



## Legal Spotlight

# Starting a Business?

A few tips every entrepreneur should know...



By: Mark D. Changaris,  
Partner,  
Berg, Hill, Greenleaf &  
Ruscitti, LLP  
[mdc@bhgrlaw.com](mailto:mdc@bhgrlaw.com)

Starting a business is an exciting time for an entrepreneur. But with all of the promise, passion, and excitement involved, it's easy to lose track of some fundamental issues that need to be addressed.

### Founder Alignment

If you are taking on a business partner, it is critical that you work out key issues, including: (i) who owns what (ownership percentages, profit and loss allocations, distributions); (ii) who contributes what (labor, cash, etc.); (iii) who will be managing the business and how decisions will be made; and (iv) perhaps most critically, what is the purpose and vision of the business (1, 5, and 10 year plans). These issues should be documented in appropriate agreements and should be papered and signed before you

start operating.

While working through these issues on the front-end takes time and energy, it is important to put a foundation in place for your business to succeed and avoid disputes in the future. Also, working through these issues is much easier at the start of the business than down the line after disputes may have arisen or relationships may be stressed. Failure to tackle these issues head-on can give rise to disputes that can distract from, or possibly scuttle, the business.

### Choosing the Right Entity: Seek Tax and Legal Assistance

It is very important for you to choose the right entity for your business needs and goals. When making this decision, it is helpful to consult with your CPA and attorney

regarding your business objectives and the relative pros and cons of the different structures.

At a high level, the different entities include: (1) Sole Proprietorships; (2) Partnerships; (3) Limited Liability Companies; (4) S corporations; and (5) C Corporations. These ownership structures have different tax, legal, and logistical characteristics that you should explore with your tax and legal professionals.

While tax and legal counsel requires an initial expense, it is important not to be penny wise and pound foolish. If you are devoting significant financial resources and your time to this business, you need to put in place the legal framework for it to succeed.

### Choosing the Right Name

If you are investing significant time and resources in developing a brand or company identity, it is important for you to make sure your business name is available and your use of the name will be permissible. Depending on the type of business involved, you may want to retain a third party to

**...it is important to put a foundation in place for your business to succeed...**

ATTORNEYS AT LAW

BOULDER, CO 1712 Pearl Street, 80302  
DENVER, CO 1525 17<sup>th</sup> Street, 80202

OFFICE 303.402.1600  
FAX 303.402.1601

[BHGR.LAW.COM](http://BHGR.LAW.COM)



perform trademark clearance searches. These searches help ensure that nobody else is using your company name and help reduce the chances of receiving a cease and desist letter threatening infringement claims.

While you can certainly do some high level internet searches and check the USPTO's Trademark Electronic Search System (TESS) yourself, conducting a complete trademark clearance search is the safest way to ensure your name is available and your company will not infringe the rights of third parties.

### Line Up Appropriate Insurance

One of the often overlooked issues when starting a business is also one of the most critical: making sure that your business is adequately insured. While the type of insurance will vary based on your industry, you should contact an insurance broker and discuss the need for Commercial General Liability (CGL) Insurance, Employment Practices Liability Insurance (EPL), Director's and Officer's Liability Insurance (D&O), and Worker's Compensation Insurance. Failure to have adequate insurance lined up before you begin operations can be a costly mistake and is easily avoided.

### Funding your Business

If you are considering raising money from third parties to fund

your business, it is important that you talk to legal and tax counsel. There are many different ways to structure fundraising opportunities. Some of the more common approaches include straight debt, convertible debt (which gives the note holder an option to convert into equity), straight equity (in which warrants or an actual capital interest are issued), or profits interests (in which a right to economically participate in the profits is given). In addition to ironing out the specific business points, it is important that you comply with applicable securities laws.

If you are going to take on investors, avoid back of the napkin deals. Do it right on the front end and avoid headaches, litigation, and additional costs down the line. A good approach is to flesh out the deal points in a non-binding memorandum of understanding or letter of intent, and then work with your legal counsel to properly document the deal.

### Develop Incentive Plans

If you are planning to offer stock options, warrants, profits interests, or some other form of equity-based incentives to your employees, it is important that you develop an appropriate and comprehensive equity incentive plan. The plan should focus on rewarding employees while providing incentives to the employees to stick with the company. Many

times, founders will offer fully vested equity grants to key employees hoping to instill loyalty. While this approach can work, it can also have perverse results if the employee leaves the company shortly after being given the equity. To hedge against this outcome, it can be beneficial to develop vesting schedules that both reward past service but also incentivize retention and continued participation.

ATTORNEYS AT LAW	BOULDER, CO 1712 Pearl Street, 80302 DENVER, CO 1525 17 <sup>th</sup> Street, 80202	OFFICE 303.402.1600 FAX 303.402.1601	BHGR.LAW.COM
------------------	--	---	--------------