



new business
typical legal services
checklist

New businesses need all the help they can get. Our firm only provides legal services, but is anxious to help our clients recognize critical decisions to be made and issues which will impact their business as they start, expand, sell, or wind down.

TEAM APPROACH. We often find it appropriate to counsel our business clients as part of a team. We typically work with an accountant, insurance agent, financial planner, realtor, computer or technology consultant, or other professional in order to make sure all the bases are covered from the start. We often receive requests for help from these types of service providers to small and start-up businesses and we will try to make referrals for our clients to professionals in these and other fields, when appropriate.

VISIT OUR WEB SITE. (<http://www.juristechnology.com>) We have started an Internet Web site to post to the Internet some additional or updated information on our services, topics of interest to entrepreneurs, and "links" to many other Internet sites where additional services or information can be found which entrepreneurs may find of interest. Some of these links, for instance, include venture capital sources, government contract information, articles on current topics of interest, and references to other sites with similar information for entrepreneurs.

The following is a partial listing of some of the more common legal services we provide to our clients.

BEFORE STARTING

Business plan drafting. The preparation of a thoroughly researched and thoughtful business plan is essential for the entrepreneur, whether or not it will also be used as part of the process of raising capital from an "angel," bank, stock issue, or venture capital fund. How else will you know if you are "on track?" We will be glad to help you find information sources on competition, costs and market; drafting assistance; and other related services.

COMPLIMENTS OF THE STUART ADAMS LAW OFFICE , P.S.C.
Lynnhurst office condominiums, Suite 1
8009 New Lagrange road
Louisville, Kentucky 40222-4791
PHONE (502) 509-4115

E-mail: biz-law@juristechnology.com Web Site: <http://www.juristechnology.com>

Business franchise opportunity review. There are some profitable franchise opportunities out there and there are some real lemons. Federal and local law typically regulate the form and content of solicitation of potential franchise opportunities. There are a number of ways to interpret the offering circulars, and there are differences in the ability to negotiate changes in the standard packages offered. We will be happy to assist you in reviewing the required disclosure statements, from a legal perspective, and may be able to suggest additional ways to analyze the strength of the franchise and its appropriateness for you.

Franchising your business. If you have developed a business or a concept for a business opportunity which you think others would love to buy into on a local, regional or national basis, we can help you weave your way through the red tape of regulations governing such businesses offerings. Consumers, over the years, have been successful in obtaining legislation and regulations in this area at the state and federal level. The FTC and most states have very strict regulations governing the method you use to contact potential franchisees and the information you must give them. We can help put together your franchise agreement and the uniform offering circular which may be required, as well as the many other documents you must have to start a franchise operation.

Business form determination. Before getting too far down the road, you should determine which legal form of business is best for you: sole proprietorship, general partnership, limited partnership, "C" corporation, "S" corporation, limited liability company or registered limited liability partnership. Each form has advantages and disadvantages, related to, for example, owner liability, formality of decision making process, paperwork, tax consequences, transferability of equity interest, and ability to raise capital.

Name and trademark search. We can assist you, before you spend you money in the market place, in determining whether the name of your business, service or product has been registered or another entity has a documented claim to a name so similar that you risk unfair competition or trademark infringement claims.

Draft a preincorporation or subscription agreement. The purpose of this kind of agreement is to set out all the issues and conditions upon which the business will go forward to the incorporation phase. It can specify the amount of the investment to be made, how the company will be structured or organized if the capital is raised, and the terms of the use or return of any monies prepaid for the organization of the business.

FORMATION STAGE

Business entity creation. Care should be given to the proper drafting of your initial documents for all of the types of entities listed above. For any entity, even including a sole proprietorship in some circumstances, there are numerous alternative ways in which

control of the company can be assured or jeopardized from the start, depending on how and when certain documents are drafted and signed. Appropriate registration of the new legal entity is essential. An accountant should also be engaged to assist where necessary.

Founder agreements. Often the inventor or founder can obtain a higher degree of control, investment repayment insurance, or repurchase option than can others. An appropriate agreement with other investors and participants should be in writing before the company proceeds.

