Legal Guide for Starting and running a small business

by Stephen Fishman Attorney · Language: EN

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Overview

Stephen Fishman's "Legal Guide for Starting and Running a Small Business" serves as an indispensable resource for entrepreneurs navigating the complex legal landscape of business ownership. The book systematically breaks down critical legal topics, offering practical advice and clear explanations to help small business owners understand their rights and obligations. It covers the entire lifecycle of a business, from the initial decision of choosing a legal structure (like sole proprietorship, partnership, LLC, or corporation) to handling daily operations, managing employees, protecting intellectual property, and complying with tax laws.

The guide's primary aim is to empower business owners to make informed legal decisions, thereby minimizing risks and avoiding costly mistakes. Fishman emphasizes proactive legal planning, providing templates and checklists for common legal tasks such as drafting contracts, hiring employees, and registering trademarks. It demystifies legal jargon, making complex subjects accessible to non-lawyers and enabling them to handle many legal matters themselves, or at least understand when professional legal counsel is truly necessary. The book is a comprehensive toolkit designed to help small businesses establish a solid legal foundation and operate compliantly.

Key Takeaways

- Carefully choose the appropriate legal structure for your business (e.g., sole proprietorship, LLC, corporation) from the outset, as it impacts liability, taxes, and administrative burden.
- Always put all business agreements, including those with partners, customers, and suppliers, in writing to prevent misunderstandings and provide legal recourse.
- Understand and comply with all federal, state, and local employment laws before hiring your first employee to avoid costly disputes and penalties.
- Proactively protect your intellectual property, such as trademarks, copyrights, and trade secrets, to safeguard your brand and unique creations.
- Maintain clear separation between personal and business finances to preserve limited liability and simplify accounting and tax preparation.

• Ensure your business obtains all necessary licenses and permits required by your industry and location to operate legally and avoid fines.

• Regularly review your business's legal compliance and seek professional advice from an attorney or accountant when facing complex issues or significant changes.

Chapter Summaries

Chapter 1: Legal Basics for Your Business

This foundational chapter introduces entrepreneurs to the essential legal landscape for small businesses, emphasizing the importance of proactive legal planning from the outset. Stephen Fishman highlights common legal pitfalls that new businesses face and stresses how understanding basic legal requirements can prevent costly mistakes. He provides an overview of the various levels of law—federal, state, and local—and guides readers on how to identify the specific regulations pertinent to their industry and business operations, setting the stage for more detailed discussions in subsequent chapters.

Chapter 2: Choosing the Right Legal Structure

Fishman provides a detailed analysis of the most common legal structures for small businesses: sole proprietorships, partnerships (general and limited), limited liability companies (LLCs), and corporations (S-corp and C-corp). He thoroughly compares the advantages and disadvantages of each in terms of personal liability protection, tax implications, administrative burdens, and ease of raising capital. The chapter guides readers through a decision-making process, helping them select the optimal structure that aligns with their business goals, risk tolerance, and future growth plans, with practical advice on formation and registration.

Chapter 3: Naming Your Business & Protecting Your Brand

This chapter focuses on the crucial steps involved in choosing and legally protecting a business name and brand identity. Fishman explains how to conduct thorough name availability searches at both state and federal levels, including checking with state secretaries of state and the U.S. Patent and Trademark Office (USPTO). He clarifies the distinctions between trademarks, service marks, and copyrights, providing practical guidance on how to register and enforce these intellectual property rights to prevent infringement and build lasting brand equity.

Chapter 4: Licenses, Permits & Zoning Laws

Fishman offers a comprehensive guide to navigating the often-complex world of business licenses, permits, and zoning regulations. He details how to identify and obtain the necessary federal, state, and local authorizations required for various business types and industries. The chapter covers everything from general business licenses to specific professional licenses, health department permits, and environmental regulations, emphasizing the critical importance of compliance to avoid fines, operational shutdowns, and legal liabilities.

Chapter 5: Business Contracts & Agreements

This chapter delves into the essential elements of legally binding contracts and common agreements vital for small businesses. Fishman covers various types of contracts, including vendor agreements, client service contracts, non-disclosure agreements (NDAs), and independent contractor agreements. He provides practical advice on drafting, reviewing, and negotiating contracts, highlighting key clauses such as payment terms, scope of work, warranties, and dispute resolution mechanisms, helping readers avoid common contractual pitfalls.

