



An Ounce of Prevention with Private-Sector Resources

New Jersey attorneys, accountants and financial institutions help entrepreneurs build and grow their businesses on solid foundations.

By George N. Saliba, Managing Editor

While new entrepreneurs typically have innovative products and/or services that will benefit customers and generate profits, these business owners may not be attuned to legal, accounting and banking issues that can dramatically affect their companies. On the following pages, *New Jersey Business* magazine explores how attorneys, CPAs and financial institutions can assist small businesses within an increasingly competitive and complex marketplace.

Legal Matters

Every small business owner knows that he or she should incorporate a business to protect individual assets, and that the most popular entity is the Limited Liability Company (LLC). That said, some business owners err by establishing an LLC

via the Internet - on their own - without the guidance of a trained attorney.

While creating an LLC is relatively easy, associated critical details are more complex: For example, has the business owner properly ensured his

or her company's name is not already in use? A "Google" search is not sufficient for this task, and no entrepreneur wants to grow his or her business with a particular name only to later learn that it tramples on the legal rights of

another business.

In a similar vein, merely creating an LLC does not establish an operating agreement, which is imperative if there is more than one business owner. When a group of entrepreneurs stumble upon a business idea, early mornings and late nights are usually spent on business matters, and are not focused on a notion that the owners may later enter into legal disagreements. Among other things, an operating agreement will indicate which owner is entitled what portion of the business. This creates clarity from the start, and, again, can protect against lawsuits if the business rises to meteoric success and owner 'X' erroneously claims that he or she is entitled to 90 percent of the company.

Of note, on March 1, 2014, all New Jersey LLCs will be governed by a new statute: If an operating agreement is not in place, owners must adhere to the statute's new "defaults."

As Gianfranco A. Pietrafesa, partner at Haddonfield-based Archer & Greiner, explains, "Under the new law, every owner has an equal share of the distributions. So, if I am [an owner] contributing 50 percent of the equity, I am only getting one third of the distributions (if there are three owners), under the new statute. That's another reason why you should have an operating agreement, in order to lay out exactly what the agreement is between the owners, on distributions.

"If you have an agreement, that's what governs. If you don't, it defaults to the statute, and you may be in for some surprises."

Intellectual Property

Most entrepreneurs understand that if they have a patentable invention, they should consult with a patent attorney who can offer specialized advice. However, other intellectual property matters - including trade secrets, trademarks, trade dress and copyrights - may be less



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obvious to new entrepreneurs.

Trade secrets and overall proprietary company information must be safeguarded via agreements with employees, as well as fool-proof security measures.

Other Matters

Beyond formation and intellectual property matters, new entrepreneurs face a bevy of other legal concerns, including, but certainly not limited to: leasing or purchasing real estate, hiring and firing employees, working with the New Jersey Department of Environmental Protection (if applicable), and interactions with vendors.

There are pitfalls surrounding real estate, and a trained attorney can help address myriad issues such as who is responsible if the building's pipes leak in the winter, or the build-

ing is hot in the summer.

New Jersey also has a thicket of employment laws, and entrepreneurs ought to familiarize themselves with them even before advertising for a job position, and certainly before interviewing potential candidates. While New Jersey technically has "at will" employment laws – meaning a company should be able to "hire and fire" at will – there are so many exceptions and special conditions that terminating an employee must be done with extreme caution, and often only after consulting with an attorney. No employer wants to violate – or be accused of violating – employment laws, especially in today's litigious legal landscape.

Early Counsel and Legal Fees

As a general rule, entrepreneurs should

contact their attorneys at the first inklings of any legal trouble. Early legal counsel often can eliminate the need for future counsel on a matter, and it can also help business owners avoid irreversible mistakes that may cost the business enormous amounts of money in the future.

Regarding attorney fees, it is not uncommon for a business owner to merely spend \$2,000 with an attorney to fully incorporate his or her business, establish an operating agreement and review points of concern.

Overall, Managing Partner Michael McBride of the Roseland-based law firm of Connell Foley, says, "If somebody is trying to grow a business, he or she doesn't want to have to worry about legal issues. If you own a business and you are spending 100 percent

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of your time working on improving your product or expanding your product, the business is going to be successful. If you are spending 50 percent of your time improving your product, and 50 percent of your time on legal issues, it's going to distract from the growth of the company. That's why a lawyer up front can be very important."

