

Legal Considerations When **Starting a Business**

by Kathy Pandelidis Granbois, Esq.

1 CHOICE OF LEGAL ENTITY

Entity Type	# of Owners	Formation Filing? Filing Fee in PA	Advertising Required?	Limited Liability for Owners?	Taxation	Governance Document
Sole Proprietorship	1	✗	✗	✗	Owners only	None
Partnership	2 or more					Partnership Agreement
> General Partnership		✗	✗	✗	Owners only	
> Limited Partnership	At least 1 general partner and 1 limited partner	✓	✓	Yes, for limited partners only	Separate partnership return, but taxes only paid at partner level	
Corporation*	1 or more	✓	✓	✓		Bylaws / Shareholder Agreement
> "C" corporation					Corporate level return and tax, shareholders pay tax on dividends	
> "S" corporation	No more than 100 shareholders and no more than 1 class of stock				Corporate level return, but taxes only paid at shareholder level	
Limited Liability Company*	1 or more	✓	✗	✓	"Check the Box" – members choose	Operating Agreement
Limited Liability Partnership	2 or more professionals	✓	✓	Yes, but only with respect to acts of other partners	Partnership return, but taxes only paid at partner level	Partnership Agreement

*Benefit corporations or companies (LLCs) - Under corporate fiduciary law, traditional corporations have the single duty to their shareholders to maximize profits. A corporation that wishes to consider societal and environmental concerns as well as profits may elect to become a benefit corporation. To do so, a corporation or LLC must (i) declare its commitment to creating general public benefit in its formation document, (ii) be accountable to that purpose, and (iii) produce an annual Benefit Report, which includes assessment against a third party standard, that is filed with the Commonwealth, delivered to its shareholders and made available to the public.

2 ENTITY NAME VS. FICTITIOUS NAME VS. TRADEMARK

- A business name must be registered with PA. A name will be “available” if no one else has formed the same type of entity with that name.
- A business that operates using a name other than its registered entity name (or, in the case of sole proprietors or partnerships, if it uses a name other than the owners’ last names) must register that name as a “fictitious” or “D/B/A” name.
- Availability of a name at the PA Corporation Bureau does not indicate trademark rights. In other words, just because a name is available, it does not mean you have exclusive rights to use it. For example, “Hershey Chocolate LLC” might be available, but you would be violating trademarks of Hershey Foods if you used it. Likewise, registering a name does not prevent others from using the same name in their business. If the name is important to your business and you plan to expand, it is important to do a trademark search and possibly even register for your own trademark to protect your name and make sure you are not violating (or “infringing”) someone else’s rights.
- It is always a good idea to do a Google® or other general comprehensive search to see who else might be using the name and how it is being used, so you can anticipate whether there may be a problem with using the name into the future.

3 LICENSURE

- Depending on the nature of your business, there may be state and/or local license or registration requirements. Call your local municipality or the PA Department of State if you are not sure whether your business needs a special license or permit.
- Examples include: cosmetologists, barbers, funeral directors, accountants, engineers, architects, attorneys, doctors, physical therapists, massage therapists, home improvement contractors, day care centers, nursing homes, health clubs, restaurants, etc.

4 INSURANCE

- Again, depending on the nature of your business, insurance may either be (i) required to get a license, or (ii) recommended to protect you against risks of loss or liability. If you’re organized as a corporation, LLC or limited partnership, having insurance also helps to show that your business has proper resources and that the limited liability of your business structure should be respected.
- Talk to a knowledgeable insurance broker to determine the amount and coverage types that are recommended for your business. Common types of insurance include premises liability (a customer slips and falls), commercial liability (a customer or supplier makes a claim against you for breach of contract or other business claim), property (burst pipe, fire) or “renter’s” insurance (contents) and if you’re a service provider, errors and omissions insurance. Also necessary for most businesses is coverage for data loss/privacy breach.

5 CONTRACTS

- A contract is any agreement or arrangement between two legal persons (individuals, corporations, etc.) that involves an “offer” and an “acceptance.” Generally, a contract does not have to be in writing to be legally enforceable. Real estate is an exception – contracts are required to buy, sell or lease.
- If your business will purchase goods or services, it will have contracts. Make sure to read and understand contracts before you sign them. Be especially aware of the term length (how long it lasts) and how and when it can be terminated. If there is anything you don’t understand, it is best to ask an attorney to review it for you and explain any sections.
- Many contracts are negotiable – in other words, if there’s something you don’t like, ask for it to be changed, or negotiate a compromise that you can live with. It is much better to not work with a particular supplier, customer, etc. than to be stuck in a bad contract that hurts your business.
- See “[Granbois Top 10 Commercial Contract Nuggets](#)”

6 ADDITIONAL RESOURCES

- Entrepreneur’s Guide: Starting and Growing a Business in Pennsylvania (by PA DCED): <https://dced.pa.gov/download/entrepreneurs-guide/?wpdmdl=56163>
- Starting a Business in Pennsylvania: A Guide to Pennsylvania
- Taxes (by PA Dept of Revenue): <https://www.revenue.pa.gov/FormsandPublications/FormsforBusinesses/BusinessRegistration/Documents/rev-588.pdf>

The information provided in this handout is limited and general in nature and does not address all aspects or details that may be relevant to a particular business. THIS SUMMARY IS NOT INTENDED TO BE LEGAL ADVICE. For more information, please consult an attorney or other experienced business professional. Best of luck to you in your business venture!

Contact **Kathy Granbois** to discuss how Saxton & Stump’s business and corporate team can help you select the right entity type for your company.

✉ kpg@saxtonstump.com
☎ (717) 556-1047