



the **virtual** attorney

**10 STEPS TO GIVE YOUR
BUSINESS A LEGAL KICK
START**



So you have a great new idea or a way to improve on an existing one, but what now? Starting a business is no easy task and the requirements to do it correctly can seem overwhelming. But, while there are a number of local, state and federal requirements to formally create the business structure and get off the ground, with some guidance and a little organization you can be up and running in no time. Here are 10 legal areas to consider when launching your business.

“Top 10” checklist to getting off the ground

- Consider your business risks**
- Research the different types of business organizations**
- Determine how your business will be taxed**
- Determine a legal structure**
- Pick a name**
- Register**
- Prepare organizational paperwork**
- Obtain licenses and permits**
- Obtain Insurance**
- Learn about taxes**



1) Consider how much protection from personal liability you will need. What are your business risks?

It could probably go without saying that when starting a new business it is imperative to consider the risks that it will face. Determining how likely you are to face losses will help you in making your determination on which entity is appropriate to your business. For example, a sole proprietorship provides no protection to the individual owner who remains on the hook for all potential liabilities and losses. This means that an individual doing business as a sole practitioner may be risking his savings, his credit and his home. Conversely, a C corporation will shield an individual owner from liabilities of the business. The trade-off with a C Corporation is added complexity in formation, operation and additional formalities that must be followed.

Regardless of the choice of business entity, in most cases the individuals forming the business will remain personally liable for their negligence. So an individual providing personal service, for example, may be just fine operating as a sole proprietorship with a strong insurance policy. The potential for loss shouldn't be the only consideration when deciding the best entity for your business, but it should certainly be given some thought.

2) Research the different types of business organizations.

The types of business organizations available depend on the state in which you will be forming your business; however, for the most part, the same basic types of structures are available in most states. Sole proprietorships, partnerships, limited liability hybrid entities (limited liability partnerships or limited liability corporations), S Corporations and C Corporations are all available to explore as possible structures for your business. Each has its benefits and drawbacks so it is important to take some time to explore the features that each offers and the formalities required for their continued operation.

3) Determine how your business will be taxed.

As they say, only two things in life are certain: death and taxes. Starting your own business means that you'll now have a lot more to consider than filing a 1040 each spring. Your choice of business entity will have long lasting implications for how and when you will be required to pay taxes. You'll want to research the various reporting requirements for each entity to determine whether you're willing to face a complex taxation scheme if it potentially means savings down the road.



	Sole Proprietorship	Partnership	LLC	S Corporation	C Corporation
Filing Requirements	IRS 1040, Schedule C (<i>profit and loss</i>), Schedule SE (<i>self-employment tax</i>), Quarterly estimated tax returns, Possible excise taxes and employment taxes	IRS 1040 IRS 1065 (<i>Partnership Income Return</i>) Schedule SE (<i>self-employment tax</i>), Quarterly estimated tax returns, Possible excise taxes and employment taxes	Not recognized entities for federal income tax purposes so it depends on election and whether LLC is single member LLC. Possible filings: IRS 8832 (<i>entity classification election</i>) IRS 1065 (<i>if elected as partnership</i>) IRS 1120 (<i>if elected as corporation</i>)	IRS 1120S, IRS 1120W (<i>estimated tax</i>) IRS 941 (<i>employment tax</i>) Possible excise taxes, Shareholders file Schedule E with 1040.	IRS 1020, IRS 1120-W (<i>estimated tax</i>) IRS 941 (<i>employment tax</i>), Possible excise taxes.
Benefits	Simplicity. Company is taxed at the individual level. Individual owner reports profit and loss on individual 1040 (Schedule C)	Profit and loss is passed through to the partners. No tax at the entity level. Ability to make various tax-free contributions and distributions of property to and from the partnership	Flexibility. Entity can elect to be taxed as an individual and pass through profit and loss to individual members or as a corporation	Only 1 level of tax (profits/ losses are passed through to shareholders)	Flexibility. Various options exist for income shifting between corporation and shareholders. No restriction on carried losses, savings on self-employment taxes, ability to lease assets to corporation.
Disadvantages	No flexibility. Company is disregarded for income tax purposes. No ability to shift income between owner and company.	Limited flexibility. Losses only taken at partner level, so any deductions (i.e. charitable deductions) are treated first as a taxable distribution to the partner.	Depend on the classification for tax purposes (sole proprietorship, partnership or corporation.)	Shareholders taxed on profits whether or not distributed.	Double taxation (corporation is taxed on earnings at the corporate level and shareholders are taxed on any distributed dividends)



4) Determine a legal structure for your business.

Not only does each business entity have different benefits and disadvantages when it comes to taxes, but they each have various levels of formality, varying filing requirements and other considerations. Before selecting an entity for your business, you should take some time to familiarize yourself with the various characteristics of each.