Chapter 6: Leasing Commercial Space

Fishman provides critical legal insights for small business owners looking to lease commercial property for offices, retail stores, or industrial operations. He breaks down key lease terms and clauses, such as rent calculations, lease duration, renewal options, build-out allowances, common area maintenance (CAM) charges, and assignment/subletting provisions. The chapter offers practical advice on negotiating favorable lease terms, understanding landlord-tenant rights and responsibilities in a commercial context, and avoiding potential disputes over property use and maintenance.

Chapter 7: Hiring Employees & Independent Contractors

This crucial chapter addresses the legal complexities of building a workforce, focusing on the critical distinction between employees and independent contractors. Fishman outlines federal and state employment laws governing hiring practices, wage and hour rules (e.g., minimum wage, overtime), anti-discrimination statutes, workplace safety regulations, and proper termination procedures. He provides guidance on drafting offer letters, employment agreements, and employee handbooks, emphasizing compliance to mitigate risks of misclassification penalties and employment lawsuits.

Chapter 8: Financing Your Business Legally

Fishman explores the legal aspects of raising capital for a small business, from traditional bank loans and lines of credit to attracting angel investors and venture capitalists. He discusses the legal documentation required for various financing methods, such as promissory notes and security agreements. The chapter also touches upon basic securities laws relevant to offering equity, explaining the importance of proper disclosure and compliance with state and federal regulations to avoid legal issues with investors and ensure legitimate fundraising practices.

Chapter 9: Understanding Business Taxes

This chapter provides a comprehensive overview of the various federal, state, and local tax obligations that small businesses must navigate. Fishman covers federal income tax, self-employment tax, payroll taxes (including Social Security, Medicare, and unemployment taxes), state sales tax, and property tax. He explains how different business structures affect tax

liabilities and discusses common deductions and record-keeping requirements, offering practical advice to ensure compliance and optimize tax efficiency while avoiding penalties.

Chapter 10: Protecting Your Business Assets & Limiting Liability

Fishman details strategies for safeguarding a business's valuable assets, including intellectual property, trade secrets, and physical property. He discusses the critical role of various types of business insurance—such as general liability, professional liability, and property insurance—in mitigating financial risks. The chapter also emphasizes the importance of maintaining corporate formalities for LLCs and corporations to preserve their limited liability protection, preventing owners from being personally responsible for business debts and lawsuits.

Chapter 11: Selling Products & Services Legally

This chapter addresses the legal considerations involved in marketing, advertising, and selling products and services. Fishman covers consumer protection laws, truth-in-advertising regulations, product liability, and the legal requirements for warranties and guarantees. He also provides specific guidance for online businesses, including privacy policies, terms of service, and compliance with e-commerce regulations, ensuring that businesses can market and sell their offerings legally and ethically.

Chapter 12: Resolving Business Disputes

Fishman offers practical advice on how small businesses can effectively handle and resolve legal disputes, ranging from customer complaints to contract disagreements with vendors or partners. He explores various dispute resolution methods, including direct negotiation, mediation, arbitration, and litigation in small claims court or higher courts. The chapter guides readers on when it's appropriate to seek legal counsel, how to prepare for legal challenges, and strategies for minimizing the impact of disputes on business operations.

Chapter 13: Selling or Closing Your Business

This concluding chapter guides business owners through the legal processes involved in exiting a business, whether by selling it or dissolving it. Fishman covers key steps for selling a business, including valuation, due diligence, drafting a purchase agreement, and managing the transfer of assets and liabilities. He also details the legal requirements for dissolving a business, such as notifying creditors, settling outstanding debts, and properly distributing remaining assets, ensuring a compliant and smooth transition out of ownership.

Themes

- Legal Compliance
- Risk Management
- Business Formation

- Intellectual Property
- Employment Law
- Tax Obligations

Frequently Asked Questions

What is Legal Guide for Starting and running a small business about?

Stephen Fishman's "Legal Guide for Starting and Running a Small Business" is a comprehensive resource that provides practical legal advice for entrepreneurs. It covers essential topics from choosing the correct business structure and drafting contracts to managing employees, protecting intellectual property, and navigating tax obligations, all aimed at helping small businesses operate legally and avoid common pitfalls.

Is Legal Guide for Starting and running a small business worth reading?

