

Business Start-Up Legal Checklist

- Decide your type of business entity: Sole Proprietor, LLC, or Corporation. Consider:
 - Tax issues (talk with your accountant or crunch the numbers yourself).
 - Liability issues.
 - Cost of setup and maintenance (government and professional fees).
 - Logistical and administrative requirements.
 - Future of your business (such as: will you add many other owners? passive investors? need outside funding?).
 - Specific issues re your situation (such as: is this business a subsidiary of another business? Are you a non-resident alien?).
 - Are you the kind of person who can switch later, or do you need it settled now?

- Decide on your business name, doing/business/as (d/b/a) name (if needed), and main domain name. Check to see if names already taken via searching:
 - Domain names and Google.
 - Trademarks ([registered](#) and common law).
 - State incorporation and other government databases.

- Incorporate the business as a corporation or LLC (if needed):
 - Decide on state of incorporation.
 - Obtain a registered agent, if needed.
 - File articles/certificate of incorporation/organization with state.
 - File annual statement of members/managers/owners/directors with state.
 - Apply for state business license, if needed.

- Other governmental filings
 - Apply for a [federal EIN \(form SS-4 online\)](#).
 - File for state ID number, if applicable.
 - File d/b/a with state or county, if doing business under a different name than own name or the LLC/Inc. name.
 - Get local business license (city), if needed.
 - Check local zoning requirements (city or county), including home business, signage, industry types, and parking.
 - Obtain home business permit or license (state or county or city), if required.
 - [File to declare S-Corporation status](#), if needed.
 - Obtain sales tax number or license from state, if applicable.

- Administrative Systems
 - Open bank account, credit card, Paypal, Stripe/Square and/or other merchant account(s) in the name of the business (separate from personal accounts).
 - Set up bookkeeping system for your business and/or hire a bookkeeper. Review books and/or reports at least monthly, if not weekly.
 - Obtain a business mailing address, if working from home or traveling.

Intellectual Property

- Decide if you're going to register any trademarks. Consider:
 - Registered trademark and common law trademark search results.
 - Value of trademark and likelihood that registration of the trademark will be granted (especially if using common words or phrases).

- USPTO fees (usually \$275/class) and attorney's fees for registering and enforcing the trademarks.
 - Will you actually enforce the trademark? Trademarks only have value and keep their value if you're willing to enforce them.
 - Will you be selling your business, or licensing the model to others?
 - Will you be doing business locally, or in other states or countries?
- Trademarks
- [Register trademarks](#) and use ® for registered trademarks, or use ™ in all instances of your common-law trademarks.
 - Monitor trademarks and send cease-and-desist communications if violated.
 - Create policies for affiliates and other associated entities on use of trademarks.
 - Renew trademark registrations.
- Decide if need to register copyrights. Consider:
- Is common-law copyright (automatic in the U.S.) not enough?
 - What is the likelihood you will need statutory damages and/or to file a lawsuit?
 - How important is the work to your business?
 - How often will it be updated? Is it easily copied?
 - Will you use this work in other countries? Would you pay to enforce it there?
- Copyrights
- Use © in all instances of your copyrighted works, including online.
 - [Register copyrights](#), if needed.
 - If you want others to use your copyrighted works, consider licensing the copyrighted works, such as via the [Creative Commons standard licenses](#).
 - Monitor copyrighted works and send cease-and-desist communications if violated. Consider [Digital Millennium Copyright Act \(DMCA\) enforcement](#), if appropriate.
 - Audit: are you using other people's copyrighted works, without a license? Consider music, photos, video that you use in media and in print. Obtain rights to use royalty-free (or creative commons) work that is approved for commercial purposes.
- Trade Secrets, including customer and prospect lists.
- Regulate access to trade secrets, private information, confidential information, business plans, lists, and passwords.
 - NDAs (see contract section) with mastermind partners, coaches/consultants, independent contractors and vendors.

Formalities and Contracts

- Corporate formalities
- Maintain separate bank, Paypal, credit card, and other financial accounts, from owner's personal financial accounts. Do this even if your business is a sole proprietorship.
 - Maintain bookkeeping and filing (electronic and/or paper) systems.
 - Owner pays self a salary and/or draw, instead of using business money to directly pay for personal expenses.
 - Sign contracts (and update old contracts) on behalf of the corporation/LLC.
 - Update accounts and software to business name.
 - Use corporate/LLC and d/b/a name in all marketing materials, including website.
 - Operating agreement and/or bylaws.
 - Resolutions to give power to take actions on behalf of the corporation/LLC.
 - Board meetings, if needed.

