plan***

A condensed, or mini version of the business plan can prove beneficial. Such a plan can be used to introduce the company to prospective investors in a concise manner, which can then be followed by sending the detailed plan to those parties who are most interested.

Such a mini plan should contain two or three paragraphs on most of the sections that would be found in a larger business plan. This would include:

- Provide rules of order for running meetings
- Provide the structure used for selecting officers
- Provide guidelines by which stock certificates will be issued
- Provide for indemnification for officers and directors

Books and software programs are available that provide a draft of corporate Bylaws and most corporate lawyers have a set of corporate Bylaws that they start from. It is worthwhile to get a hold of a template before drafting Bylaws. This will indicate how Bylaws should be broken down into individual sections which will cover all applicable rules and regulations pertaining to shareholders, the Board of Directors, officers, committees, the use of outside contractors, policy making, corporate actions, etc. The powers granted to Board members and officers as well as the procedures used in selecting, electing or removing board members or officers from appointed positions would also be included.

The Bylaws should include details explaining how amendments can be proposed and added in the future. It is advisable to work with an attorney when drafting Bylaws.

Once Bylaws have been drafted and approved, copies should be printed and be readily available in the corporate headquarters.

## ***Issuing Stock***

A corporation is responsible for filing a notice of stock issuance, preparing stock documentation and certificates, and then issuing the stock certificates to shareholders.

The Articles of Incorporation will state how many shares the company is authorized to issue. All issued shares will represent ownership of the company. Therefore, if a company is authorized to issue 5,000 shares, but only issues 2,000 of those shares, the individual with the highest percentage of those 2000 shares is the majority shareholder, despite the fact that there are 3,000 remaining shares of unissued stock.

Typically, incorporation rules and regulations do not stipulate how many shareholders a corporation must have. Therefore, in small companies, the shareholders are most often the original owners who started the company. However, as a business expands, so may the number of stockholders, each owning a share of the corporation. While shares of stock are initially purchased directly from the company and typically held onto by people closely associated with the company, shares may be purchased from other investors in the open market. Ultimately, for larger corporations, this leads to trading shares on a stock exchange, such as the NASDAQ, New York Stock Exchange or the American Stock Exchange.

When issuing stock in a small corporation, you can determine who will receive shares of stock, what percentage of the corporation each shareholder will own and how much shareholders will pay for each share of stock. A Stock Subscription Agreement will spell out the details of the transaction including the price per share and number of

segment of the population over the past decade, angels are now also young investors looking for the next innovative idea to get behind.

It is estimated that over twenty billion dollars are invested in start up or young growing companies by angel investors.

The typical angel investor:

- Is well educated
- Invests in an area of personal interest or industry with which they have been associated
- Does not get involved in the daily routine and operations of the business
- Makes an average investment of anywhere from \$10,000 to \$250,000
- Look for companies that have large growth potential

Angel investors, once thought to invest more often on a whim or based on their personal impression of a business or the individual behind it, are now exercising greater due diligence. They look for a sound business plan that clearly demonstrates how the business will work. Additionally, they want to be convinced that the management will be able to implement the plan. While angels are typically more patient than lenders, they want to know how soon the business will be able to see a profit or have an exit. Generally, they do not want to be the only source of funding and want to know where future investment capital is likely to come from.

A meeting with an angel investor should be set up in person. You should be ready with written material (business plan, projections, etc) and prepared to answer the tough questions. Angel investors want to see that you:

- Have done your homework and researched the industry thoroughly
- Stand firmly behind your business plan and goals
- Have thought through all aspects of the business from a practical aspect
- Have an experienced management team

Being prepared for meeting with an angel investor requires more than just knowing what is inside of your business plan. Due diligence on your part is necessary concerning the angel. Find out what you can about this investor's background, interests and past investments. You should know something about the person from whom you are requesting money. A personal rapport can be a key part of the success of the relationship.

Although you want an angel to invest money, you also need to establish what the business arrangement will include. Traditionally angel investors were often silent backers putting money into a project that they believed in but having little to do with the business beyond making their investment. Today, however, you will find angels who want to be involved in all key decisions and those who will provide guidance and expertise from afar. You need to establish from the onset the amount of involvement the angel investor wants in the management decisions and operations of the business.

- You have an obligation to continue making payments. Typically, leases may not be terminated before the original term is completed. Therefore, the lessee is responsible for paying off the lease. This can pose a major financial problem for the owners of a business experiences a downturn.
- You have no equity, until you decide to purchase the equipment at the end of the lease term at which point the equipment has depreciated significantly.
- Although you are not the owner, you are still responsible for maintaining the equipment as specified by the terms of the lease. Failure to do so can prove costly.

## ***Venture Capital***

Venture capitalists raise money from various institutional and pension fund investors to back start-up and growing companies that show strong potential to develop and become big. Venture capital firms go through a process of raising funds from foundations, endowment funds, retirement funds, corporations and foreign investors. Similar to a mutual fund, a venture capitalist firm pools investment dollars and then looks for solid investments.

Most often, venture capitalists look for very big returns, making them more selective than angels who may invest in smaller businesses. They are devoted to raising money for new and emerging business ventures so they want to maintain a strong track record in raising fund for successful companies. Therefore, they are most often seeking to invest in companies that will grow quickly and see large profit margins.

Venture capitalists generally invest in several businesses at a time to limit their risk. Typically, they will also become involved in the business, providing their experience and expertise in the industry. This is, in part, because unlike angels who are investing their own money, the venture capitalist firm is investing the money of other people or institutions.

