

Consumer Legal Guide



Your Guide to Starting a Business



**ILLINOIS STATE
BAR ASSOCIATION**

ASK A LAWYER

STARTING A BUSINESS

Thinking of going into business for yourself? There are, of course, many questions to be answered before you launch your business. First, you must decide whether you have the experience, skill, business know-how, and sheer stamina it may take to be successful. You must decide what that business will be, where it will be located, whether you will start from scratch or buy an existing business, how much capital you will need, and so on. Preparation of a thorough business plan is very important in obtaining financing. And, finally, there are many legal questions to be answered, some of which are covered in this pamphlet. For full information on how local, state and federal laws would affect your business, you should consult your attorney at an early stage.

BUSINESS ORGANIZATION

The type of business organization that will be used by you is entirely your choice. There are four basic types of business organization:

1. Sole proprietorship
2. Partnership
3. Corporation
4. Limited liability company

Before deciding how to organize your business, you will be wise to contact your attorney and/or accountant. The importance of professional assistance will become readily apparent because the type of organization you choose for your business involves a great many considerations which can be brought to your attention by your professional counselor. Some of the questions that you will want to consider concern tax advantages, organizational expenses, control of the business, expansion of the business, perpetuation of the business, and personal liability resulting from the business. This is not a complete list, but should assist you in your choice of business organization type and in obtaining professional assistance before starting your business.

SELECTING A BUSINESS NAME

You may conduct your business under your own name, the names of your partners or business associates, or under an assumed name. When consulting your attorney, inquire as to whether or not the name you choose must be registered with an official with the city, county, or state government. You should remember not to choose a name that is the same or deceptively similar to the name of another business, or you may face legal action. You may be able to obtain legal protection for the exclusive use of your business name.

LICENSE TO DO BUSINESS

A license must be obtained from the state for certain businesses, such as retail and service establishments, beauty shops, private employment agencies, and small loan companies, to name only a few. It may be necessary to obtain a state or local license for your business, and again you should consult with your attorney to determine whether or not a license is necessary. If your business is home-based, certain restrictions may apply.

TAX LAWS

As you well know, tax consequences will result from your business. State, local, and possibly federal taxes will be imposed upon your business and to determine which of the above taxes will apply to you, how much you will have to pay, and the most advantageous type of business from a tax standpoint, it will be necessary for you to seek professional counsel and advice from your attorney and/or accountant. You may be further required to obtain state and federal account numbers and authority for collection, reporting, and payment of sales and employee taxes.

EMPLOYEE RELATIONS

Anyone hiring, employing, and ending the employment of individuals must comply with state contract law, federal and state statutory law, and common law decisions by state and federal judges. For example, employers may not discriminate against any applicant because of race, color, religion, national origin, and a number of other classifications protected by federal, state, and local laws. Laws also regulate the wages, hours, and working conditions of all employees, particularly minors. Depending upon the type of employee, a company must pay overtime pay after the employee works a number of hours each week. Some companies are required to provide health insurance to its employees under federal law. Companies are also required to insure their employees with workers' compensation and unemployment compensation coverage by paying taxes to the state government. Companies also contract with individuals who act as independent contractors and not employees. Although contracting with individuals as independent contractors is lawful, some companies try to avoid the payment of taxes and benefits by misclassifying individuals as independent contractors rather than employees. This may result in liability to state agencies as well as to the Internal Revenue Service. Depending upon the circumstances and the risks to be encountered by a company, some companies obtain employment practices liability insurance to cover some claims. Obtaining coverage requires an analysis of the company's risks and philosophy of operations.

SECURITIES LAWS

Any time you sell stock, most types of notes, or other interests in your business to family, friends or other investors, federal and state securities laws apply. Such sales must be registered under those laws unless an exemption is available. To qualify for some exemptions, you may need to file documents with

governmental agencies either before or after a sale is completed. Failure to comply with federal or state securities laws can result in personal liability. The effect of securities laws should be discussed with your lawyer.

FRANCHISE AGREEMENTS

If your new business will be entering into a franchise agreement, it is important that you have your lawyer review the franchise agreement and the franchise disclosure documents before you sign the agreement. Franchise agreements typically impose very significant financial and legal obligations upon the franchisee. Your lawyer may be able to help you modify the franchise agreement to make it more favorable to you.

OBTAIN PROFESSIONAL COUNSEL

Do not hesitate to obtain professional counsel. Good advice can make the difference between success and failure. Here are some of the ways in which professional advisors can be of assistance to you:

YOUR LAWYER: He or she can help you choose the type of business organization that best suits your needs and objectives; 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 other estate plan should be revised by your lawyer to include your new business interests.

YOUR BANKER: He or she can point out possible sources of capital including a mortgage on your home or other property, commercial bank loans, credit from suppliers of equipment and merchandise, financing of receivables by a factoring company, a Small Business Administration loan and other sources.

YOUR ACCOUNTANT: He or she can help set up and supervise procedures for keeping payroll, tax, and other business records.

YOUR INSURANCE BROKER: He or she can advise you as to the types and amounts of insurance you should carry to protect yourself and your business against loss.

The local Chamber of Commerce (in Chicago, the Chicago Association of Commerce and Industry) and the Small Business Administration, a federal agency, also can assist you in the formative stages of your business and thereafter. State and local business incentive programs may be available to you; that availability and qualification requirements for assistance should be thoroughly examined at the outset of any new or expanding business endeavor. You should determine whether your business qualifies for minority-owned or female-owned business certification.

IMPROVE YOUR ODDS

The odds are against the eventual success of any new business. The majority of new businesses fail for a variety of reasons. Those reasons range from lack of market to inadequate organization. The cost of failure is always high, if not in dollars, then in disappointment and personal disillusionment, not to mention long hours and hard work. Your attorney and other professional advisors cannot guarantee your success; but they can help improve your odds. To find an attorney, you can log onto IllinoisLawyerFinder.com, or call the Illinois State Bar Association lawyer referral service at 1-800-922-8757 toll-free in Illinois.

If you're looking for an
Illinois lawyer, look to
IllinoisLawyerFinder.com



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Find a lawyer near you 24/7 on the Web at **IllinoisLawyerFinder.com** or call us from around the state at **217-525-5297** or **800-922-8757** Monday through Friday from 9:00 a.m. to 4:00 p.m.



ILLINOIS STATE
BAR ASSOCIATION

This pamphlet is prepared and published by the Illinois State Bar Association as a public service. Every effort has been made to provide accurate information at the time of publication.

For the most current information, please consult your lawyer. If you need a lawyer and do not have one, call Illinois Lawyer Finder at (800) 922-8757 or online **www.IllinoisLawyerFinder.com**

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Starting a Business

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For more information on legal issues or to obtain single copies of each of the pamphlets listed above (free to individuals), please visit

www.ISBALawyers.com

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