



BY STEVEN D. KRAMER

LOOK BEFORE YOU LEAP: ADVICE ON STARTING A BUSINESS

Success is the focus when starting any new business. Planning for success demands a plan to avoid pitfalls that could result in the failure and bankruptcy of your business and personal financial ruin. In order to craft a successful vision for your business, keep the following four ideas in mind.



CHOOSE YOUR NAME CAREFULLY AND TAKE THE STEPS NECESSARY TO PROTECT YOUR INTELLECTUAL PROPERTY.

When choosing a name for your company, try to choose a distinctive name. Think about a name that consumers will associate with your company so that when they think of that name they think of your business. The more distinctive the name, the more trademark protection the name will have and the more opportunity there will be for brand recognition and distinction in the marketplace. Some examples of strong brand names are Xerox, Band-Aid, or Coca-Cola. Avoid geographical names,

generic names, and descriptive names. Take steps necessary to obtain trademark protection of your business name by filing a Florida Trademark, a U.S. Trademark, or both. Consider consulting with a business attorney who understands intellectual property to discuss potential issues including non-compete agreements with your employees, and non-disclosure agreements with business associates, individuals, business entities, or other businesses. You should also discuss trade secrets protection, copyright protection, and patent protection, depending on your business.



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CHOOSE THE STRUCTURE OF YOUR COMPANY CAREFULLY.

There are many types of entities that you can choose for your business including sole proprietorships, partnerships, limited liability companies (LLC), and corporations.

Each of these entities has advantages and disadvantages. When choosing an entity, keep in mind that the right choice will offer you protection from personal liability so that your family does not end up in financial ruin if your business should fail. Choosing the right entity could mean significant tax savings and tax benefits. While it is important to have a CPA discuss the tax advantages of any of these entities, it is imperative to have an attorney draft the paperwork for the entity so that you obtain the maximum possible protection from liability.

THINK VERY CAREFULLY BEFORE GETTING MARRIED... IN BUSINESS.

If you are going into business with a partner(s), have a plan and partnership agreement ready before you begin. Many people compare partnerships to marriage, except for a few key differences.

CHOOSING THE RIGHT ENTITY COULD MEAN SIGNIFICANT TAX SAVINGS AND TAX BENEFITS.

Like marriages that end in divorce, many business partnerships often break up when partners grow apart, partners want to explore other business opportunities, or when partners are not happy in their business relationship anymore. Some partnerships will also unfortunately end when one partner dies. To avoid costly legal battles, it is an excellent idea to have an exit strategy ready in the event that you and your partner(s) choose to part ways. This exit strategy can be aptly compared to a prenuptial agreement for business partners. Also, consider a succession plan in place in case one of you dies or becomes ill and unable to conduct business. You may want to do business with your partner, but you may not want to share a business with your partner's husband or children. In short, when you go into business with partners, have a strategy to deal with potential business breakups, conflicts, and succession.

THINK CAREFULLY BEFORE YOU SIGN A LEASE.

Most businesses have a physical location where they will open an office and conduct business. In almost all circumstances this location will require a lease. In many cases a business lease can be as great or a greater financial obligation than a mortgage on a family home. Therefore, treat leases with the same gravitas and consideration as you would a mortgage. Be very careful about signing a personal guarantee. Even with a corporation - that might protect you from personal liability for business debts - signing a personal guarantee can put your personal finances on the line. Should your business default on the lease, or you get into a dispute with the landlord, you could wind up with a large judgment entered against you that could follow you for the next 20 years.



Steven D. Kramer acts as managing partner of Kramer Law Firm. He is included in Florida's Best Lawyers (2013 ed.) and Best Lawyers in America (Woodward/White 2012, 2013). Steven received his J.D. from the University of Florida and earned a small business advisory certificate from the Harvard Business School.

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