Like most other types of financing, venture capital is usually part of the equation. A venture capital firm may want to know that there are other sources of funding. In many cases, venture capitalists look at the long-term picture and if the business grows according to the plan, it may receive several rounds of funding. However, the business must account for how all funding has been used and follow the goals and plans set forth in accordance with the previous round(s) of financing.

There are also various types of venture capitalists. Some will focus on providing seed money for a new business venture, while others will come in only later on in the development of the business. Venture capitalists may specialize by investing in specific industries or types of businesses. They may only serve a specific geographic region or only provide funds for expansion purposes of an existing business. It is important that you research the investing criteria of a venture capital firm before approaching them.

the liabilities of the company. The difference between your assets and liabilities will be the net worth of the business at the end of a specific period ( $\text{Assets} - \text{Liabilities} = \text{Net Worth}$ ). The net worth of your business at a given time is of particular interest to prospective investors and lenders.

The assets of the business are that which have a cash value including:

- Investments held by the company
- Equipment
- Machinery
- Display cases
- Inventory
- Cash and cash equivalents
- Accounts Receivable

Capital assets, or fixed assets, are the long-term assets, such as any building the company owns or the machinery used to produce goods. These are assets that are expected to be around for several years. They are also assets that can depreciate over the years, such as the new computer you purchased last year. Accumulated depreciations are deducted from your list of fixed assets. On the other hand, a building that you own might appreciate in value. This, however, is not reflected on the balance sheet until the building is actually sold.

The liabilities are all of the debts that the business owes. This may include:

- Money owed on equipment
- The mortgage on your building
- Accounts payable
- Accrued wages (which are wages owed to employees)
- Insurance and health benefit payments

Once you get a total of your liabilities you will add the Owner's Equity in the business, which consists of how much he or she has invested into the business and how much of the profits are still in the business. This is essentially the net worth of the business. Therefore, you would list on the balance sheet:

- Invested Capital
- Retained Earnings

Added together you will get the owner's equity. This total, together with the total liabilities should balance with your total assets. Hence the name "Balance" Sheet.

In addition to a Balance Sheet and Income Statement, you will want to keep a Statement of Cash Flows, which allows you to track the cash in and out of your company throughout the year. All manners in which the company uses cash can be recorded, including operating, financing and investing activities. By listing both the

the task and free up your time. More on hiring a bookkeeper later in this chapter.

### **Inventory Records**

Another set of records you may need to maintain (depending on the type of business) are inventory records. Keeping good inventory records will allow you to better manage your inventory holdings. Such record keeping will also help you keep track of buying trends, seasonal activity and pilferage. You'll want to know how much stock is on hand versus the amount that you purchased and can do so by keeping records of the purchase date of the items in stock, purchase price, sale price and dates of items sold. You can use inventory software packages or a ledger or notebook.

To track money coming and going, most small businesses typically use a revenue and expense journal. This is a single entry method of accounting where receipts and expenditures are recorded. The other method used, a double entry system, is more time consuming, but records both a debit and a credit for each entry, marking the item sold as a credit and the money taken in as a debit. If you choose to use a computer software program to record revenues and expenses, you might consider:

- Quicken by Intuit (Single entry accounting)
- Microsoft Money (Single entry accounting)
- QuickBooks from Intuit (Double entry accounting)
- Peachtree Accounting from Peachtree Software (Double entry accounting)

### **Break Even Analysis**

It helps any business, particularly a start-up, to determine at what point you will break even. By projecting how much revenue in sales you will need to take in versus your ongoing expenses, you will be able to determine approximately when you should break even and subsequently show a profit. Such an analysis can help you monitor your progress so you can see if your projections are on track. If not, you can make adjustments. Many established companies also look closely at the Break Even Analysis to determine where to make cutbacks.

## ***Budgets & Projections***

Your budget will assist you when tracking the flow and progress of your business by providing you with a picture of how much you are spending and in which areas you are exceeding your projected spending limits. A budget can be prepared for a specific area such as promotion and marketing or a special project or as an overall guideline for your small business.

### ***Bookkeepers***

Most people who start out in business are fairly convinced that they will be able to keep their own books. With the proliferation of software products on the market it would seem that the process should be fairly simple. The belief is that you will:

- Save money by not hiring a bookkeeper
- Keep a closer eye on the financial aspect of the business
- Maintain privacy

While a small start-up business may allow for such self-management, as a business grows it is typically in the best interest of the owner(s) to hire bookkeeping help. Someone who specializes in the field can, in the long run, save you time and money. The details involved in maintaining accurate books can be lost when combined with the many other tasks and responsibilities of running a business. A business owner's time is too valuable to spend on journal entries. For this reason, there are individuals who specialize in the field.

Prior to hiring a bookkeeper, estimate the amount of hours he or she will need to prepare your books on a monthly basis. Small start-up companies generally do not need a fulltime bookkeeper. Use word of mouth and ask another business owner who handles his or her books and whether or not he or she would recommend their bookkeeper. The local Chamber of Commerce, industry associations, Internet job sites, or even your accountant can also prove to be worthwhile sources for finding a qualified bookkeeper.

Preview from Notesale.co.uk  
Page 57 of 182

## Chapter 6

### Small Business Tax Basics

- 
- Income Taxes
  - Pass Through Taxes
  - Sales Taxes
  - Payroll Taxes
  - Employment Taxes
  - Tax Software
  - Tax Planning
- 

If you are starting a business, it is essential that you familiarize yourself with all of the necessary tax forms that you will need to file with the IRS and the various taxes you will be required to pay.