Confidentiality and noncompete agreements. There are a variety of different types of these agreements which can be drafted to protect the founder and the company. The law in this area is constantly changing. Great care must be taken in drafting, negotiating and executing these agreements. A mistake here can be fatal to a company. Many of these agreements fail in court because of poor drafting or lack of consideration in the execution.

Nondisclosure and submission agreements. Many entrepreneurs have great and original ideas but jeopardize them in the process of starting their company. If your business involves confidential, proprietary or "trade secret" information, you should be sure not to inadvertently allow it to go into the "public domain." Agreements can be drawn up to give you greater protection in dealing with potential investors, suppliers, fabricators, key employees and others as you start up your business.

Transfer restriction agreements. It can be important to restrict the transfer of an investor's equity interest in a company. This might be to avoid securities problems, because of the possibility of jeopardizing "S" election status or for similar reasons. It might also be possible to avoid a deadlock or just to provide a way to facilitate transfer of interest. You probably do not want the bankruptcy, divorce, or negligent conduct of one of your key stockholders or partners to result in their spouse, creditor or estate becoming your business "partner," without the option of first buying out their interest and protecting yours.

Transfer of assets to the new business entity. It is important, for many reasons, to make sure the business entity maintains ownership title or properly recorded leasehold interests in its property. We can help you through the maze of procedures for proper transfer and receipt of the assets from an individual to the new business entity. We can also assist you and your insurance agent in assessing the types of risk you may have in setting up and operating your business.

Web site creation and "Virtual Contracting." Many of our clients have already, or will soon, be starting an Internet site to advertise their product or service. There is currently a great deal of confusion over trademark, copyright and other intellectual property issues related to web sites. Not the least of these is the "domain name" issue. Many of these are evolving issues which will continue to change as courts and legislative bodies try

to resolve disputes or prevent others. The material you post on your web site locally may submit you to regulation or litigation in a remote corner of the planet. Interstate and international jurisdiction over material on the Internet is still being decided on a case by case basis with conflicting results. Disclaimers are critical. The existence and enforcement of contracts concluded electronically, often without paper backup, is a growing area of concern. No one has all the answers but we can help you sort out your risks and preferred approaches to doing business on the Internet.

TRADE SECRET AUDIT

Protecting sensitive business information. Most business owners consider some information, formula, process or device to be worth keeping secret from their competition. There are a variety of federal and state laws designed to protect the owners of proprietary information and technology from misappropriation. Most of these laws, however, naturally depend upon the owner to: (1) realize the existence of a protectable interest, and (2) take affirmative steps to avail themselves of the protection offered. All laws make it necessary for the business owner, inventor or entrepreneur to take reasonable steps to keep privileged information reasonably secret. There is a great deal of confusion as to what is or is not a trade secret or protectable interest. What is or is not protectable may also periodically change for a business, as information becomes public or new methods or processes are being developed.

Periodically, a business should identify those aspects of its business which might qualify as a trade secret or proprietary information which should be protected. A trade secret audit is essential to identify all sensitive information. Once that is accomplished, a specific written program to protect all of this information should be developed and monitored. This involves a team approach between management of the business and legal counsel. Failure to identify and protect often results in unnecessary loss of competitive advantage, or worse. Some of the areas of business worth investigating for the existence of trade secrets and a plan to protect them might include, but certainly not be limited to:

- Research and development
- Technical information
- Production and process information
- Customer information
- Vendor information
- Supplier information
- Sales and marketing information
- Quality control techniques
- Product or service margins
- Combinations of public domain and proprietary information
- Strategies and forecasts
- Marketing and business plans

BUSINESS OPERATIONS

Annual and Special meetings. It is important, in any organization, to keep good records. It is critical, for a number of legal and administrative reasons, to comply with state statutes and typical by-law provisions which require corporations to hold annual meetings of shareholders and directors. The minutes should be properly drafted and recorded. A template can be provided, which you can modify annually. Important decisions should be documented, such as loans, leases and major contracts.

Loan agreements. Loans to or from the company should be properly documented for legal and tax purposes. Appropriately drafted corporate resolutions and promissory notes must be documented when money is loaned to the company or borrowed by it.

