



Small Business **TRENDS**

AVOID A LEGAL TRAP!

How to Keep Your Business
In Good Standing

ASK A LAWYER

Questions They
Should Answer

GET IT IN WRITING

Why Is It So
Important?

**20 PLACES TO
GET LOW COST
LEGAL ADVICE**



**FIND THAT
PERFECT
GIFT!**



UPDATED FOR 2018

Small Business Trends Gift Guide

<https://smallbiztrends.com/business-gift-giving>

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10 Questions to Ask a Lawyer

Have you seen what lawyers can charge for their time? Sure, it can be worth it in the right circumstances but not every occasion requires legal help. Before you pick up the phone to call a lawyer to help you in your business pursuits, check out our list of 10 questions any small business owner should ask a lawyer.

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These missteps in branding could cost your business dearly.



10 QUESTIONS

TO ASK A LAWYER BEFORE STARTING A BUSINESS

It's all about getting those proverbial ducks in a row before getting the business off the ground. Lawyers are good at lining up ducks.

There are several legal ramifications of starting a business. It can lead to issues related to liability, copyright, employee rights and everything in between. So one of the first steps you should take as you work to get your business off the ground is speak with an experienced business attorney.

Ben De Leon is the President of De Leon Washburn & Ward, P.C., where he has served as general counsel

to some of the fastest growing companies in Texas. As an experienced business lawyer, he recently spoke with Small Business Trends about some of the most important legal issues that new entrepreneurs should discuss when getting started. Here are some of the top things to

consider.

How Should I Structure My Business?

Speak with an attorney who can explain each option for you and then listen to your vision for your company so they can guide you in the right direction for your specific situation.

How Do I Protect My Personal Assets if the Business Fails?

De Leon says, "Establishing a limited liability company or other corporate entity with the applicable government agency (e.g., filing a Certificate of Formation with the Texas Secretary of State) and securing an EIN number from the IRS are vital steps to ensuring small business owners'

**“ Speak with an attorney who
can listen to your vision**

personal assets are protected from any exposure in connection with their business operations. Many small business owners file assumed business certificates with the County Clerk in which their business is located instead, thinking their personal assets are shielded from exposure in this regard. This is not the case. Only by establishing a corporate entity and following the necessary corporate laws and regulations do small business owners enjoy what's commonly known as a "corporate shield" that protects their personal assets and ensures only their business assets are at play."

How Do I Choose a Name?

Each state has its own processes for officially selecting a name. So a business attorney can help you make sure your name of choice is available and walk you through the necessary paperwork.

How Do I Protect Investors?

If your business has any outside investors, it could impact the type of corporate entity you're able to establish for your business. Specifically, you need to be sure that the structure provides a corporate shield for your investors as well as yourself.

Who Has What Ownership Responsibilities?

It's best to have contracts or signed agreements in place when you're just getting started so that all parties involved understand what is expected of them and what they are entitled to in any given situation.

De Leon says, "I've seen time and time again where business owners have oral agreements with each other or third parties; then an issue arises and there's nothing in writing to address it."

How Do I Draft Bylaws?

Then you also need to create some bylaws for your company as a



whole. These should outline all of the rules that owners and management should follow over the course of running the business.

De Leon says, "Owners must understand that establishing a corporate entity and securing an EIN number is but the first step; internal governing documents (e.g., Company

Agreements/Bylaws/Agreements of Limited Partnership), ownership agreements (membership interest/shareholder agreements) and corporate resolutions to memorialize certain actions of one's business (awarding of bonuses to employees, purchase of real property or business equipment, securing business loans, etc.) are extremely important



for the sake of following corporate formalities, but also in case a regulatory agency decides to drop by and audit owners' records."

How Do I Make Sure I'm Compliant with All Regulations?

The federal government and each individual state have requirements for record keeping, safety practices and a number of other business related processes. So your business needs to know exactly what is required in order to comply with all of those rules and regulations. Your lawyer can walk you through some of those issues and make sure you know exactly what records must be kept on hand and for how long.

Do I Have Enough Insurance and the Right Insurance?

Insurance can help you avoid costly issues down the road. Speak to your legal representative to discuss what

types of coverage you might need or at least benefit from, including coverage for workplace injuries, data breaches, or non-injury claims made by employees or customers.