Every business is required to file a federal tax or information return. The type of business entity you have selected (as discussed in Chapter 1) will determine the manner in which you will file and subsequently pay taxes. A “C” Corporation, for example, will be responsible for paying corporate taxes, while the owner of a sole proprietorship will report the income or losses from his or her business on his or her personal income tax return. Payment will then be based on the sole proprietor’s personal income tax rate.

In this section we take a broad overview of the various types of taxes that you will encounter when going into business. It is highly advisable that you seek professional guidance from an accountant before filing your tax return. Look for someone who is familiar with your type of business.

It is also important to remember that as soon as you form a business you will need to obtain an employer identification number (EIN) from the IRS by filing Form SS-4. Your EIN, combined with the individual social security numbers of your employees, will provide the tax identification data needed by the IRS.

### ***Income Taxes***

A business is typically expected to pay estimated taxes quarterly throughout the fiscal year. Such estimated taxes are due for businesses that will anticipate having a tax bill of at least \$500 at the point of filing an annual return. Form 1040-ES from the IRS will help you determine how much in estimated taxes you should pay. Payments are made

to the Federal Government, and in most cases (depending on the state tax laws) to the state as well.

With the potential of facing IRS penalties, it is important to pay such quarterly estimated taxes on time or request an extension in advance of the due date. To calculate your tax bill you need to consider the following options.

You will be expected to pay:

- 90% of the overall tax that you will owe
- or 100% of last year's tax figure (110% if the total income is over \$150,000)
- or annualize based on the previous quarters, minus expenses, and then pay at your personal income tax or corporate tax rate.

Your accountant should help you make the decision as to which method of calculation is best for you based on your business entity.

#### **"Ordinary & Necessary" Business Expense**

Typically, all "ordinary and necessary" business expenses can be deducted from your business income when filing your business tax return. Such deductions may include business travel, office and/or computer equipment, attorney and accounting fees, delivery costs, utilities, and rent. These are items that are necessary to properly conduct your business. Mileage accrued for business related travel can also be deducted at the current rate allowed by the IRS (see [www.irs.gov](http://www.irs.gov)).

Keep a careful record of your expenses and have backup material on hand for documentation whenever possible. If you have incurred expenses that are both business and personal in nature, such as a trip that was for business and personal reasons, you can deduct a portion of those expenses. Use discretion when determining what portion of the total expense was business related. Make sure to document all such expenses.

The steady rise in home-based businesses has created some gray area regarding business deductions. As is typically the case, you need to be able to justify each deduction in the event a tax auditor should question it. If you conduct business from a home-based office, for example, you can claim a deduction for the portion of your home that is being used for business purposes. Accordingly, you can also claim a percentage of your utilities, phone bill and other related costs such as Internet service used for business purposes. Save your bills and show the percentage you used as a business expense.

Medicare, meanwhile, is designed to help people over the age of 65 pay for medical costs. While it does not pay for many types of medications, it does help nearly 98% of Americans over the age of 65 with some portion of their medical bills.

In addition to the money that, by law, is withheld from each employee's paycheck for FICA, the employer is also required to match the amount. The amount for FICA is currently 7.65%, which is comprised of 6.2% for Social Security and 1.45% for Medicare. To determine how much Social Security and Medicare tax to pay, see IRS Publication 15.

The time frame in which you are required to pay FICA will depend on the size of the payroll. The larger the payroll, the faster you need to send in the payments. For example, a very small business with one employee might file quarterly, while a large company with a \$100,000 weekly payroll, will need to file within three days after payroll is completed. Again, this schedule will be provided for you.

#### Some Common IRS Tax Forms You Should Know About

|      |                                                                     |
|------|---------------------------------------------------------------------|
| SS-4 | Application For Your Employer Identification Number (EIN)           |
| W-2  | Employer's Wage and Tax Statement                                   |
| W-4  | Employee's Withholding Allowance Certificate                        |
| 940  | Employer's Federal Unemployment Tax Return                          |
| 941  | Employer's Federal Quarterly Tax Return                             |
| 1040 | Estimated Tax                                                       |
| 1099 | Miscellaneous Income: Used to report compensation for non-employees |
| 1120 | US Corporate Income Tax Return                                      |
| 1125 | Federal Tax Deposit Coupon: Used to deposit taxes.                  |

## Employment Taxes

Each business is required by law to withhold federal income taxes from the wages of its employees.

### ***Federal Withholding Taxes***

Withholding taxes are filed in accordance with the W-4 Employee's Withholding Allowance Certificate, which is filled out by each employee. The W-4, in conjunction with IRS Publication 15, is used to determine how much federal income tax you are required to withhold. Amounts will vary depending on:

- The number of withholding allowances claimed by the employee
- The marital status of the employee
- Any exemptions from withholding taxes claimed by the employee

### Pre-interview To Do List

- ✓ Prepare the questions you will be asking in advance and review them carefully.
- ✓ Set up specific time periods on your schedule for interviews. Try to avoid scheduling too many interviews in one day or your recollection of individual applicants may become clouded.
- ✓ Select a comfortable, well-lit, quiet location to conduct interviews.
- ✓ Have a legal pad or paper available on which to take notes during the interview.

Review each applicant's resume just prior to the interview (and file along with your notes following the interview).

