

## GENERAL LEGAL COMPLIANCE AND PROTECTION FOR BUSINESS OWNERS

### WHAT LEGAL REQUIREMENTS APPLY TO ALL BUSINESSES?

\*Annual statement of information (officers, directors, and agent for service of process) and filing fee to the secretary of state (except sole proprietors and general partnerships).

\*Taxes – annual franchise tax fee (except sole proprietor and general partnership), state and federal tax returns, employment taxes, sales and use taxes, personal property taxes.

\*Local business license, professional licensing

\*Federal Employment Identification Number

\*Insurance – unemployment and workers' compensation, liability, etc.

\*Qualification to do business in other states if you do business elsewhere.

### HOW TO AVOID PERSONAL LIABILITY?

1. Form an entity.
2. Avoid personal guarantees.
3. Observe appropriate formalities for the entity.
4. Remit all taxes withheld or collected.
5. Carry insurance.

#### Protecting Intellectual Property

1. Identify trade secrets and take steps to protect them.
  - a. Trade secret defined as “(1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
2. Identify and protect creative works through copyrights.
3. Identify and protect distinctive phrases, logos and branding items through trademarks (or service marks).

#### BUY-SELL AGREEMENTS

An agreement document how you or another owner can leave the business if one of you moves out state, goes to a new line of work, becomes physically or mentally disabled, dies, wants to sell to an outsider, or seeks to buy out a co-owner's interest.

What can happen if you don't have a buy-sell agreement?

\*You may be forced to work with and share control of the company with someone you don't know.

\*You may end up working with a family member of a deceased or divorced owner.

\*If you die, your survivors may end up stuck in a business they don't want.

\*You may end up arguing with a co-owner on the price of the company.

## BUSINESS CONTRACTS

What makes a valid contract? An agreement, consideration and acceptance, and sometimes a writing.

Things to include in the contract:

\*Names and addresses of the parties

\*Date the contract is signed

\*Short preamble, i.e. background or recitals

\*What each party promises to do

\*When the work will be done or the product delivered

\*How long the contract will remain in effect

\*The price – or how it will be determined

\*When payment is due

\*Warranties

\*Conditions on how you can terminate the agreement

\*Liquidated damages if performance is delayed or defective

\*Whether or not a party can transfer their interest in the contract to another

\*Resolution of disputes through arbitration or mediation

\*Who will cover attorney's fees and costs if a party breaches

\*Where notices of default and other communications can be sent

\*What state law applies if questions about the contract arise.

## CHOOSING AN ENTITY

*Do the parties need limited liability?*

	<i>Yes</i>	<i>No</i>
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Sole Proprietor (dba)		X
General Partnership		X
Limited Partnership	X	
Limited Liability Company (LLC)	X	
Limited Liability Partnership (LLP)	X	
S Corporation	X	
C Corporation	X	

*Do the parties want profits and losses to pass through to their personal income tax returns?*

	<i>Yes</i>	<i>No</i>
Sole Proprietor (dba)	X	
General Partnership	X	
Limited Partnership	X	
Limited Liability Company (LLC)	X	X
Limited Liability Partnership (LLP)	X	X
S Corporation	X	
C Corporation		X

*Will all of the parties be actively involved in management?*

	<i>Yes</i>	<i>No</i>
Sole Proprietor (dba)	X	
General Partnership	X	
Limited Partnership		X
Limited Liability Company (LLC)	X	X
Limited Liability Partnership (LLP)	X	X
S Corporation	X	X
C Corporation	X	X

Elena Rivkin Franz, attorney and counselor-at-law, is licensed to practice in all California court and the United State District Court of Northern California. During law school, she was a judicial extern for Judge James Ware of the Federal District Court in the San Jose Division.

To lean more about Elena's specialties of law, please view her profile under attorneys. If you would like to speak with Elena, please call 408-369-0800.

By: [Elena Rivkin Franz](#) | Practice Area Topic: [Business Formation](#), [Business Owner](#), [Employer](#), [Employment Law](#), [Non-profit Organizations](#), [Physicians and Medical Professionals](#), [Real Property](#)