	Sole Proprietorship	Partnership	LLC	S Corporation	C Corporation
Ownership	Individual	Partners	Members	Shareholders (limited amount of individuals permitted)	Shareholders
Management	Individual owners	Managed by partners (can be limited. Defined in partnership agreement)	Members or Managers (defined in operating agreement)	Board of directors (elected by shareholders). Officers run day-to-day operations (elected by directors)	Board of directors (elected by shareholders). Officers run day-to-day operations (elected by directors)
Personal Liability	Individual owners 100% liable for losses of the company	Partners personally liable for business debts (may be limited in case of limited partner)	Members typically not liable for debts of the company	Shareholders typically not liable for the debts of the company	Shareholders typically not liable for the debts of the company
Requirements for Formation	None.	None. Partnerships may be formed orally	File Articles of Organization with state.	File Articles of Incorporation with state.	File Articles of Incorporation with state.
Formalities	None (but may need to file DBA registration and periodic taxes)	None (but may need to file DBA registration and periodic taxes. Can be governed by partnership agreement but may also be formed orally.)	Daily operations governed by operating agreement. Must file annual reports with state.	Daily operations governed by bylaws. Required to have formal board and shareholder meetings, keep minutes and file annual reports with the state.	Daily operations governed by bylaws. Required to have formal board and shareholder meetings, keep minutes and file annual reports with the state.



Taxation	Taxed as individual income and loss. Report on 1040 (schedule C)	Income and losses attributable to partners. Reported on 1040 (schedule K-1)	Can elect to be taxed as individual or corporation.	Profit and loss typically passed through to shareholders and reported on 1040. Profits taxed whether or not distributed to shareholders.	Separate entity for tax purposes. Must file separate return, report distributions, salaries, income and loss.
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5) Determine what your business will be called and research the name.

Once you've determined which type of business entity to use you should do some research on the name you would to use for your new business. In the internet age it's easier than ever to find out if someone is already using the name, whether a domain name is available and whether protection is available if you do move forward using your chosen name.

Unfortunately, there is no one-stop shop to determine the viability of using a name, but with a few resources and a little time you should be able to develop a sense of confidence that your chosen business name is not going to conflict with another business.

County Search: Check with the county clerk's office in the place you'll be forming the business to see whether your desired name appears on its list of fictitious business names in the county. Most counties have a search tool on their websites that you can use, but if not you may need to call the clerk's office and determine the procedures they require you to follow.

State Search: If you will be forming an LLC or corporation search the Secretary of State's (in Wisconsin, the Department of Financial Institutions) records for any other company already formed under your chosen name or a similar name. Like the county websites, the state will typically have a search feature on its website that you can use. Make sure to search the entire name and various combinations of the words as most of the directories are sensitive to the exact language that you input into the field. In order to ensure that no other names are close to your chosen name, take the extra time to search a few different combinations of the words you'd like to use in your name.

Trademark search: Finally, make sure to search trademark databases, especially the federal trademark database kept with the U.S. Patent and Trademark Office (USPTO). The USPTO's website has an easy to use search feature much like many states and counties. Again, make sure to try a few combinations of the words in your chosen name to ensure that it is not too closely related to a name that is already trademarked. Additionally, you should search all 50 state trademark databases to ensure your name does not infringe on a state registered mark (especially if you plan to do business throughout



the country or on the internet). Websites like www.cscglobal.com will search all 50 state registries for a fee; however, if you have a little time and some patience you can methodically do a search yourself for free.

Domain search. A website is a necessity for any business today. Whether you will be doing business online or not, consumers are going to search for your company online. Having a website offers an easy way to provide information on your company, products and services and offers a level of legitimacy to your company. Once you think of a couple of ideas for what you would like your web address to be, you'll need to make sure that your chosen site name is still available. Sites like GoDaddy.com, networksolutions.com and instantdomainsearch.com offer an easy search feature that will help you determine name availability. Once you find an available name you can follow the prompts to claim and register that name.

6) Register business name.

Once you've done your due diligence and determined that it's safe to use your chosen name it's time to register your name. Many times, this is done concurrently with filing any organizational paperwork. In most states, if you are forming a corporation, LLC or limited partnership, your name will be automatically registered when you file articles of incorporation, articles of organization or a limited partnership statement. However, if you have decided to form a sole proprietorship or partnership that will be doing business under a fictitious name, while there are no required filings to organize the business, you'll want to register your fictitious business name.

In Wisconsin, a fictitious business name is filed with the Department of Financial Institutions (<http://www.wdfr.org/corporations/faqs.htm>)

In Illinois, a fictitious business name is filed with the Secretary of State (<http://www.cyberdriveillinois.com/>)

In Minnesota, a fictitious business name is filed with the Secretary of State (<http://www.sos.state.mn.us/index.aspx?page=180>)

Trademarks or service marks can also be registered at the state or federal level. While not required, registering your business name, the name of your product, a label, logo or slogan will give you certain protections and will alert the public of your claim to the mark. A word of caution: while registering a mark at the state level is a relatively simple task, federal trademark laws are many and the process for registration is complex. Federal trademark registration is one area where an intellectual property attorney will be an invaluable asset.

In Wisconsin, a mark can be registered with the Department of Financial Institutions (http://www.wdfr.org/Notary_Public_and_Trademarks/defaultTrademark.htm)

In Illinois, a mark can be filed with the Secretary of State (http://www.cyberdriveillinois.com/publications/pdf_publications/tmsm15.pdf)

In Minnesota, a mark can be filed with the Secretary of State (<http://www.sos.state.mn.us/index.aspx?page=1093>)



7) Prepare organizational paperwork- what is required?