Yes, it is highly recommended for anyone starting or operating a small business. The book distills complex legal information into an accessible format, empowering business owners to understand their legal responsibilities, protect their assets, and make informed decisions without constant reliance on expensive legal counsel. It's an invaluable tool for proactive legal planning and risk mitigation.

How does Legal Guide for Starting and running a small business end?

Spoiler: The book concludes by reinforcing the continuous nature of legal compliance and risk management for small businesses. It encourages owners to regularly review their legal standing, stay updated on relevant laws, and understand when it's crucial to seek professional legal or accounting advice to ensure the long-term health and success of their enterprise.

Who should read Legal Guide for Starting and running a small business?

This book is ideal for aspiring entrepreneurs, new small business owners, and even experienced small business operators who wish to deepen their understanding of legal requirements. It's particularly beneficial for those who want to establish a strong legal foundation for their business, minimize liability, and handle many legal matters independently.

How long does it take to read Legal Guide for Starting and running a small business?

Given its comprehensive nature and the depth of legal topics covered, a thorough reading of "Legal Guide for Starting and Running a Small Business" would realistically take approximately 10 to 15 hours, depending on the reader's pace and how much time is spent on specific sections relevant to their business.

Questions & Answers

What are the primary legal structures for a small business discussed in the book?

The book extensively covers the main legal structures available to small businesses, including sole proprietorships, partnerships (general and limited), limited liability companies (LLCs), and corporations (S-corps and C-corps). It details the advantages and disadvantages of each in terms of liability protection, taxation, administrative burden, and fundraising potential, guiding readers to choose the most suitable structure for their specific needs and goals.

Why is it important for a small business to have a written operating agreement for an LLC?

The book emphasizes that an operating agreement for an LLC, even for a single-member LLC, is crucial because it defines the rights and responsibilities of members, outlines profit and loss distribution, and establishes procedures for decision-making and dispute resolution. It acts as a foundational contract, providing clarity and preventing future disagreements, especially as the business grows or if new members join. Without one, state default rules apply, which may not align with the members' intentions.

What key steps does the book recommend for protecting intellectual property?

The book advises small business owners to proactively protect their intellectual property through various means. This includes registering trademarks for brand names and logos, obtaining copyrights for original creative works like software or marketing materials, and filing for patents for inventions. It also stresses the importance of using non-disclosure agreements (NDAs) with employees and contractors to safeguard trade secrets and confidential business information, ensuring legal recourse if breaches occur.

How does the book address the legal aspects of hiring employees versus independent contractors?

The book provides a detailed explanation of the critical legal distinctions between employees and independent contractors, highlighting the significant implications for taxes, benefits, and legal liabilities. It outlines the IRS's common law factors used to determine classification, such as behavioral control, financial control, and the type of relationship. The author strongly warns against misclassification, detailing the potential penalties and back taxes that can arise from incorrectly categorizing workers.

What are the essential elements of a legally sound contract, according to the author?

According to the author, a legally sound contract generally requires four essential elements: an offer, acceptance, consideration (something of value exchanged), and the intention to create legal relations. The book stresses that contracts don't always need to be in writing, though written contracts are highly recommended for clarity and enforceability. It also covers the importance of clear terms, mutual assent, and the capacity of parties to enter into an agreement.

What advice does the book offer regarding business insurance?

The book strongly advises small business owners to secure adequate business insurance to mitigate various risks. It discusses different types of insurance, such as general liability, property, professional liability (E&O), workers' compensation, and business interruption insurance. The author emphasizes that insurance is a critical component of risk management, protecting the business from financial losses due to accidents, lawsuits, natural disasters, or other unforeseen events, and recommends consulting with an insurance professional.

How does the book guide readers through the process of obtaining necessary business licenses and permits?

The book guides readers by explaining that obtaining the correct business licenses and permits is a crucial initial step, varying significantly by industry, location, and business type. It advises researching federal, state, and local requirements, often starting with the local city or county clerk's office and state business registration agencies. The author stresses that failure to comply can result in fines or forced closure, making thorough research and timely application essential for legal operation.

What are the key legal considerations for a small business engaging in online sales?

For small businesses engaging in online sales, the book highlights several key legal considerations. These include establishing clear terms of service and privacy policies on their website, complying with consumer protection laws, understanding sales tax obligations across different jurisdictions, and ensuring data security for customer information. It also touches on accessibility requirements for websites and the importance of intellectual property rights when using images or content online.

