

# Launch Grow Protect

Does Your Business Have These  
Legal Essentials?

## LAUNCH

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- Forming the Legal Entity
- Observe Legal Formalities
- Have a Written Agreement Establishing Ownership & Control
- Complying with State & Local Law

## GROW

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- Generating a Revenue Stream
- Developing an online presence
- Identify strategic partnerships

## PROTECT

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- Have a Written Agreement with All Employees
  - Have a Written Agreement with All Independent Contractors
  - Register And Protect Your Intellectual Property
  - Secure Appropriate Insurance
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## Choosing a Business Name

- Brainstorm various business names
- Search for various similar businesses to see if others use similar names. Check availability of desired domain name
- Check availability of the entity name with state and local fictitious business registrations
- Consider conducting a state and federal trademark search to determine if there would be possible consumer confusion

## Determining Legal Structure & Register Your Business

- Determine your entity type. (Sole Proprietor, Partnership, LLC, Corporation, Non-Profit)
- File your articles of organization/incorporation with the applicable state office
- Pay the applicable registration fee

## Getting Your Tax Numbers

- Obtain a federal EIN (FEIN) for your business
- Obtain the applicable state tax registration

## Opening a Business Checking Account

- Check if your bank offers free business checking
- Segregate personal assets from business assets

## OBSERVE LEGAL FORMALITIES

Memorializing the  
Organization of the Business

- Have an organizational meeting with the shareholders/members and make sure the decisions are documented.
- Have an organizational meeting with the directors / managers / offices and make sure the decisions are documented

Signing Binding Documents  
in the Correct Capacity

- Make sure all documents signed are signed in the appropriately designated capacity on behalf of the business. (e.g. president, manager)
- If any documents have been signed personally make sure the legal entity adopts such document as an action of the legal entity, and not an individual action.

## HAVE A WRITTEN AGREEMENT ESTABLISHING OWNERSHIP & CONTROL

Establishing Ownership

- Have a document that governs the operations of the business and any controls you want placed on management.
- An LLC and its members should execute a **BASIC OPERATING AGREEMENT** or **ADVANCED OPERATING AGREEMENT** which designates the role and responsibilities among the members and manager(s).
- Review all of the headings of your chosen Operation Agreement to make sure you know what you want the document to cover.
- A corporation should execute a **SHAREHOLDER AGREEMENT** and adopt **BYLAWS** governing the management of the corporation

## COMPLYING WITH STATE & LOCAL LAW

### Complying with State Laws

- Register with the applicable department of taxation. Obtain a State Tax ID number and determine your obligations regarding income and sales tax. In Virginia you may register online at [www.tax.virginia.gov](http://www.tax.virginia.gov).
- Depending on your type of business you may be subject to other licensing requirements, such as health permits or contractor's licenses. If your industry is regulated by the Department of Professional and Occupational Regulation, you must be in compliance with all licensing requirements.

### Complying with Local Laws

- Obtain a business license. The business license is issued by the locality where the business is physically located. If you are a home-based business, you must still be in compliance with zoning requirements and have a business license.
  - Check the applicable zoning. Make sure your type of business is allowed by law at your business location and if so, obtain a Certificate of Zoning Compliance or applicable permit. Each locality has an office responsible for zoning and building permits.
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# Grow

## GENERATING A REVENUE STREAM

### Creating a Sales / Service Contract

- The basic transactional terms of the goods/services being provided.
- Specify the price to be charged for the goods/services.
- Determine the payment terms. (e.g. installment payments, net 15, net 30, deposits or contingent payments)
- Include representations and warranties covering the legal authorities of individuals to the transaction, the existence of contingent liabilities.
- If you are selling goods disclaim all warranties of merchantability or fitness for a particular purpose would be possible consumer confusion.
- Include miscellaneous provisions regarding the resolution of disputes, which state law governs, and how the agreement can be terminated.

### Having a Plan to Recover in the Event of Nonpayment

- Include an attorney's fees provision in the agreement.
- Plan for a scenario in which you will have to collect money from your customers.
- (e.g. letters and phone calls)
- Require cash or credit card payments whenever possible.
- Have a relationship with a collections agency and law firm if you need to pursue collections.

## RAISING CAPITAL

### Finding a Business Loan Type that Works for Your Business

- Line of Credit: Lender provides an amount of credit that can be used as needed.
- Receivables Financing: Lender finances future revenue and provides an
- advance in exchange for a percentage of interest.
- Inventory Financing: Bank lends against inventory held for future sales.
- Asset Based Financing: Bank allows you to borrow against your combined business assets which may include brokerage accounts, inventory and / or real

### Finding Investors in Your Business

- Decide how you will offer capital investment in your business to third party
- investors. (e.g. equity, debt, convertible debt etc.)
- Control the terms of any offering and understand exactly what you may be giving up.
- Focus on building the relationship with your investors before worrying about how much they will invest in your business.
- Ask Briefcase or a seasoned corporate attorney before evaluating any investment in your business by someone else.