## Employment Interviews

There are several different philosophies when it comes to the interview process. Depending on the position being filled, some employers will look more closely at specific technical skills, others will be concerned primarily with how this individual will fit in with the team, and some will focus on an applicant's enthusiasm and desire for the position. The need to handle specific tasks, supervise others, meet with clients and/or work independently will factor into how you approach the interview process and make your assessment of the candidate.

Although you can get the answers to many questions from looking at a resume, it is important to hear each prospective employee respond so that he or she can provide greater insight into his or her previous employment and education.

Among the questions you will want to ask include:

- What did you do at your last position?
- What did you like about your last position?
- Why did you leave your last position? Or why do you wish to leave your current position?
- How would you describe your relationship with your co-workers? Supervisors? Clients or customers?
- What accomplishments are you most proud of?
- In which areas would you most like to improve?
- What were your strengths and weaknesses?

You also want to find out about the applicant's reasons for starting in the field and their future plans or goals. Questions you might ask include:

- What made you pursue this field?

### Interview Red Flags!

You may find certain red flags during the interview process that will indicate that this is not the ideal person for the job. These might include:

- ✓ Inconsistency in the applicant's story
- ✓ Inconsistency between what is on the résumé and the applicant's answers to your questions
- ✓ Unexplained tardiness or improper behavior on the part of an applicant during the interview
- ✓ Avoiding or talking around specific questions but not providing an adequate answer
- ✓ Lack of knowledge concerning your company (showing lack of preparation)

### Your Responsibilities

You should explain the position and mention any benefits package that will be included. It is also helpful, although not essential, to give each applicant a little background information about the company.

You should end the interview by asking the applicant if he has any questions. Make sure you know the answers before responding or make it clear that you can find out the answers and let them know. You do not want to misrepresent yourself or your company by answering incorrectly. It is important that any statements you make about the company or about the position are accurate.

And finally, you should thank each applicant for coming in to the interview and shake his hand. You need to be polite and professional throughout the interview process.

Along with the interview questions you should ask, there are several questions you should not ask, including:

- How old are you?
- What is your religion?
- What ethnicity are you?
- What is your sexual preference?
- Are you married?
- Do you have children?
- Are you planning to start a family?
- Have you ever done drugs?
- Have you ever been arrested?

Or any other questions that relate to personal information and are not pertinent to the job. In addition you should not touch an applicant, other than a handshake.

twenty years and drug testing is typically found to be within the rights of most employers.

Short of drug testing, or in addition to a drug test, you may require all new employees to sign a Drug-Free Workplace Policy. Such a policy should make it clear that:

- It is unlawful to possess, distribute or manufacture any controlled substance while on company property or while conducting company business
- It is unlawful to be engaged in company business while under the influence of an illegal drug
- Violations of the above policies will result in disciplinary actions that can include termination and even legal action

Understanding that drug, as well as alcohol, abuse can be the results of a physical illness and/or an emotional dependency, some companies are now offering programs to help treat such employees. Unfortunately, many smaller businesses simply do not have the resources or funds to take part in such programs.

### ***Communications & Computer Use***

Nearly every business in America has someone who spends too much time on the telephone making personal phone calls. Coupled with personal emails, the amount of non-business related communications taking place during standard "work hours" today is staggering.

While it would be impractical to completely forbid personal calls, such calls should be limited to those that are deemed necessary and important. This policy should include the use of an individual's cell phone during business hours.

Policies regarding e-mail (and computer use/Internet access in general) should state that:

- The use of email is for business purposes only
- E-mail that includes jokes or content that could be deemed offensive is prohibited
- The use of e-mail to send confidential or other such materials that might be sensitive to the company is prohibited
- The company has the right to monitor and review all e-mail sent and received by company employees
- Visiting Web sites that are deemed inappropriate, including sites featuring pornography, online games or potentially offensive material is prohibited
- No personal shopping or personal business transactions are permitted via the Internet
- Computer use is for authorized employees only
- No one other than the specific employee is permitted to use his or her own personal password

- Discrimination
- Harassment

By carefully drafting clearly worded policies and reviewing them with your attorney, you will have more solid ground to stand on should a former employee initiate such legal action. If, for example, you have all employees read and then sign that they have read Confidentiality and Sexual Harassment policies when they are first employed, you will have such documents available to you. Signed policies will usually stand up in court if the employee was terminated for clearly violating company policies.

### ***Taking Precautions***

Before you fire someone, you should make sure you have a legitimate reason that is based on fact and documented. If, for example you have proof that the employee showed up late or was absent from work on a regular basis, then you can use time sheets or time cards as documentation should you need to substantiate your decision to fire the employee on the grounds of tardiness or absenteeism. Illegal acts, including embezzlement, stealing or drug use are also valid grounds on which to terminate an employee. Again, you must make sure that you have proof of such activities before doing so.

An employee who is not adequately doing his or her job can also be fired. In some instances it might be appropriate to give the employee an opportunity to improve his or her work. It is also important that you provide clear (and documented) instructions as to exactly what task or tasks the employee is expected to do. Then, if he or she has failed to do so, you have documentation stating that the specific tasks or job requests were not carried out. Consistently poor evaluations will also indicate that the employee is not performing at the level expected of him or her. However, since such evaluations can be subjective, you may wish to substantiate them further by attaching copies of a time sheet showing lateness or work done incorrectly before terminating an employee based on job evaluations.

Employees are also let go because the company can no longer afford to keep them on the payroll. In some cases such layoffs are widespread and may include entire departments while in other circumstances only a few employees may be dismissed. Be careful. Make sure you can fairly justify why each employee is no longer necessary to the company or why a department has been singled out to be eliminated. You do not want to show any pattern of discrimination, either willfully or unintentionally.