Property transfers. If the founders, investors or others will be letting the company use their equipment or inventory, a bill of sale, lease or other instrument should be properly drafted and executed. This can be critical in a tax audit, sale or dissolution and should be done contemporaneously with the transaction. The IRS is particularly interested in such documentation.

Employment Agreements. How you handle your employees can determine the future of your business. It is a critical decision as to whether or not to even have an employment agreement or employee manual. We can assist in drafting or deciding against either.

Independent contractor agreements. The high cost of employee benefits, paperwork and compliance issues have caused many companies to try to designate those providing labor as independent contractors. The IRS is closely scrutinizing this issue. If your company substantially complies with the IRS 20 point test and has an appropriate independent contractor agreement, it stands a better chance of avoiding the penalties associated with failure to pay unemployment and workers compensation costs or complying with withholding requirements, if the status of independent contractor is challenged.

Consultant Agreements. It is often desirable to retain a departing business owner for purposes of a smooth business sale or transition. Such agreements are also used as a form of retirement plan, deferred payment plan, or installment sale plan. Quality and quantity of the consultant's time, as well as default provisions, are obviously critical to success of such agreements. This type of agreement, however, can make or break a sale or transfer.

Distributorship Agreements. Many sales based businesses find it effective to retain the services of a distributor. These agreements involve geographically and administratively remote personnel. This requires provisions on responsibility for expenses, compensation,

promotion quantity and quality, conflicts of interest, exclusivity, territory, insurance and termination.

Customer Agreements. Many of your customers will judge you by their first impression of your professionalism. This may be from your job quotation, purchase order or contract forms. These documents can also save or allow loss, depending on how they are drafted. Language accurately defining the product or service to be provided, quantity and quality issues, warranties and exclusions, time frame for performance, payment and acceptance or rejection, are but a few of the issues which should be specifically and accurately defined in writing to avoid disputes. A good contract can save you time and money in dealing with customers, as well as creating an impression of your business standards. Avoiding one lost contract or customer could well justify having a proper customer document drawn up.

Collection of accounts. Proper screening of customers who pay in installments, with a check or credit card or by other than cash, can be essential in collection of delinquent accounts. It is essential to get the right kind of verifiable information. It is also important to comply with federal and state laws on methods used to collect debts, since "consumer" laws can be costly for a business if violated. We can help you set up your screening process and effect legally permissible collection efforts.

BUYING, SELLING, AND DISSOLVING A BUSINESS

Business valuation. We do not perform appraisals of assets of a business but do work with those professionals (such as appraisers, accountants and auctioneers) who do. It is often critical, however, for legal counsel to perform a "due diligence" review of the business for the above transactions. The existence of liens, taxes, unliquidated claims, unemployment reserve fund deficiencies, workers compensation or personal injury claims, product liability issues, environmental clean-up liability, status of warranties to customers, leases and a multitude of other issues should be thoroughly investigated and resolved to avoid litigation or liability after the transaction is "completed."

Closing and transfer documentation. Care must be taken, in negotiating a business transfer, as to how an offer is made or received. What specifically is covered or excluded, payment terms, warranties as to title, continuing liability outside the transaction (such as for withholding and environmental problems) can be critical to insure that you really get all you are negotiating for. We can help in setting the stage for the negotiations, determining whether the negotiations are exclusive and binding, drawing up the agreements, title papers and transfer documents and performing due diligence.

Management Agreements. Many business owners allow purchasers to lease or operate their business for a specific period or until permits or licenses are obtained. Security, insurance, inventory, expenses, prices charged by the business while under

management contract, profit allocation, and conditions for the completion or termination of the agreement must be negotiated and properly drafted in this type of agreement, which is common to many retail businesses.

BUSINESS DISPUTES

Unfair Competition. We can help you determine and enforce your rights in unfair competition matters. This can result from misappropriation or theft of trade secrets, illegal actions by competitors or former employees and a very wide variety of other circumstances. Many of these attacks on your business may be actionable under both federal and state law or under a common law theory.