### Complying with Securities Law for Capital Investment

- Make sure any capital you may raise complies with applicable securities offerings for similar unregistered offerings.
- Avoid making false or misleading statements that could be material in connection with raising capital (e.g. don't oversell).
- Do not pay a consultant, financial advisor or third party to raise money on a contingent basis unless they are a registered finder.
- Do not advertise or solicit capital investment from the general public or use email facebook, twitter etc. to raise capital.
- Make sure you have a uniform disclosure document that is provide to all potential investors.
- Determine whether an investor is "accredited" before accepting any capital investment.
- Ask Briefcase or a seasoned corporate attorney before accepting any capital investment

### Developing an online presence

#### Registering Your Domain in Your Business Name

- Brainstorm various domain names that could work for your business.
- Search for various similar businesses to see if others use similar or confusing names.
- Check availability of desired domain name.
- Set up the registration of your domain name on behalf of your legal entity, not personally.

## Creating Website Terms & Conditions

- Make sure the terms and conditions of the website mirror any sales/service agreements you have.
- Make sure the terms and conditions accurately reflect the processes and procedures that will be in place on your website.
- Make users of your website “Agree” to the terms and conditions prior to any sale of goods or services.
- Update your terms and conditions regularly if your services change.
- DO NOT copy terms and conditions from a business similar to yours and post them on your website.

## Creating a Privacy Policy

- Include the nature of the data collected by the site
- Include the use of the data.
- Identify any affiliate relationships or business which might receive the data.
- Identify who may have access to the data.
- Indicate whether cookies are used to track activity on the site.
- Make sure to update privacy policy whenever your procedures change in how
- your business handles customer data via the website.

## IDENTIFY STRATEGIC PARTNERSHIPS

Secure a Competent  
Bookkeeper or  
Accountant

- Establish a relationship with a bookkeeper or certified public accountant who will guide you regarding the preparation and tax reporting requirements for your financial statements.
- Have monthly or at least quarterly financial reports prepared.
- Work with bookkeeper or accountant to develop realistic cash flow projections for your business.
- Make estimated payments on any taxes that may be due at the advice of your accountant or bookkeeper.

Enter Into a Joint  
Venture Agreement  
that Provides:

- The scope and purpose of the joint venture
- The form of the joint venture (e.g. partnership, LLC, contractual)
- Address any regulatory issues with the joint venture
- Address tax considerations and profit sharing
- Address management considerations and how joint venture is managed
- Detail how information is reported and what parties have access to certain information regarding the joint venture
- Identify how the joint venture will be financed
- Consider including a non-compete/non-solicitation agreement to maximize the success of the joint venture
- Provide a dispute resolution process that each party understands and is comfortable with



# Protect



## Employment Agreements Should Set Expectations Regarding

- Compensation and how and when it will be paid.
- Grants of equity and how shares/ownership is distributed, if any.
- The scope of employment and responsibilities expected of the employee.
- The benefits that the employee will receive and the eligibility requirements to obtain them.
- The term of the employment and the circumstances under which the employment employee could be subject to termination.
- Whether you plan to reimburse the employee for their business expenses and the procedure for doing so.
- Any liability protection offered to the employee such as a directors and officers insurance policy.
- The confidentiality restrictions placed on the employee and their right to use information obtained in their job for other purposes.
- The agreement should require the employee assign any intellectual property created in connection with their employment.
- Non-compete and post employment restrictions on the employee.
- Dispute resolution provisions that detail how issues with employees will be resolved.
- If your business has numerous employees subject to similar policies it may want to consider adopting an employment manual which all employees agree to abide by.

## HAVE A WRITTEN AGREEMENT WITH ALL INDEPENDENT CONTRACTORS

## Ensure Your Contractors are Not Employees

- Can the worker make a profit or loss as a result of the work, aside from the money earned from the project? (This should involve real economic risk-not just the risk of not getting paid.)
- Does the worker have an investment in the equipment and facilities used to do the work?
- Does the person work only for your business and not other businesses?
- Does the worker offer services to the general public?
- Do you have the right to give the worker instructions about when, where, and how to work?
- Do you train the worker to do the job in a particular way?
- Are the worker's services so important to your business that they have become a necessary part of the business?
- Do you set the hours? Must the worker spend all of his or her time on your job?
- If your answer is YES to most of the above questions you likely have hired an employee and NOT an independent contractor

Independent  
Contractor  
Agreements Should  
Set Expectations  
Regarding:

- Compensation and how and when it will be paid.
- The scope of work and responsibilities to be performed by the contractor.
- The term of the engagement and the circumstances under which the contractor is subject to termination.
- The confidentiality restrictions placed on the contractor and their right to use information obtained for other purposes.
- The agreement should require the contractor assign any intellectual property created in connection with their engagement.
- A provision that the contractor is required to pay all of its own employment taxes and an understanding that the contractor will be issued a 1099 for all work performed in excess of \$600.
- Dispute resolution provisions that detail how issues with employees will be resolved.