Discrimination laws protect against firing someone because of race, sex, religion, disability, ethnic background or because an individual is over 40 years of age. If, for example, all of the layoffs in the company were of individuals of the same ethnicity, they could file a discrimination suit against your business and potentially win.

## Chapter 9

### Key Contracts

- 
- Understanding Contracts
  - Sales Contracts
  - License Agreements
  - Stock Purchase Agreements
  - Office Leases
  - Right of First Refusal Agreements
  - Boilerplate
- 

### Understanding Contracts

Business contracts are legally binding written agreements between two or more parties. They are an important part of business and such agreements need to be created and/or reviewed carefully.

While smaller businesses will often conduct business based on informal handshake agreements or unspoken understandings, the more that is at stake, the more essential it is to have a signed contract. A contract serves as a guide to the agreement that must be followed by both parties. It presents each party with the opportunity to:

- Describe all obligations they are expected to fulfill
- Describe all obligations they expect the other party, or parties, to fulfill
- Limit any liabilities
- Set parameters, such as a time frame, in which the terms of the contract will be met
- Set terms of a sale, lease or rental
- Establish payment terms
- Clearly establish all of the risks and responsibilities of the parties

A contract is, in essence, a written meeting of the minds. While it is typically drawn up by one party and favors the needs and requirements of that party, protecting them from most (if not all) liabilities, it should be thought of, initially, as a work in progress that changes and grows as each party contributes prior to signing, when it becomes an official document. Consideration, whether it is monetary or a promise to do work or provide a service by a specified date, is at the root of a contract. Obviously, both sides should benefit in some manner before entering into any such agreement. The term “standard contract” is more myth than reality and too often people simply sign on the dotted line without reading or negotiating the terms of a contract.

the local Chamber of Commerce and/or other business owners to make sure you are adhering to the details.

### Zoning Laws

Common zoning law questions that may arise include:

- ✓ Where can you build a loading dock?
- ✓ How high can you build?
- ✓ What are the rules regarding waste removal?
- ✓ Are there specifications about trucks or large vehicles?
- ✓ Can you build a parking lot? How much of your land can you use?
- ✓ Can you use part of a sales or retail facility as a warehouse?
- ✓ Can you use the sidewalk in front of your business for selling, advertising or expansion?
- ✓ Can you use part of a commercial retail site for manufacturing purposes?
- ✓ What are the laws regarding noise?

Zoning laws cover everything from storing and serving food to having drive-up facilities. Review them carefully.

Note: Zoning laws can, and do, change. Keep up with meetings of the local municipal boards and/or Chamber of Commerce.

In addition, if you operate a home-based business, make sure to review local zoning ordinances. Most home-based businesses fail to do so. Many never encounter any problems until a neighbor files a complaint. The more obvious it is that you are running a home-based business (such as having numerous deliveries of large items to your front door) the more diligent you need to be about making sure you comply with local zoning ordinances.

### ***A Good Filing System***

Along with trying to stay abreast of all of the laws that pertain to your business, you can benefit yourself greatly by maintaining accurate and up to date files. Such record keeping will prove beneficial, should you:

- Need to comply with any change in the current laws
- Have a lawsuit filed against your business
- Be audited
- Be looking to make changes or additions to your business
- Be looking to sell or merge your business with another company

Bank records, employee records, contracts, business forms, permits and licenses, zoning ordinances, copyright filings, patents, leases, bookkeeping records and tax

- Alcohol
- Chemicals
- Firearms
- Gasoline or petroleum products
- Lottery tickets or other games of chance
- Stocks or investment vehicles including bonds and/or mutual funds
- Tobacco products

Services, which you provide, may also require licensing. For example, if you are providing financial advice, operating a daycare center or serving as a masseuse you are typically required to have a license.

Operating or housing certain equipment or machinery on your premises may be subject to permits. For example, operations involving gambling or explosives will require a license. Having vending, arcade or video games on the premises may also generally require that you obtain a permit or license.

Certain types of businesses fall under the jurisdiction of government agencies. For example, if you want to open a radio station, you will need to comply with FCC laws and regulations.

Preview from Notesale.co.uk  
Page 103 of 182

- Distribution of the copyrighted work by sale, rental, lease or lending
- Performance or display of the copyrighted work publicly

The owner does not have to provide any explanation if he or she chooses not to allow the copyrighted work to be used.

### ***Infringement On Your Copyrighted Work***

If you discover that someone has infringed upon your copyrighted work by using it without your permission, you should immediately draft a letter regarding the infringement of your copyrighted materials. In the letter, explain exactly what copyrighted material was used and in what manner. Demand that the party cease and desist from using the work or allowing anyone else to use the work in any manner.

Send the letter by certified mail with return receipt requested and close the letter by letting it be known very clearly that any failure to comply with the letter immediately will result in further legal action.

### ***Infringement of the Copyrighted Works of Others***

To prevent any infringement on the copyrighted works of others, remind your employees that they must seek permission before using copyrighted work.

Of course, there are quotes, lines and photocopies that are typically part of the everyday business process and "fair use" of materials should not violate copyright laws. But what constitutes such "fair use" of this material?

