



STARTING YOUR BUSINESS IN ARIZONA

Starting a new business? Need some advice from someone who has been there?

Giving advice regarding starting a new business is a little bit like the blind man describing an elephant: it depends on where you are standing. For example, a government official will focus on permits, licenses and taxes; an accountant may emphasize accounting, payroll and tax issues; and a marketing person will develop your identity, brand and unique selling proposition.

As an **Arizona business lawyer**, I consider the following items to be important in starting your business:

An entity: Does a corporation or limited liability company (LLC) make the most sense for your company? Note: You can form an LLC from a worksheet you get online but that will not include the Operating Agreement, Minutes or EIN number. All are very important. As a plumber once said: "We like do-it-yourselfers." The reason is that both lawyers and plumbers make more money cleaning up the mess created by the inexperienced, in addition to doing the work again, the way it should have been done in the first place.

Source of Capital: Will there be investments from out of state and/or by a person not active in the management or operation of the company? This could be a securities law violation with criminal penalties. There is a good reason you can't sell securities or investment contracts on Craigslist without getting a letter from Attorney General's Office. Have a clue; if you are selling interest in a business, you need an attorney. There is a way to do this right.

Business Plan: Can you fill in the blank in 25 words or less? "The reason why people should buy from me and not my competitors is _____. " (If you can't answer this question reasonably well, then stop what you are doing. You are

probably not ready to launch.) Second test: I will survive with fewer and inferior resources than the more established and well-heeled competitors in the industry because _____ (new industry, niche market, what?). Nobody cares that you worked and saved for 25 years to open your business; customers care if you have something they want and if what you have is better, or a better value, or more convenient, than somebody else's product in the same industry.

Your Team: The newer you are to business (and usually the less you can afford it) the more you need a team of qualified professionals (lawyer, accountant, marketing expert, tech guru, etc.) not only to get financing or investment, but also to get business. Major clients, investors and bankers do "due diligence," which means they check out your ability to perform because, among other reasons, they do not want to get left "holding the bag" of unfilled orders, lost money, unpaid loans, etc.



Due Diligence: Have you checked out the industry, your idea? Are you really the only one to have this idea of starting a new business in Arizona? Great ideas tend to happen at the same time. Is someone else launching a new business in Phoenix or Scottsdale or Flagstaff with the same idea? Is it somebody else's idea but you can do it better? That's OK, if it is. Starbucks didn't invent the coffee house, Microsoft the computer or software, etc.

Start-Up Capital: Do you have the money to build your "legal brick house" and avoid "the ten common mistakes that business owners make"? (These are titles of other articles by me.) The money for legal stuff such as your entity to ensure limited liability, the owners' buy-sell agreement (a business pre-nuptial), a federal trademark, trade name, copyrights, lease review, key employee agreement (non-competition agreement and/or confidentiality agreement), asset protection and general advice regarding organizational engineering is not an expense; it is an investment in the legal foundation of your business. So, invest \$10,000 up front on top of the money for tables and chairs, and set up your business properly. A business is like a child: you will spend a lot of time feeding and nourishing it – and you have to be there when it needs you – so your life will be much easier if you build your legal house well from the beginning. One quick example: Getting a letter from an attorney telling you that you cannot use your new business name because someone in Ohio has a federal trademark on it. If you find out soon enough, this is fine. However, after you have invested \$100,000 in brand and customer goodwill, it is not fine. The same point applies as well to

your accounting, marketing and technology. (This being said, I am well aware of what I call the "\$3,000.00 decision – in fact I wrote a book about it entitled Inside the Firm: The Art of Choosing and Using a Lawyer, available on Amazon.com. Anyway, when I was a business person, before I became a lawyer, I would have, say, \$3,000.00 for my new venture. I knew I needed legal, accounting, marketing and technology help (probably just "needed help period") but I could not get everything done for that amount of money. New business owners have this problem, only today the amount may be \$10,000.00 or more. So, what to do: Answer: List the things that you have decided are important. Some things you can eliminate, e.g. if your business is at home, then you can skip the lease review. By the way, an article by Jo Ann Joy - another associate of this firm - on organizing your home office is available on this site. Prioritize your list. Then, as soon as you have the money (and something to lose), come back and do the next thing.

I hope this partial list helps. If you need further help you can always make an appointment with the firm for your entity, trademark, contract, litigation, or other matter.

If you have any questions about business law, call The Law Office of Donald W. Hudspeth: 602-265-7997 or toll-free: 866-696-2033, or via our [web form @ www.AZBUSLAW.com](http://www.AZBUSLAW.com). We are Phoenix's business law resource.

1. This list is not intended to be exclusive or "the" list. I will add things as I go. But, for the most part this advice is not limited to Phoenix or Scottsdale, or even just to "starting a business in Arizona," but would apply in any state.

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