Accountants

Immediately upon formation of his or her company, a small business owner should consult with an accountant. Again, the operating agreement may be top of mind, and Steven Bortnick, a partner at West Orange-based Beder-son, LLP, explains, "The first thing we might do is read a draft of the operating agreement, because if there is more than one member of the LLC, we want to understand how profits and losses and management are going to be split, allocated or divided, among the members within that operating agreement.

"There can be significant tax issues within the operating agreement, as well. And as crazy as it sounds, if there's more than one member, oftentimes we want the entrepreneur to understand his exit strategy, even upon formation. So, God forbid there's a death, or a business divorce, or one partner wants to sell and one doesn't. Or, they both want to sell. It's very important that the operating agreement addresses those issues."

Overall, accountants – as well as attorneys – are now fielding questions from their small business clients regarding the Affordable Care Act and its associated uncertainty from both legal and accounting perspectives. Small businesses wish to comply, but the rules and regulations are not clear, and amendments and modifications will likely be put forth by the government. Separately, the future of the capital gains tax is another question-generator.

Accountants are also now helping

their clients turn financial documents suitable for the Internal Revenue Service into documents that adhere to Generally Accepted Accounting Principles (GAAP), suitable for banks or other applications. For example, to spur investment, federal tax law allows businesses to depreciate new equipment in one year. However, by GAAP standards, a business must depreciate the equipment over the course of its "life," which might be 5 to 10 years, or longer.

A big disparity between two bases of reporting can be generated if a business purchases a \$100,000 computer server and the IRS allows the business to depreciate it in one year, but GAAP demands it be spread out over five years.

Speaking more broadly about GAAP, Bortnick adds, "As GAAP imposes additional and somewhat radically changing requirements, bankers frankly don't understand the impact to small business, and neither does the client. Oftentimes, we [accountants] have to bridge that gap."

Meanwhile, Marc Blumenthal, CPA, principal, head of the tax department at Sax Macy Fromm & Co., summarizes his views on accounting and the economy: "I can tell you that among my clients, for the most part, there is a pretty good feeling out there, right now. They are doing business, they are making money – it is not a 2009 situation, at all. And that's almost across the board. Even for some of the developers and builders of residential property, it is like little buds are coming out of the ground."

Financial Institutions

Assistance from financial institutions can be as important to the small business entrepreneur as that from attorneys and accountants. Loans are often a key means for fostering business growth, and Kenneth W. Nickel, senior vice president, community lending department at Wayne-based Valley Na-

tional Bank, echoes others' sentiments when he says: "Loan portfolios have not grown significantly over the last five years in the banking world, and all of the banks are now competing for what is a smaller market of qualified

borrowers. As such, we aggressively attempt – with people that we can qualify – to make the loans.

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is a great time - with the real estate values and the low interest rates - to buy a building, as opposed to renting it. So, there is activity. It is just not anywhere near where it was six years ago."

Banking Products

Entrepreneurs today must focus not only on creating quality products and services, but also on cost-cutting via efficiencies and other means. Numerous banking technology products provide these competitive edges, whether via online banking, remote deposit capture (which allows banks to remotely make deposits) or merchant services features that permit next-day availability of funds.

That said, Douglas Smith, consumer sales director, and a senior vice-pres-

ident at Vineland-based Sun National Bank, says that relationship banking is still important: "There's always going to be the need for relationship banking, because now more than ever, business owners need to focus on developing strategies to effectively and efficiently run their businesses. They are looking for [bankers] who are trusted advisors, who are going to be able to be 'in the loop' and give them information on the latest in technologies.

"Where we now see the difference is how we interact with those business owners. It's imperative to have a disciplined approach, and I think our business bankers are spending more time on the road than ever, because businesses aren't coming into the [bank] branches anymore. We have to really show them

how remote deposit capture - in some cases - can expedite receivables."

Conclusion

Entrepreneurs need not face the demands of the business world on their own, and while attorneys and accountants do charge fees for their services, the net result is typically a larger amount of money saved: The attorney may help avoid lawsuits and help strategize, and a good accountant will proactively seek ways for his or her business client to save money - and increase profits. All told, when it comes to private-sector small business resources, an ounce of prevention is typically worth a pound of cure. New Jersey's array of accountants, attorneys and bankers stand poised to facilitate entrepreneurs today and into the future. **NJB**



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