Fair use of copyrighted work which includes reproduction or performance of the work is not an infringement of copyright if the work is used for the purposes of:

- Criticism
- Comment
- News reporting
- Teaching
- Research Purposes

Factors that will be considered in deeming the fair use of the work in question include:

- How the work is being used
- Whether such use is of a commercial nature or for nonprofit educational purposes
- The amount of the work being use in relation to the work as a whole
- How such use of the work will affect the value and potential commercial market for the copyrighted work
- Whether proper attribution is given to the copyrighted work

## Trademarks

The idea of marking an item for ownership can be traced back in history to the finding of marks on pottery created many thousands of years ago. The economic use of such marks shows up in 500 B.C. during the Roman Empire.

Today, according to the USPTO, a trademark is defined, as “a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs, that identifies and distinguishes the source of the goods of one party from those of others.”

Service marks are the same as trademarks, except they refer to the source of a service and not a product. The term “marks” is typically used to define the proper usage of both.

The benefit of such a mark is that it will legally prevent others from using a similar name or likeness that identifies your product or business. Familiar commercial companies such as Federal Express use trademarks to protect their company name, slogans, logos and other identifiable symbols. This protects a company in the event that someone tries to confuse the public by presenting a very similar name, logo or slogan.

Technically speaking, it is not necessary to register a trademark with the USPTO. By legitimately using the <sup>TM</sup> symbol next to your mark, it is possible to establish rights. However, it is beneficial to register the mark with the USPTO for several reasons, which include:

- Legal recognition of the USPTO registration symbol ® by United States courts
- Ability to bring a legal action in a Federal Court
- Listing on the Principal Register, which provides public notice of legal ownership of the mark
- Greater ease in obtaining registration in other countries
- Recognition by U.S. Customs, which can prevent infringement by the importation of foreign goods

Like a copyright, you should use the mark whenever using the product, symbol or slogan publicly. FedEx® is an example of how the trademark is used in all packaging, advertising and promotion of a brand name. You should take the time to remind all of your employees, particularly in the advertising, promotion, graphics and design departments, to use the mark properly.

A trademark search can save you time and money. You can find companies such as Thomson and Thomson in North Quincy, Massachusetts (800-629-8833, [www.thomson-thomson.com](http://www.thomson-thomson.com)) or Allmark Trademark in San Jose, California (866-ALLMARK, [www.allmarktrademark.com](http://www.allmarktrademark.com)) that will conduct a search for you to make sure another company is not already using a trademark that you are looking to register. Doing a web search on Google is also advisable.

- More costly than newspapers
- There is a long lead time (ads may need to be ready six months in advance)
- Typically, the ad will run only once per month since most magazines are monthly publications

Whether you choose to advertise in a newspaper or a magazine, prepare print ads that have some lasting power. Typically, a print ad will run several times before you'll want to start working on a new one, especially a magazine ad.

### **Radio**

Radio is often a far underutilized medium. Typically, it costs much less money to produce a radio commercial and buy airtime than to buy television airtime or to do a photo shoot for a magazine print ad. For a radio commercial to be effective, it needs to grab the listener's attention quickly and cover all the key points in a concise, informative and entertaining manner.

Your ad can be in the form of radio copy read by on-air personalities or you can have a pre-produced spot of 5, 30 or 60 seconds. Remember copyright usage (Chapter 11) before using recorded music. If you write advertising copy, make sure you write in a conversational style and repeat important information during the ad. Don't try to pack too much into the copy.

Placement is the other key to radio advertising. An ad during morning or evening "drive time" will be far more effective than an ad at 2 a.m. In addition, you will want to select the type of station(s) most listened to by your buying demographics. Once you've chosen a station and requested the time slots during which you wish to advertise, you'll be quoted rates. Typically radio ads are bought in chunks since a high frequency of commercials during a short period of time has been proven to be most effective. You may also opt for summer placement, since radio listenership usually increases during June through August.

Advantages of radio advertising:

- Inexpensive to produce commercial spots
- Easy to make last minute changes and/or update radio scripts or spots
- Can buy in blocks and reach your target market consistently for a period of time

Disadvantages of radio advertising:

- Very dependent on placement
- Limited time in which to include all pertinent information
- Scripts are typically only as good as the talent reading them

Before advertising on the radio, get the listener demographics and the ratings for each station in your market.

additional features and the more traffic your site is generating, the more the cost will increase.

A Web Hosting Service typically allows you to:

- Register your own domain name for a modest fee
- Pay for more space as your site grows
- Get email at your site and usually have several email addresses
- Receive viewer statistics, such as how many visitors there are to your site per week or month

When selecting a web hosting service, look at the fee structures carefully. Typically, companies will charge an initial set up fee, monthly fees plus additional charges for various options. Make sure you know what all the fees will be and how often they will be charged. While most companies charge for updating the site, some offer deals that allow for some free updates. Evaluate and compare services offered. Get recommendations.

### ***Web Site Developers***

There are many individuals out there who will offer to develop your web site for you. The trick is finding someone who will do what you want.

To find a good web site developer, look at other web sites. Contact the names of developers listed at the bottom of the sites that you like. You can also ask for referrals from other businesses, providing you like what you see on their sites. Shop around and find someone who is easy to work with and comes highly recommended.