**REGISTER AND PROTECT YOUR INTELLECTUAL PROPERTY**

Patents

- Patents are the best protection you can get for a new product. A patent gives its inventor the right to prevent others from making, using, or selling the patented subjected matter described in words in the patent's claims.
- Consider a prior art patent search to determine what is/isn't patentable.
- Consider immediately filing a provisional patent application if you are still working on your idea.
- The United States Patent and Trademark Office (USPTO) only grants patent applications which show: (1) Only the concrete embodiment of an idea, formula, and so on is patentable; (2) the invention must be new or novel; (3) the invention must not have been patented or described in a printed publication previously; and (4) the invention must have some useful purpose.
- A utility patent provides protection of your idea for approximately 20 years after which the idea becomes public domain.



## Trademarks & Copyrights

- Consider whether you have a business name or logo entitled to trademark protection.
- Perform a trademark search to see if your name or logo conflicts with any other trademarks registered with the USPTO.
- You obtain rights to a trademark by actually using the mark in commerce.
- If you are not registering a mark make sure to include “TM” next to any business name or logo to protect yourself from.
- You don’t need to register the mark to get rights to it, but federal registration does offer some advantages.

## Trade Secrets & Confidentiality

- If you can keep what makes your business successful a secret, don’t tell anyone!
- A trade secret right allows the owner of the right to take action against anyone
- who breaches an agreement or confidential relationship or who steals or uses other improper means to obtain secret information.
- Make anyone with access to your trade secrets sign a confidentiality agreement or non-disclosure agreement which restricts their access and use of your
- confidential information for your business purposes only.

### **SECURE APPROPRIATE INSURANCE**

## General Liability Insurance

- Develop a relationship with a licensed insurance broker who knows how your business operates and has experience with your particular industry.
- General Liability Insurance covers possible liability that may arise from operating your business in its ordinary course.
- Commercial Property Insurance protects against potential liability that may occur on or around your business premises.
- Commercial Automobile Insurance covers liabilities arising from the use of a vehicle for business purposes, even if it is not owned by the business.
- Directors and Officers Insurance covers employees of the company from personal liability that may arise from performing the ordinary and necessary functions of their job.
- Professional Liability Insurance is designed to cover possible liability issues that may arise in a particular industry or trade. A licensed broker can guide a business through obtaining this type of specific insurance.

Workers  
Compensation  
Insurance

- Workers compensation insurance is almost always required for any business with part time or full time employees.
- Failure to maintain workers compensation insurance leads to possible fines from the state in which your business operates as well as possible liability to your employees.
- Workers compensation insurance covers possible liability arising from injuries
- that may occur to employees while in the employ of your business.
- If you pay contractors with a 1099 they can be deemed employees for the purpose of state mandated workers compensation insurance.
- An LLC manager or any corporate officer is generally considered an “employee” under workers compensation laws.
- There are exemptions which may apply, however, do not rely on these
- exemptions unless you regularly Ask Briefcase whether coverage is required, or seek the guidance of an experienced corporate attorney

Life and Disability  
Insurance

- As a business grows it is important to protect the future of the business and the families of the owners and employees of the business from the death and disability of those involved in the business.
- Business continuation insurance protects against the event of the premature death of a business owner which may result in the business being liquidated, sold to outside parties, or surviving family members may have to become active in the business. To plan for the orderly disposition of the business, a buy-sell agreement should be considered funded by an insurance policy.
- Key Employee Insurance covers that employees who are an integral part of a business owner’s success. Could your small business continue to be as profitable in the event of the unexpected death of a key employee? Life insurance coverage payable to the business in the event of death or disability of the employee is an option to make sure you have cash available when you need it.
- Employee Benefits and Incentives are insurance products like Fringe benefits involving life insurance, such as Split Dollar, Executive Bonus, and Non-
- Qualified Deferred Compensation, allow you as a small business owner to select the employees you want to participate and vary the benefits among them. These plans must meet IRS requirements and can result in significant tax savings for your business.