What is the significance of a 'fictitious business name' (DBA) registration?

The book explains that a 'fictitious business name' or 'Doing Business As' (DBA) registration is significant when a business operates under a name different from its legal owner's name (for a sole proprietorship or partnership) or its registered corporate name. It informs the public about the true owner of the business, helps prevent consumer confusion, and is often required by banks to open a business account. It does not create a separate legal entity but provides transparency.

What advice does the book provide on managing business finances legally?

The book advises managing business finances legally by maintaining separate bank accounts for business and personal funds, especially for sole proprietors, to preserve liability protection and simplify accounting. It stresses the importance of accurate record-keeping for tax purposes and compliance with financial regulations. The author also touches on understanding tax obligations, payroll taxes, and sales taxes, recommending professional accounting or legal advice for complex financial matters.

How does the book address the legal aspects of leasing commercial space?

The book dedicates attention to the legal aspects of leasing commercial space, advising business owners to carefully review lease agreements before signing. It highlights key provisions such as rent, term, renewal options, maintenance responsibilities, permitted uses, and clauses related to improvements or subleasing. The author strongly recommends negotiating favorable terms and having an attorney review the lease to protect the business's interests and avoid costly disputes or unexpected liabilities.

What are the legal implications of forming a partnership, as discussed in the book?

The book explains that forming a partnership carries significant legal implications, primarily unlimited personal liability for general partners for business debts and actions of other partners. It emphasizes the critical need for a comprehensive written partnership agreement to define roles, responsibilities, profit/loss distribution, decision-making processes, and dispute resolution mechanisms. Without an agreement, state default rules apply, which may not align with the partners' intentions and can lead to severe conflicts.

What is the author's stance on seeking professional legal advice for small businesses?

The author consistently advocates for small business owners to seek professional legal advice, especially for critical decisions like choosing a business structure, drafting contracts, or dealing with complex legal issues. While the book provides comprehensive guidance, it repeatedly emphasizes that it is not a substitute for personalized legal counsel. The author stresses that proactive legal consultation can prevent costly mistakes, ensure compliance, and protect the business's long-term viability.

How does the book explain the concept of 'piercing the corporate veil'?

The book explains 'piercing the corporate veil' as a legal doctrine where courts disregard the limited liability protection typically afforded to corporations or LLCs, holding individual owners personally responsible for business debts or liabilities. This usually occurs when owners fail to maintain the legal separateness between the business and themselves, such as commingling funds, failing to observe corporate formalities, or using the entity for fraudulent purposes. It underscores the importance of proper corporate governance.

What are the legal requirements for naming a business, according to the book?

The book outlines legal requirements for naming a business, stating that the chosen name must generally be distinguishable from other registered businesses in the state. It advises checking state business entity databases and potentially federal trademark databases to avoid infringement. For corporations and LLCs, specific suffixes like 'Inc.' or 'LLC' are often required. The author also discusses registering a 'fictitious business name' (DBA) if operating under a name different from the legal entity name.

What does the book advise regarding compliance with employment laws?

The book advises strict compliance with a wide range of employment laws, covering areas such as minimum wage, overtime, anti-discrimination (e.g., Title VII, ADA), workplace safety (OSHA), and family and medical leave (FMLA). It stresses the importance of clear job descriptions, consistent application of policies, and proper documentation. The author warns that non-compliance can lead to significant fines, lawsuits, and reputational damage, making it crucial for small businesses to stay informed and compliant.

How does the book guide a business owner through the process of dissolving a business?

Spoiler: The book guides a business owner through the process of dissolving a business by detailing the necessary legal and administrative steps. This typically involves formally notifying state authorities, settling all debts and liabilities, distributing remaining assets according to legal priority, and properly closing out tax accounts. The author emphasizes the importance of following specific state procedures for dissolution to avoid lingering liabilities and ensure a clean legal exit from the business.

What are the key differences between an S-corporation and a C-corporation as presented in the book?

The book highlights key differences between S-corporations and C-corporations primarily in their taxation. C-corps are subject to 'double taxation'—the corporation pays taxes on its profits, and shareholders pay taxes again on dividends. S-corps, conversely, are 'pass-through' entities, meaning profits and losses are passed directly to the owners' personal income without corporate-level tax. The book details eligibility requirements for S-corps, such as limits on shareholders, making C-corps more suitable for businesses seeking significant outside investment.