Depending on the complexity of the site and the need for business transactions, detailed graphics, etc., the costs will vary greatly. Keep in mind that no matter what you pay, the web site developer is working for you, which means:

- You call the shots
- All content, graphics and everything else on the site should be owned by you (and your contract should spell that out)
- The developer (as stated in the contract) is responsible for all functions on the site and making sure that they are in working order
- You should draw up a contract with the developer which is a “work for hire agreement”, specifying the start and completion date of the site’s creation and the costs

### ***What Makes A Good Web Site?***

The best web sites are those that serve the purpose of their owners. For some businesses, a web site provides the backbone of the company’s retail operation. For many other companies, the site offers an adjunct source of sales revenue along with

The process of filing a claim will usually require that you have your paperwork in order. For example, if you have Business Interruption Insurance, you will need to show, on paper, how much business you are losing during the interruption period. As mentioned earlier in the book, it is essential to keep good records of your typical business activity. They will be used to determine how much income you are losing.

Once you file a claim, be prepared in case you need to do battle with your insurance company. If you feel you are not receiving a fair settlement, schedule a time to talk with your insurance agent, the claims adjuster and/or contact the customer service division of the insurance provider. Working with your insurance company, you may be able to reach a better settlement. If you are completely dissatisfied, you may hire an attorney familiar with insurance claims to help you with the settlement.

### **Ways To Lower Insurance Premiums**

In an effort to pay lower insurance premiums, you can safeguard your business in many practical ways. Below are some suggestions:

- ✓ Install sprinkler systems and make sure they are maintained
- ✓ Have all electrical wiring properly installed by a professional and insulated
- ✓ Maintain adequate and updated files of business transactions and personnel information including all signed agreements
- ✓ Adhere to proper industry specific safety precautions
- ✓ Have all employees trained in the proper use of equipment – keep manuals readily available
- ✓ Make sure there is adequate lighting
- ✓ Have all vehicles maintained, registered and inspected on a regular basis
- ✓ Only allow employees with good driving records to operate a company vehicle
- ✓ Have clearly marked emergency exits and hold safety drills
- ✓ Limit access and the number of keys distributed to your primary facility and/or vehicles, warehouses or other facilities
- ✓ Have an arbitration provision in all of your contracts for settling disputes and to reduce the costs and hassles associated with disputes.
- ✓ Repair any damages, unsafe conditions or broken equipment

If you can make every effort to keep your employees (and yourself) safe from physical injury and you have employees read and sign policies covering conduct and behavior while employed, then you can typically lower your risks of accidents or lawsuits and in turn, lower your insurance premiums.

### ***Other Types of Insurance***

Along with purchasing Property Insurance and Liability Insurance (including E & O, Employment Practices, Product Liability and/or other forms of liability insurance), you will pay Unemployment Insurance as mandated by law. In addition you will typically pay

### Additional Costs

Leases typically address who pays for electricity, water and heat. Some terms you should know include:

- ✓ **Operating Costs:** An overall term for additional building related expenses such as janitorial, electrical and maintenance costs.
- ✓ **Overages:** The increase in the cost to operate the property from one year to the next. If, for example the cost for electricity was \$2 per foot one year and \$2.30 per foot the next, the overage of \$.30 would be passed on to the tenant.
- ✓ **Pass Through Costs:** All expenses that are passed through from landlord to tenant.

## Getting Out Of A Lease

Your reason for wanting to get out of the lease will factor into the method you choose. A tenant generally wants out of a lease because:

- Business is growing and the facility is too small
- Business is bad and the rent payment is too high or you simply want to close up shop
- You are dissatisfied with the service of the landlord or how the terms of the lease are being handled

If you need to move to a larger space or a better location, one option is to sublease the space to someone else. You must first make sure subletting is allowed in the terms of the lease. Most often a sublet is allowed with the approval of the landlord. You will still be obligated to the landlord if the subtenant defaults on payment.

Another option, if business is going well, is to buy out the remaining portion of the lease with a lump sum payment. If the landlord will be able to rent the space without much difficulty, your buyout price will be far less than the amount remaining on the lease. This payment may be worthwhile if you are moving to a bigger space or better location.

If business is going poorly, you can also look to sublet, or find a new tenant with whom the landlord can negotiate a new lease for more money. Talk to your landlord about the situation. Landlords usually do not benefit from having a tenant who might be headed toward bankruptcy, so they may allow you to rent out the space, or a portion thereof, while actively looking to find a new tenant.

If you are dissatisfied with the manner in which the landlord is meeting the terms as outlined in the initial lease, re-read your lease carefully and see if any terms have been violated that allow you to break the lease. Read the section on how all disputes will be handled. Do you have sufficient grounds to get out of the lease? If, for example, the lease states that you will have the only jewelry store in the mall, but a department store

C. Action by Incorporator

1. The names and addresses of the initial directors

|       |
|-------|
| _____ |
| _____ |
| _____ |
| _____ |

D. Unanimous Written Consent In Lieu of Meeting of Board of Directors

1. Names and Titles of Officers and Driver's License numbers (\*indicates a required officer; all others are optional)

| <u>Name</u> | <u>Title</u>             | <u>LicenseNo. for<br/>DE-1 Form</u> |
|-------------|--------------------------|-------------------------------------|
| _____       | President and Chief      | _____                               |
| _____       | Executive Officer*       | _____                               |
| _____       | Secretary*               | _____                               |
| _____       | Chief Financial Officer* | _____                               |
| _____       | Vice President           | _____                               |
| _____       | Assistant Secretary      | _____                               |
| _____       | Chairman                 | _____                               |

2. Initial Issuance of Shares

(a) Aggregate shares to be issued:

| <u>Name</u> | <u>Address</u> | <u>Number of<br/>Shares</u> | <u>Consideration<br/>(and Valuation if<br/>Non-Cash)</u> |
|-------------|----------------|-----------------------------|----------------------------------------------------------|
| _____       | _____          | _____                       | _____                                                    |
| _____       | _____          | _____                       | _____                                                    |
| _____       | _____          | _____                       | _____                                                    |
| _____       | _____          | _____                       | _____                                                    |

(b) Specify if issuance of shares is to be under:

California:

- (1) \_\_\_\_\_ Section 25102(f)
- (2) \_\_\_\_\_ Section 25102(h) of the Corporate Securities Law of 1968
- (3) \_\_\_\_\_ Other exemption: \_\_\_\_\_
- (4) \_\_\_\_\_ Qualification with the Department of Corporations

If these terms are acceptable, please sign in the space provided below and return this letter to us. Again, we're very excited to have you join the Company.

