

# 5 Reasons You Need A Business Attorney

By: Lori T. Williams, JD

## **1. Creating the Proper Structure For Your Business**

The proper formation and legal structure of your business is important for both tax consequences and liability purposes. Therefore, you should consult with both a CPA and an attorney to determine the best type of structure for your business entity.

Professional service providers often form their business as a PLLC, which stands for professional limited liability company. They may also choose a PC, which stands for professional corporation. Other businesses, which aren't considered professional service providers, may choose to operate as an LLC (limited liability company) or Inc. (corporation). See the following website for a complete list of available operating structures for Michigan businesses. [http://www.michigan.gov/dleg/0,1607,7-154-35299\\_35413---,00.html](http://www.michigan.gov/dleg/0,1607,7-154-35299_35413---,00.html) You may also file your entity with your County Clerk's office if you decide to operate as an assumed name.

Creating a corporate structure for your business is usually advisable to shield you from personal liability in the event the business is sued. Those who select an assumed name (ie. d/b/a or doing business as xyz company) as their business structure run the risk of personal liability if the business is sued.

## **2. Protect Your Intellectual Property**

You might think of entrepreneurs, inventors, authors, or musicians when you hear the words intellectual property. While it may apply to them, it might also be relevant to your business. Do you have a logo for your business? That is one form of intellectual property which could be protected through a copyright or trademark, depending on where and how it is used. Material published on the internet or in a book may be copyrighted. A symbol or distinctive mark may be protected by a trademark, such as Pepsi, or a service mark, such as Manpower.

Intricate designs, processes and inventions may be protected by a Patent. Engineers are commonly known for patenting their designs and processes, but Patents are available to others as well. The patent office is filled with applications from inventors whose ideas never came to light or to the marketplace.

Intellectual property attorneys are a highly specialized segment of the licensed attorneys in your State, so it is best to consult with a specialist about these matters to ensure proper advice and protection. Although no one can guarantee a patent won't be violated or stolen, you would benefit from proper

counsel to argue the legitimacy of a patent, trademark or copyright if the issue went to court.

### **3. Proper Counsel As You Grow**

Proper planning in the beginning stages of your business can be a critical step in avoiding disappointment or even litigation between business partners or owners. An operating agreement is advisable when 2 or more owners, principles, or members are operating a business. At a minimum, this document spells out job functions and responsibilities, percentages of ownership, shares of equity, division of profits and losses or liabilities. Other terms can be added depending on the type of business it is, including succession planning which will be covered in section #4 below.

If the business has employees, then an employee handbook is advisable. This document spells out the rights and responsibilities of employees, applicable benefits and compensation, disciplinary procedures for misconduct, and termination policies. Having an employer-oriented employment law firm is important when drafting these documents, especially one familiar with your type of business.

Your business attorney may be retained on an “as needed” basis to handle formation documents, employment and/or operating documents, and to review or draft contracts and agreements between the business and vendors or sales representatives or other third parties. Other times it is advisable to have the law firm act as your in-house counsel so they are more involved in the day to day operations and problems that might arise. Choosing the right type of law firm for your business is as important as choosing your business structure and creating your business agreements, contracts and policies.

### **4. Estate Planning/Succession Planning For Your Business**

Often careful thought and planning is exercised at the beginning of a business, but proper estate planning is too often delayed, sometimes indefinitely. No one likes to think about what might happen if one of the key officers or owners of a company is injured, disabled, or suffers from an early death. However, failure to properly plan for such events could mean the demise of the business as well.

Working with your estate planning attorney, CPA, and financial advisor, you can protect your business with the proper insurances, wills, trusts, and operating agreements or buy sell agreements that are triggered at the time of injury, disability, and/or death of owners, officers, and/or key employees of a business.

## 5. Should you Mitigate or Litigate?

Of course no one wants to think about lawsuits when you are starting or growing your business. The truth is, even with proper planning, you aren't fully protected from someone filing a frivolous lawsuit. While anyone can file a lawsuit as long as certain age and jurisdictional requirements are met, the suit could be dismissed fairly quickly for lack of merit. Having proper counsel is essential for several reasons:

- a. Analyzing what defenses you may have;
- b. Determining if there is any legitimate liability on your part or others in the company;
- c. Determining how to mitigate (ie. lessen or eliminate) your damages so you don't bankrupt the company defending a lawsuit.

While you may feel there is a principle at stake and you won't pay one dime to some joker with trumped up charges, you should still retain proper counsel to assist you through the process. Many aggrieved parties who wanted their day in court came to a fair and just result by calmly talking through the issues with counsel for both parties present. Everyone wants to feel heard, understood and responded to. When this doesn't happen, that's when lawsuits can become a money pit.

Lawsuits are more prevalent today than ever before. Even statements made in social media sites have been used as evidence in criminal and civil matters and employee harassment suits. They have also been used as a basis for not hiring certain employees. I generally advise people not to post anything on the internet that they wouldn't want viewed by the general public. Posting something on a friend's "wall" on facebook is the equivalent of a bathroom wall or a billboard. You never know who may read it later, and how it could come back to haunt you.

There are other situations which may come up in your business for which you could benefit from legal counsel. Feel free to contact me to discuss the matter further. I provide a free consultation and would be happy to recommend a specialist that I personally know and trust if I feel they would be right for your situation.

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Lori T. Williams is the owner and managing attorney of Your Legal Resource, PLLC, a legal referral service based in Birmingham, MI. She connects the right client with the right attorney in all areas of law throughout Metro Detroit. Lori is also helping professional service providers to start and grow their practices by effectively branding themselves, mastering networking, and creating effective strategic relationships to generate clients and revenue. For more information, visit: [www.bestlegalresource.com](http://www.bestlegalresource.com) or email [Lori@BestLegalResource.com](mailto:Lori@BestLegalResource.com).