Can You Write Vendor Contracts?

Once your business starts working with vendors, suppliers, clients, or any other third parties, you'll need written agreements in place to ensure that all parties involved know what to expect. A lawyer can help you draft specifics or at least walk you through the creation of some templates that you can use in common situations.

Can You Help Me with Tax Issues?

Your legal representation probably isn't going to do your taxes for you or manage your books. But there are some tax ramifications of choosing different corporate entities or making some of the other decisions listed

above. So it is important that you also have a good CPA in your corner, and your lawyer might be able to refer you to one so they can work in tandem on some of those important issues.

De Leon says, "Not only do business owners need to seek good legal representation, they also need to secure a good CPA to talk them through the tax ramifications of the corporate structure they choose, business purchases, applicable taxes owners must file once established, and the like. Having good coordination between business owners' legal counsel and their CPA makes the process go even smoother, allowing owners to focus on continuing to grow their business."

By Annie Pilon
Staff Writer





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5 TIPS FOR HIRING LEGAL COUNSEL

F Some readers know that I used to be a corporate attorney. As a General Counsel I have hired literally hundreds of outside law firms to represent the company I worked for. Trademarks; patents; litigation; transactions; collections -- you name it, I've probably hired a law firm to handle it.

I've managed counsel in law firms ranging in size from solo practitioners, to the largest law firms in the world, such as Jones Day, Mayer Brown, and Squire Sanders & Dempsey, to name a few.

As a General Counsel a key responsibility of mine was to hire the outside counsel; oversee the matters for the company's best interests; and most importantly, manage costs. And I can tell you that managing costs is something that can be done with simple steps. Many

steps work just as well in a small business as in a large corporation.

Interestingly, the same steps that you use to manage costs also help you avoid many of the frustrations that legal clients often feel. Those frustrations include unpleasant surprises from fighting litigation for years only to be pressured to settle on the courthouse steps (when you could have done it much earlier and saved countless dollars and hours), to transactions that die a slow death from overlawyering, to misunderstandings between counsel and clients (often due to the client's unrealistic expectations caused by the failure to discuss expectations up front).

That's why I was so interested in a survey by Rocket Lawyer. Asked what poses the biggest risk to their busi-



nesses, one-quarter of small business owners said “legal issues.” But even though they’re worried, business owners aren’t turning to lawyers as often as they should. The reason? More than half of small business owners (51 percent) contend that legal help is too costly.

Failing to consult a lawyer is often penny-wise and pound-foolish. In fact, getting legal help is actually a smart way to save money for your business. A good lawyer can help you prevent costly problems later, spot loopholes in contracts and agreements that can cost you money, help you save on commercial leases and more.

Fortunately, it’s possible to use a lawyer without spending a fortune. Here are five steps to keeping your business’s legal costs down.

By Anita Campbell,
Small Business Trends Publisher

1. Understand how the lawyer bills you.

Some attorneys bill hourly, some by the day (per diem), and some on a monthly retainer. Attorneys may also charge flat fees for standard jobs like contract review. No matter what method your lawyer uses, ask questions to be sure you understand the details. For instance, if the attorney has assistants, are you billed for their work at the attorney’s rate? Also ask about extras – some lawyers will pass the cost of faxing and making copies on to the client, while others won’t.

2. Use time wisely.

Time is money for a lawyer, so when you meet with or talk to your attorney, plan ahead to keep the time as brief as possible. Make a list of questions so you don’t forget anything you need to ask; then focus on what you need to do.

3. Keep it simple.

The less work the attorney has to do, the less you’ll get billed for. Provide the lawyer with documents he or she will need to review before the meeting. Have your information in order. Send one detailed email rather than 17 short ones with question after question. Like any businessperson, lawyers appreciate it when you make their job simpler.

4. Review your legal bills.

If you’ve got a complex project with an attorney, ask for an itemized bill. Go over it in detail to make sure you weren’t overcharged and that you understand what you’re being billed for.

5. Be proactive.

Some entrepreneurs are scared to talk to their lawyers for fear of incurring a fee ... so they let small problems spin out of control. Make it a point to communicate with your attorney briefly every month or so and bring up any issues of concern. This way, you can nip problems in the bud and take advantage of opportunities for growth when they arise.