Various filings are required depending on the business entity you have selected. Below is a chart indicating the required filings for each entity as well as where to file and filing fees.

	Required Filings	State	Where to File	Filing Fees
Sole Proprietorship	None	Wisconsin	NA	NA
		Illinois	NA	NA
		Minnesota	NA	NA
Partnership	None for General Partnership. Limited Partnership requires statement of limited partnership.	Wisconsin	Department of Financial Institutions	\$70.00
		Illinois	Secretary of State	\$150
		Minnesota	Secretary of State	\$100-\$120
LLC	Articles of Organization	Wisconsin	Department of Financial Institutions	\$130-\$170
		Illinois	Secretary of State	\$500
		Minnesota	Secretary of State	\$135-\$155
S Corporation	Articles of Incorporation	Wisconsin	Department of Financial Institutions	\$100
		Illinois	Secretary of State	\$150
		Minnesota	Secretary of State	\$135-\$155
C Corporation	Articles of Incorporation	Wisconsin	Department of Financial Institutions	\$100



		Illinois	Secretary of State	\$150
		Minnesota	Secretary of State	\$135-\$155

8) Obtain licenses and permits.

The licenses and permits you will need to operate your business vary widely depending on your location and type of business. However, there are a few items that will be necessary for nearly all new businesses.

Federal EIN

EIN stands for Federal Employment Identification Number. Your company's EIN will be used as an identifier on federal tax forms. If your business is going to have employees then you will need to obtain an EIN to use when reporting income to the government. While some business owners without employees have the option to file under their social security number, an EIN affords a business flexibility allowing it to set up retirement accounts and pay additional taxes, such as excise taxes. You'll also use your EIN to do non-tax related taxes, such as set up business bank accounts, apply for credit or set up a smartphone plan.

Note that single member LLCs are disregarded for federal income tax purposes and may just use the member's SSN in place of the EIN on federal income tax returns. However, an EIN may be necessary for other reasons as stated above.

State sellers permit

Depending on the type of business and the state in which it operates, it may be necessary to obtain a seller's or resale permit. A seller's permit is typically required for any business selling tangible goods or taxable services, unless they are specifically exempted by statute. A seller's permit allows the state to identify those businesses that must pay sales tax.

Any specialized state licenses

Many areas of business require additional licenses in order to operate. For example, businesses such as car dealerships, establishments that sell liquor, real estate agents, cosmetologists, and many more require profession or business specific licenses in addition to a general business license. The types of business requiring additional licenses are set forth in statutes and regulations on a state-by-state and sometimes local basis.

Local registrations and permits



Along with the wide array of required permits and licenses at a state level, some businesses may need to register or obtain licensure at a local city or county-level as well. In order to determine if your business is required to register locally try calling the county or city clerk's office or going to their website.

Information on Illinois business licenses

<http://www2.illinois.gov/business/Pages/default.aspx>

Information on various required Minnesota business licenses

http://mn.gov/elicense/az_indexes/licensebyname.jsp

Information on Wisconsin business licenses

<http://ww2.wisconsin.gov/state/license/app?COMMAND=gov.wi.state.cpp.license.command.LoadLicenseHome>

9) Obtain Insurance.

It should go without saying, but starting a business will bring with it inherent risks and inevitable unhappy customers. Business insurance can protect you from loss due to natural disasters or lawsuits. There are various types of insurance available to you and your business such as property and casualty insurance to protect your physical business assets (buildings, vehicles, inventory, etc.) or liability insurance which can shield you against claims for negligence. Additional types of insurance available to businesses and business owners are:

- Commercial auto insurance
- Product liability insurance
- Business interruption insurance
- Worker's compensation insurance
- Life and disability insurance

You should speak with an insurance professional about which types of insurance are appropriate for your business.

10) Learn about taxes.

If there is one thing that causes more headaches and frustration to new business owners than anything else, it's taxes. While the complexity of your business's tax obligations will be dictated largely by its size, your choice of business entity will also play a large roll. Corporations are likely to have a much more complex tax scheme than sole proprietorships and instead of one filing a year you may now need to keep track of multiple deadlines and learn how to estimate your business's tax liability months in advance. For all those headaches, however, there is a nice tradeoff in the form of deductions. Expenses that are incurred while carrying on your trade or business can be deducted from total tax liability. To be deductible, the expense must be ordinary and necessary, meaning that it must be one that is common



and accepted in your area of business and an appropriate expenditure to the advancement of your business. Expenses incurred in areas such as advertising, benefits, depreciation, supplies and materials, and office expenses can reduce the total amount of liability your business may have.

A word of caution though: Tax laws are incredibly complex and the penalties for abuse or misuse can be substantial. Given the risks involved, the best bet is to hire a good lawyer and accountant to walk you through the maze of code sections and regulations. This is one area where the money you spend to get some profession help will be very well spent.

The Virtual Attorney Contact Information

For questions on starting a business or to discuss your own needs feel free to contact me anytime:

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