Fraud, misrepresentation, and breach of fiduciary duty. There are many circumstances when businesses become involved in a situation which causes a fiduciary relationship to arise between them. Some circumstances involve illegal inducement to enter into a contract, nondisclosure or concealment of essential facts and material representation of risks, profit, or other essential elements of a contract. We have experience in assisting our clients with the legal forensics of investigating whether such an event has occurred and taking appropriate action to pursue available remedies. We will often work with accountants, valuation experts, and investigators in assessing and proving damages in such cases.

Co-owner disputes. The business divorce can be more vicious than the domestic variety. The unwritten partnership or claim of equity in a business can have a devastating impact on a company at any stage. It can lead to disparagement of the business to suppliers, customers and competitors, as well as loss of key employee. Sometimes a simple meeting to lay out all the facts can lead to resolving the conflict. Often it is necessary to obtain a restraining order or injunction to stop the damage until the matter can be resolved in court. We have resolved these matters both ways for our clients. We have also handled numerous minority shareholder squeeze-outs from each side.

There are a multitude of other issues that come up constantly in business that have legal implications. As our society becomes more highly regulated, more attention must be paid to these details, in addition to not forgetting the competition and the customers. We provide a free newsletter and periodic legislative alerts to our ongoing clients to help keep them informed. We also provide a free legal audit checklist to our clients on request, to help them look at issues in more detail than we can set out here. If you are interested in discussing any of these issues or services, please give us a call or schedule an initial consultation. We look forward to establishing a relationship with our clients that will help them prosper and free them from the time and hazards of dealing with the above areas without counsel on their side.

Not-for-Profit Corporations. We also assist not-for-profit corporations organize. Much of the corporate procedure is similar to that of the “for profit” business organization but there are also several critical differences. Additionally, we can assist in preparation and filing of an application for tax exempt status for your Section 501(c)(3) or other potentially tax exempt organization. We have a long history of helping organizations get up and running, as well as in helping with grant application and fund raising efforts for their tax exempt entity. Many religious, educational and charitable organizations can obtain tax exempt status, if properly organized, in order to allow them to save money and channel it better for their tax exempt purpose.

Taking Profit out of the Business. Unfortunately, all too many entrepreneurs quit their day job or invest in a business opportunity only to find that their quality (and perhaps even quantity) of life is reduced. We have experience in working with entrepreneurs to map out and execute on a plan to get the most financial reward out of their business venture. We offer basic estate planning packages at a fixed cost, as well as tailored complex will and trust packages, where circumstances warrant. This is another area where we like to work as a member or leader of a team effort to serve our clients, utilizing the services of accountants, financial planners, insurance agents, and others to maximize our clients’ return on investment.

If you would like more information on any of the above services or business documents, please let us know. An information request form follows for your convenience.

Please fill out this form and send it back to us if you would like us to send you more information on services we perform in the areas listed in this Typical Legal Services document.

Return to:

**Stuart Adams Law Office, P.S.C.
Lynnhurst Office Condominiums, Suite 1
8009 New LaGrange Road
Louisville, Kentucky 40222-4791**

Please send me more information on the following business documents or services:

- **Drafting a business plan**
- **Selection of appropriate legal form for my business**
- **Name selection, research and registration**
- **Drafting a preincorporation or subscription agreement**
- **Services and packages for creating a corporation, partnership, limited liability company or registered limited liability partnership**
- **Founder and inventor agreements**
- **Confidentiality and noncompete agreements**
- **Trade Secret Audit**
- **Nondisclosure, noninterference and submission agreements**
- **Buy-sell and stock transfer restriction agreements**
- **Company records maintenance services (ex. annual & special meetings minutes and scripts)**
- **Corporate loan resolutions, promissory notes and security agreements**
- **Property transfer and title document preparation and recording (ex. deeds, bills of sale, etc.)**
- **Employment agreements**
- **Consultant agreements**
- **Distributorship agreements**
- **Independent contractor agreements**
- **Customer document preparation or review (ex. advertising material review; drafting of purchase orders and contracts)**
- **Collection of debts and accounts receivable**
- **Due diligence regarding purchase, sale or merger of a business**
- **Business litigation and dissolution**
- **Other issues or services as follows:**

Please send this to:

Name: _____

Company name: _____

Title: _____

Address: _____

Phone: _____

Best time of day to call: _____

How did you hear about our services and law firm: _____