20 PLACES TO GET LOW COST LEGAL ADVICE

Don't have the money to keep a lawyer on retainer? No worries. Today, you have plenty of low-cost options for legal help on demand.

Rocket Lawyer

Rocket Lawyer is one of the leaders of online legal help. You can make one document for free to start, which you can print or download as a PDF.

Nolo

On its website you can find a wealth of legal advice for business, as well as books and business forms available for purchase. You can also use Nolo's Lawyer Directory to find an attorney by specialty and location.

Lawyers.com

The business section of Lawyers.com has free articles and tutorials on many topics, but there are two other features that make this site worth a visit.

Avvo

You can use the Q & A forums on Avvo to get your legal questions answered for free. If you need more help, you can talk to a lawyer for a fee. Its directory of business lawyers has ratings from previous clients.

LegalZoom

LegalZoom.com has a business legal plan for a low monthly cost. For that you get to "Ask business legal questions, get advice on specific situations, have an attorney review your business contracts and more."

The website also provides legal documents, but they cost more than other online providers.

FreeAdvice.com

Like many legal websites, there is a large collection of articles here, which may answer your questions. On the "Ask a Lawyer" page you can get your questions answered by an attorney for free.

FindLaw

In the section on small business law Findlaw has many articles on legal topics that are free to read. They also sell legal forms for all 50 states.

Law Guru

LawGuru says it has a "network of over 7,700 specialized attorneys in all legal areas." You can either type your question into the box on the homepage or search their past answers.

Small Business Forums

Online discussion forums for small business owners can be full of questionable legal advice, since participants are not attorneys. Sometimes you'll find people who have faced the same issues you're facing.

Federal Trade Commission

The FTC's online guide to Antitrust Laws provides information on how to report a suspected antitrust violation and whom to

turn to for enforcement. There is sufficient information there to either avoid the necessity of hiring an attorney, or to be better prepared when you do hire one.

Small Business Administration

The SBA website has a page about handling legal concerns that links to some useful resources. It may be more useful to use the search box for articles and advice on specific issues.

Internal Revenue Service

Check out the Small Business and Self-Employed Tax Center. The IRS maintains a collection of resources here, and some are available in Spanish as well.

U.S. Department of Justice

The Justice Dept. website has a list of free legal service providers. Choose a state and click through to find the ones near you. Most are oriented to helping individuals rather than small businesses, but it can't hurt to check.

Civil Rights Division of the Justice Dept.

The Civil Rights Division of the Dept. of Justice has an extensive collection of information here about ADA compliance for customers and employees, and even has guidelines for some specific business types.

OSHA

If you have legal questions about your businesses compliance with OSHA regulations, what better place to get them answered than from OSHA itself? Use their "Compliance

Assistance Quick Start" program online.

SCORE

SCORE is a non-profit association that helps small businesses with advice, mentoring, and education. Its volunteers are experienced business people who provide free counseling by phone, email, and in person.

Free Business Legal Clinics

There are various free legal clinics around the country. For example, the Small Business Legal Clinic in Oregon has had more than 300 attorneys volunteer for the SBLC Pro-Bono Project.

Trade Associations

If you belong to a trade association you might get free legal advice for business, advice and help from their legal staff. If you don't yet belong to one, it might be worth the cost to join.

Fellow Business People

While you shouldn't rely too heavily on the legal opinions of non-lawyers, it is possible that other business owners have had the same legal issues you're facing.

Your Local Attorneys

Finally, there are probably some lawyers near you who offer a free initial consultation of 30 minutes or more. That may not be enough to resolve your matter, but you'll at least have a better idea how to proceed.

**By Steve Gillman,
Expert Contributor**

GET IT IN WRITING!

No matter how confident you are that nothing can go wrong, the only one true way to ensure nothing will go wrong is to get it in writing ... Every. Time.

According to Charley Moore, attorney, founder and CEO of Rocket Lawyer, planning before the year end can help ensure small businesses “have a happy, healthy and legally sound New Year.”

To make lives easier, Moore offers the following legal tips to help small and medium-sized business owners.