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- Annual filings, as required by the state.
- Professional or industry registration and filings, if required.
- Renew business licenses and d/b/a registrations, as required.
- Draft and use [written contracts in all business relationships](#):
 - Decide on choice of law and choice of venue, especially if will include arbitration and attorneys' fees clauses.
 - Contracts with clients and/or customers.
 - Website: terms of service or terms of use for website visitors.
 - Website privacy policy. Comply with GDPR if any EU personal information gathered. More stringent requirements if directed to kids under age 13.
 - Website and other marketing disclaimers.
 - Website: terms of service (such as a click-through agreement) for your programs that can be purchased or registered for directly online.
 - Contracts with independent contractors and vendors. Include any state law requirements (in both your state and their state) for maintaining the independent contractor relationship. Include work for hire and other ownership language, if needed.
 - Joint venture and mastermind group agreements.
 - Shared office and/or subleasing agreements.
 - Non-disclosure agreements. May be included in other contracts, or free-standing (such as for mastermind groups). Be careful about enforceability of restrictive covenants or covenants not to compete (illegal in some states).
 - Model releases.
 - Leases or other rental agreements.
 - Affiliate agreements

Risk Management

- Obtain appropriate insurance.
 - Business liability & business property insurance. May also include directors and officers, business continuation, and other provisions. Especially important if have live events.
 - Professional liability, malpractice, or errors and omissions insurance.
 - Commercial automobile insurance, if needed.
- Compliance with laws, regulations, and contractual obligations.
 - [CAN-SPAM Act](#) compliance (CCPA if applicable), GDPR compliance.
 - Testimonial and endorsement guidelines ([2013 FTC Guide](#)).
 - State/industry specific rules, especially professional and ethical rules.
 - HIPAA, if medical-related industry or profession.
 - Contest rules, both statutory/regulation (federal and state) and contractual (such as on Facebook).
 - Statutes and regulations regarding gift cards and gift certificates.
 - Contractual obligations, including:
 - Contracts with vendors, clients, customers, especially regarding restrictive covenants and intellectual property.
 - Rules regarding business use of social media sites and ownership of contacts.
 - Rules for specific forums, such as [Facebook Pages](#).
 - SEO and internet advertising risk management.
 - Internal policies and handbooks.
 - Audit: look for unauthorized use of other people's intellectual property: trademarks, copyrighted works, trade secrets, and perceived endorsements.

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- Client and customer screening procedures.
 - Maintenance of trade secrets, including customer and prospect lists (such as access to and ownership of social media and email lists).
 - Maintenance of login & passwords, and back up of electronic files (local and remote).
 - Procedures if owner is incapacitated or otherwise unable to work.
 - Back-up services or plans in case important services are down or locked, such as internet, website, Paypal, or merchant accounts.
 - Management of joint venture and shared space relationships, to reduce risk of accidental partnership.
 - Compliance with ADA, if a [public accommodation](#).
- Audit of [independent contractor procedures](#) (to maintain non-employee status).
 - Contracts, including any “magic words” in your or their jurisdiction.
 - Most important factor: who controls the way in which the work is done? Is the control results-based, or method-based?
 - Various other factors: working by project or hourly, full time or part time, using own equipment/computer, training and education of the worker, location of worker, temporary or permanent, payment by time or job, is the work an integral part of the business, does the worker have special skills, is there an opportunity for worker’s profit or loss dependent upon skill, whether the worker has their own business and own clients. Look at your state/local, the worker’s state/local, and federal statutory and regulatory requirements. These laws change constantly.
 - Maintain documentation of procedures, so can prove-up status.
 - [Unpaid interns](#) are rarely permissible under federal, state, and local law. Be careful of how treat “volunteers” (such as event volunteers).
- Taxes (check with accountant or tax preparer, for specifics).
 - State franchise fees and state income taxes.
 - State or local business licenses.
 - Sales taxes (if physical products).
 - 1099s for independent contractors.
 - Quarterly tax deposits (federal and state), if needed.
 - [Barter rules](#).
 - Paying the owner a salary (subject to self-employment tax) versus dividends.
- Business Owner Protections.
 - Insurance: Homeowners/renters’ insurance, and umbrella policy (personal liability).
 - Quarterly tax deposits, if needed. Be sure to review as income changes.
 - Estate planning:
 - Living trust and/or will.
 - Power of attorney.
 - Healthcare directive.
 - Succession planning (may include life insurance to fund).
 - Disability insurance and/or set-aside.
 - Long term care insurance, if appropriate.
 - Life insurance, if needed.
 - Health insurance and/or health expense set-aside.
 - Business emergency planning, for natural emergencies (earthquake, fire) and health or emergency issues of the business owner.
 - Retirement plan funding and owner exit strategy.

- Maintain a file referencing location of other important documents and important data and contact information, so can be located by power-of-attorney or executor. Keep an extra copy of file in a remote location, in case of local disaster.
- Dispute management policies and procedures.
 - Policies and procedures to deal with customer or client service issues.
 - Policies when faced with DMCA issues (include in website terms of use).
 - Social media policies.
 - Comment, email, spam, harassment management policies.
 - [Responses to cease & desist letters](#), licensing disputes, content warnings, spam blocks.
 - Responses to accusations of defamation, interference with contract, violation of NDAs or restrictive covenants.
 - Contract review, negotiation, and breach mitigation.