Yours truly,

[Name]

[Title]

Agreed and Accepted:

---

[Name]

Preview from Notesale.co.uk  
Page 155 of 182

transferee or pledgee of the Shares held by the undersigned to agree to take and hold such securities subject to the provisions and conditions of this Section 5.

- (b) Each certificate representing (i) the Shares and (ii) any other securities issued in respect of the Shares upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event, shall (unless otherwise permitted by the provisions of Section 5(c) below) be stamped or otherwise imprinted with a legend substantially in the following form (in addition to any legend required under applicable state securities laws):

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. SUCH SHARES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS THE COMPANY RECEIVES AN OPINION OF COUNSEL OR OTHER EVIDENCE REASONABLY ACCEPTABLE TO IT STATING THAT SUCH SALE OR TRANSFER IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SAID ACT. COPIES OF THE AGREEMENT COVERING THE PURCHASE OF THESE SHARES AND RESTRICTING THEIR TRANSFER MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE CORPORATION AT THE PRINCIPAL EXECUTIVE OFFICES OF THE CORPORATION.

The undersigned consents to the Company making a notation on its records and giving instructions to any transfer agent of the Shares in order to implement the restrictions on transfer established in this Section 5.

- (c) The undersigned agrees to comply in all respects with the provisions of this Section 5. Prior to any proposed sale, assignment, transfer or pledge of any Shares, unless there is in effect a registration statement under the Act covering the proposed transfer, the undersigned thereof shall give written notice to the Company of the undersigned's intention to effect such transfer, sale, assignment or pledge. Each such notice shall describe the manner and circumstances of the proposed transfer, sale, assignment or pledge in sufficient detail, and shall be accompanied, at the undersigned's expense evidence satisfactory to the Company the effect that the proposed transfer of the Shares may be effected without registration under the Act or applicable state securities law.

6. Investor Information

The Company may only accept subscriptions from persons who meet certain suitability standards. Therefore, certain information is requested below.

(a) Name: \_\_\_\_\_

Age: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

(b) Home Address: \_\_\_\_\_

Home Telephone Number: \_\_\_\_\_

(c) Firm Name: \_\_\_\_\_

Nature of Business: \_\_\_\_\_

Position/Title: \_\_\_\_\_

Length of Time in Position: \_\_\_\_\_

Business Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Zip Code: \_\_\_\_\_

Business Telephone Number: \_\_\_\_\_

(d) Send Correspondence to: Home \_\_\_\_\_ Business \_\_\_\_\_

(e) List each prior employment position or occupation during the last five years, giving dates: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(f) List any business or professional education, indicating degrees received, if any: \_\_\_\_\_

\_\_\_\_\_

(g) (1) My net worth (together with my spouse's net worth), is in excess of \$ \_\_\_\_\_

and of high quality. The company has 35 employees and has successfully developed other business software. More information can be obtained by visiting the company's Web site at [www.catchysoftware.com](http://www.catchysoftware.com).

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**Preview from Notesale.co.uk**  
**Page 175 of 182**

## **Checklist for Issuing Stock**

If you are planning to issue stock, there are a number of important steps that should be undertaken, including the following:

1. Board Approval. The Board of Directors of the company should approve the offer and sale of the stock, any agreements for the sale, and the filing of any needed governmental documents. This can be accomplished through resolutions adopted at a Board meeting or by written unanimous consent.
2. Shareholder Approval. Approval of the shareholders may also be necessary, especially if the Articles of Incorporation of the company are being amended. Amendment of the Articles will typically require approval by the holders of the majority of the outstanding shares, either by resolutions adopted at a meeting or by written consent.
3. Review the Company Charter. The company's charter (Articles of Incorporation or Certificate of Incorporation) should be reviewed to ensure that you have enough shares authorized to allow the new issuance.
4. Review Compliance With Securities Laws. Before an offer or sale of stock can be made, you need to ensure that the proper steps have been taken to comply with the federal securities laws and the securities laws of the states where the offers or sales of stock are made. Typically, you will want to find a private placement type of exemption to avoid the costly procedures of conducting a registered offering.
5. Prepare Appropriate Agreements. The sale of the stock should be documented by appropriate agreements. When the transaction is not really negotiated, such as the sale of Common Stock to friends and family, a Subscription Agreement may be appropriate. If the transaction involves venture capitalists or strategic investors, then a more detailed negotiated Stock Purchase Agreement will be necessary.
6. Review How the Sale Will Affect Future Action. The company should review how this stock offering might affect future financings. Ideally, the stock issuance should not unduly restrict the ability of the company to issue additional stock in the future.
7. Price and Number of Shares. The appropriate price for the shares and the number of shares to be issued need to be established. The dilution to the existing shareholders resulting from the new issuance must be reviewed and determined acceptable.