Don't Wait to Incorporate

For businesses that want to grow in the new year, incorporating is an important step. Moore calls it “the first step” to limit liability that shields personal assets from business failure.

It can also offer tax advantages such as the ability to deduct fringe benefits like travel expenses.

Incorporating your business provides you with a sound corporate foundation to grow and mitigate risks of failure.

Get It In Writing

According to Rocket Lawyer's small business index, the biggest legal issues facing small businesses are contract negotiations (24 percent) and failing to collect payments (18 percent). Getting everything in writing can help you avoid these legal hassles.

Moore advises, “Whether it's a new employee or a repeat client, never assume anything is binding unless it's in a contract.”

A legal contract works for both parties and establishes accountability. That's good for you and your client or employee.

Refresh or Create Your Business Will

A Buy-Sell Agreement, also known as a Business Will, is a document that helps businesses prepare for future. If





you are in a partnership, this document details what happens should one party leave the business.

If you already have a Buy-Sell Agreement or an estate plan, make sure you review it annually. This is especially important if you have changes in life circumstances such as marriage, divorce, birth of a child, among other reasons.

An updated Buy-Sell Agreement or estate plan will protect your interests and make it easier for your successor to assume responsibility.

Keep Good Counsel

As the new administration takes office in the new year, complying with government regulations should be on top of your priority list. You should “consult a business attorney more than once a year rather than wait until a big issue arises,” suggests Moore.

He adds, “It’s better to pay a little up front than a lot down the road, especially when dealing with federal regulations.”





IT'S A TRAP!

10 LEGAL MISTAKES TO AVOID MAKING AS A STARTUP

There are lots of business traps you need to avoid as a startup. Among the biggest are the costliest. Small Business Trends contacted Paul Kassabian, Legal Product Counsel at LegalZoom to get a list of 10 legal mistakes every startup should avoid making.

He started by stressing a thoughtful approach. “When forming a business, it’s easy to get caught up in the excitement of getting things up and running. However, failing to take the appropriate legal steps can set a company off on the wrong foot,” he wrote in an email.

Not Establishing Your Business Properly

This is one of the most common blunders that costs. By forming a limited liability company (LLC), corporation (INC) or a sole proprietorship, small business owners keep their businesses in the right tax category. This is a great way to

protect your personal assets from any liabilities your business might suffer. Further, separate bank accounts keep everything in separate financial lanes around tax time.

“The last thing someone wants to do is search back three months in their past transactions to determine whether something was a business expense or a personal purchase,” Kassabian writes.

Not Looking After Your Intellectual Property

In a word, looking after your intellectual property means having control over the ownership of the goods and services you sell. You should know the different kinds — copyrights, trade secrets patents and trademarks.

If you miss this important aspect of your business formula, you may lose or give up some of your success. Learn more here.

Not Providing Contracts for Employees

Without these, you're leaving yourself open to legal action from disgruntled ex-employees and disputes from current ones. Salary, working hours and other details need to be clearly laid out.

Not Getting Things in Writing

A handshake deal won't protect your small business when problems arise. The terms of every deal and who has what responsibilities needs to be penned. A good lawyer should be on your team to guide you through this.

Not Filing Taxes or Other Documents on Time

Small business owners are always busy chasing profits and putting out business fires. Kassabian says that as a result, they often file tax returns and other important documents late. That leaves them open to federal and state fines. Getting the proper legal and tax advice from the beginning is the remedy here.

He also points out that most of the documentation needed can be found online.

Not Having a Privacy Policy

These are essential to steer clear of legal issues for web startups. Basically, this is a written contract between your small business and the folks using your website. It's another buffer designed to protect you from legal claims.

Here's a template to check out.

Being Reactive

"Maybe the most important mistake entrepreneurs should avoid is waiting for an issue to arise before consulting with a legal advisor," Kassabian writes. "Signing contracts, hiring vendors and employees – these are all matters that need to be



done within specific legal guidelines."

He stresses that this kind of preventative care is as important for a small business as for your personal health.

Not Having Clear Guidelines

Kassabian warns against taking shortcuts like not having an employee handbook as a bulwark against liable claims.

