



ATTORNEYS AT LAW

A PROFESSIONAL CORPORATION

GETTING READY

TO DO

BUSINESS:

SOME THOUGHTS ON ORGANIZATION

BY

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Of Counsel

Many people *want* to start a business. A famous philosopher once said that the urge to start a business in America was second only to the urge to have a family. Fortunately (or unfortunately as the case may be), the success rate of starting a family is higher than the success rate of starting a small business. There is a fine line between success and failure. Further, the consequences of failure can often lead to financial ruin, breakups in social and other relationships, alcoholism and, even, suicide. Yet, many people who go into business never have a chance of success. Not because they don't have a good product or service to sell, but because they have no foundation. If you build the foundation correctly, the house that you build, called a business, might have a ghost of a chance of success. Below are 10 of the most commonly asked questions or issues about starting a small business (and maybe growing it to a larger business):

1. ***I have an idea or a talent and my friends and family tell me I should open a business, is this a good idea?*** Is your idea or talent really *marketable*? First of

all, is it something other people would want? Secondly, can it be profitable?

There are three stories that I will share with you:

- The Sandwich Story;
- The Pie Story;
- The Shrimp Story.

2. ***What is the first thing that I should do?*** Get a good lawyer and a good accountant. The lawyer and accountant need not come from a big firm, but they have to be interested in you. A mistake that many small emerging businesses make is that they do not file the right papers from the start, and they do not organize in a business and tax efficient manner.

3. **How much Should I Invest:** Only invest what you can afford to lose. Be careful about quitting your day job.
4. **How Should I Organize?** A business should *never* be organized as a proprietorship or a partnership. Both have huge potential liability issues. The most efficient means is to form a Limited Liability Company. The cost is about \$500. This provides the most tax efficient means of organizing, and gives the same legal protection from personal liability as a corporation. I would advise staying away from forming a corporation. “C” corporations are not tax efficient and “S” corporations have too many limitations. An LLC can be used whether you are doing business by yourself or with others.
5. **What Name Can I Use:** You can use the name that you organize under, or you can use a fictitious name. Avoid trying to use a name that is similar to a national company since it is likely to infringe on its trademark.
6. **Are there Special Requirements if I Hire Employees:** Yes; this is where your accountant comes in. Anytime that you hire employees, the complexity of your business increases tenfold. There are a number of federal, state and possibly local tax filings. Also, and this may be the most important part of your business, make certain that you pay any payroll tax withholding of your business (this is also true of sales taxes). Payroll and sales taxes are often called “trust fund” taxes. Never use the government as a creditor. Go without food, but pay your trust fund taxes. There is personal liability for failing to pay over payroll and sales withholding taxes. Also, the government will generally not compromise later on regarding the payment of such taxes, and such taxes are *not* dischargeable in bankruptcy. Many

people who go into business and fail have a payroll or sales tax legacy that lasts for the rest of their lives.

7. **Bringing In an Investor:** Often, to capitalize a small business, a person will bring in a “money” person. This can often be a “Trojan” horse. Bringing in an investor requires you to answer several questions that you must ask yourself:

- Do I want this person or his money?
- Do I want this person to be silent or vocal?
- Can I get along with this person?
- Do I trust this person?

8. **Bringing In a Family Member:** A surefire way to advance family disharmony is to indiscriminately bring in another family member. This is because business problems are seldom left at the office. Whether to bring in a family member requires a “detached” analysis. You have to evaluate whether you can work in harmony with this person. Do they have the right attitude for your business? Do you find some of their personal traits and habits irritating? Many couples have sown the seeds of divorce by going into business together.

9. **Expanding the Business:** Once the business begins to succeed, ambition (and greed) takes a firm foothold. “Going Public” becomes a frequent daydream. Remember, a bad apple can spoil the bushel. Never put a successful business in jeopardy by expanding into a business that is too large.

10. **Succession Planning:** From the first day of your business you must work on an exit strategy. Will your business be taken over by the “kids”? Maybe they don’t like your business. Don’t force a square peg into a round hole. Also, determine if

one or more of your employees or a competitor would be a likely candidate. This should be a topic of conversation with you lawyer and accountant at every meeting.