



Get Smart

Three critical and cost-effective legal projects for business owners.

BY JIM CHESTER

Working with many entrepreneurs, partners, and “key” persons in various small to mid-sized businesses over the years, I noticed that they have had many similar legal needs, regardless of their size, industry, or location. Fortunately, there are projects that address those issues from a “bang for your buck” perspective. The benefits of these legal projects, which often cost less than \$1,000, generally pay for themselves many times over.

Entity Formation

One of the most critical and cost-effective legal projects for business owners is the formation of a legal entity, such as

a corporation or limited liability company. Legal entities can protect the owner’s personal assets from business debts and lawsuits. Legal entities also make the addition of multiple owners easier and allow for business continuity in the event of retirement or death.

Typical situations in which a business owner might consider forming a new legal entity include: (1) the launch of a new company or business; (2) the spinoff of a new line or products; (3) the addition of a partner, owner, or investor; and (4) growth of the business to add employees or engage in bigger projects.

There are several types of entities to choose from in Texas, and business owners can select the one that best fits their company in terms of flexibility, tax benefits, etc. Common entity choices include corporations, limited partnerships, and limited liability companies.

Regardless of type, entity formation in Texas is relatively cheap, easy, and fast. Current Texas filing fees can be as little as \$300 for LLCs and corporations. Other costs related to forming an entity can be zero for “do-it-yourself” filings, and can typically range from \$1,000 to \$2,000 for formations handled by lawyers.

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Registered Trademarks

Although the use of a name brand or logo by a business automatically creates limited rights to prevent others from using similar marks, trademarks registered with the United States Patent Trademark Office can grant owners broader and potentially permanent rights throughout the entire country. Thus, USPTO registrations can preserve new markets for expansion, even if the current use is fairly local in scope. In addition, once a mark is registered with the USPTO, the owners can use the “®” designation, which is a powerful deterrent to potential copycats. Furthermore, although the owners of intellectual property must typically self-police against infringement, U.S. Customs and Border Protection will seize potentially infringing imports, provided that the marks are USPTO-registered and recorded with the CBP.

The filing process can cost as little as \$275 in USPTO fees for DIY filings and can typically range from \$1,000 to \$2,000 for searches and filings handled by an experienced trademark lawyer. Filing is not the *end* but the *beginning* of the administrative process, so additional work is often needed. The USPTO process can take anywhere from one year to several years (typically 9 to 10 months), but the “priority date” (the date from which any later uses of the mark by others can be stopped) reverts back to the filing date. Thus, the earlier one files, the sooner the nationwide protections will begin.

Typical situations where businesses often consider a USPTO trademark registration application include: (1) formation of new company or a spin-off; (2) launch of new products or a marketing campaign; (3) entering new markets (including overseas); (4) seeing a similar mark used by another

company; or (5) merger/acquisition or financing.

Legacy Planning

Estate planning allows people to direct how their estate is handled and divided after their death. Proper estate planning involves more than preparing a will; it also includes advance directives, medical information releases, and powers of attorney to address situations in which a person requires emergency medical care and is unable to speak for himself or herself, or for situations in which a person becomes temporarily or permanently disabled.

Business owners have additional matters to consider when it comes to planning for their death or disability, such as the impact on their business, their partners and employees, as well as their clients and customers. As such, legacy planning for business owners includes business succession agreements and directives to deal with death, bankruptcy, disability, divorce, and other departures of co-owners. In addition, legacy planning should include an updated and complementary estate plan such as a will, advance directives, powers of attorney, and guardianship appointments to protect their interests and those of the business.

Typical situations where business owners consider estate and legacy planning strategies can include: (1) launch of a new business; (2) addition of new partners; (3) life changes (marriage/divorce/kids, etc.); (3) a transition plan for retirement; (4) illness or accident; or (5) incentives for employees to continue the company after departure of current owners.

Much of the business side of legacy and business succession is integrated into company agreements, such as buy-sell and shareholder agreements,

which can often be drafted by legal counsel for less than \$1,000.

On the personal side of legacy planning, estate documents can be executed to include instructions for handling an estate in the event of a death or disability of a business owner. An estate plan can be as simple as a DIY will written in your own handwriting. Alternatively, costs to have attorneys prepare full estate plan documents (wills, powers of attorney, living wills, etc.) can range from \$500 to \$1,500 for relatively simple plans with no trust or state tax issues. **TBJ**

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