"Taking shortcuts when forming a business can seem like the easiest or fastest solution in the moment, but it can also put business owners in a number of dangerous situations. Paperwork often feels daunting, but taking time to do things the right way saves businesses from major headaches down the road."

Not Having Non-Disclosure Agreements in Place

These work to protect your intellectual property. They are the best legal umbrella to use if you need to talk business to folks outside your organization. These should cover trade secrets, financial data and any other data that keeps your business moving forward.

Under an NDA, you're free to share confidential information that helps your business. Without one, that same info can be used or sold to competitors.

There are dire consequences for not having an NDA.

"A dispute with no written agreement to fall back on can result in substantial legal fees," Kassabian points out.

Not Keeping Business and Personal Finances Apart

He also says that mixing personal and business assets can leave a small business owner responsible for business debts or claims against the company. It can all be as simple as getting a business credit card or business line of credit.

Kassabian supplies some final advice:

"If you're deciding to take the plunge and start a company, it's important to take a step back and make sure you've taken the necessary legal steps to ensure your dream is protected. If you plan well, you will spend less time on legal problems and more time getting back to what you do best—running your business."



MUST DO

A LEGAL CHECKLIST YOUR SMALL BUSINESS NEEDS TO COMPLETE

By Nellie Akalp,
Expert Contributor



1

Meet with a Tax Advisor



2

Set Up an Accounting System



3

Set Aside Time to Work on the Business



4

Make Sure your Business is Compliant



5

Plan for Retirement

QUICK LEGAL CHECKLIST FOR SMALL BUSINESSES

- * **Meet with a Tax Advisor**
- * **Set Up an Accounting System**
- * **Set Aside Time to Work on the Business**
- * **Make Sure your Business is Compliant**
- * **Plan for Retirement**
- * **Invest in Your Well-Being**



6

Invest in Your Well-Being

Five-Star Candidates Are Out There

Level Up Your Hiring Process with These 2 Web-based HR Apps

With so many job seekers heading online, recruiting is not easy as it once was. More importantly, ever-evolving regulations regarding questions on your application add complexity.

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BRANDING MISTAKES

Your business has a brand. It might have multiple brands, and each of those brands has the potential to become extremely valuable intellectual property.

However, if you don't protect your brands with trademarks, you could find yourself in very expensive legal trouble in the future. In fact, you might even lose your brands if you don't protect them with federal trademark registrations.

It's not just legal trouble that you could face if you don't protect your brand with a trademark. It's also business trouble, because without proper trademark registration that gives you the ability to stop others from using similar brands to identify their goods and services in the marketplace, you could lose opportunities to grow your business by expanding into new industries, new locations, or new verticals.

Fortunately, those types of expensive branding mistakes are totally preventable. Simply start by registering trademarks for your brand elements, including your brand name, logo, slogan, and even unique package designs. If you neglect protecting your brand by getting the right safeguards in place, you'll hit roadblocks that prevent you from making money in the future.

In other words, your business might be okay in the short-term, but in the long-term, it could be in jeopardy.

CHOOSE THE WRONG BRAND NAME

Don't fall in love with a brand name until you're 100% sure that you can use it to represent your goods or services in the marketplace both now and in the future. Invest in a comprehensive trademark search to confirm that the brand name you want to use doesn't conflict with any existing trademarks.

NOT REGISTERING A DOMAIN NAME

When you choose a brand name, you should have a domain name strategy for it. That means you should register your brand as a domain name with the most common extensions, such as .com, .net, and .org, as well as misspellings, plural and singular versions, phonetically similar versions, and so on.

"INVESTING" IN A CHEAP LOGO

There are a lot of websites where you can get a cheap logo for your brand, but you could be saving money today only to end up spending ten times, a hundred times, or a thousand times more in the future when you run into copyright problems.

NOT REGISTERING A DOMAIN NAME

If you have a federal trademark registration for your brand, then you can stop others from using it in the marketplace, which could cause consumer confusion about the source of goods and services.

However, you might give up that right if you don't monitor and enforce your trademark.

*By Kelley Keller
Expert Contributor*

A background image featuring a grid of light bulbs. Most bulbs are dim and blue-tinted, while the central bulb in the middle row is brightly lit, casting a warm glow. The text is overlaid on this background.

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