

## **What is a business lawyer?**

A "business lawyer" or "business attorney" generally refers to a lawyer who represents business entities of all types. These include corporations, LLCs, general partnerships, limited partnerships, sole proprietorships, associations, organizations and joint ventures. Typically business lawyers also represent individuals who act in a business capacity (owners, proprietors, principals, managers, partners, directors, officers, controlling shareholders, entrepreneurs). Some business lawyers also represent other individuals in their dealings with business entities (e.g. contractors, subcontractors, consultants, minority shareholders, employees). When we use the term "business lawyer" we think of all three of the above. We represent companies, owners, entrepreneurs, individuals in a business capacity and other individuals who have relationships with business entities. Definitions of related terms: The terms "corporate attorney" or "corporate lawyer" can refer to a business lawyer, or a business lawyer who primarily works for corporations.

## **Do I need a business lawyer & can I afford one?**

If you are a business owner and you are concerned with the legal protection of your business and your personal assets, the answer is yes. A business lawyer can advise you of the applicable laws and help you comply with them. A business lawyer can help steer you away from future disputes and lawsuits. A business lawyer can help protect your tangible and intangible assets. A business lawyer can help you negotiate more favorable business transactions. Having a business lawyer can project positively on your business. Further, an established relationship with a business lawyer can be invaluable when you need to turn to someone who knows your business for quick legal guidance. Unlike some larger firms, we value our role as a business attorney and counsel to start-ups and small businesses. We realize that many small businesses have genuine concerns about lawyers running up large tabs for unwanted, unnecessary or questionable work. We are sensitive to that concern and actively work with you to control legal costs. We believe it is in both our interests to discuss the scope of work and the costs involved before we provide any legal services. We can provide estimates or fixed pricing plans so that your company has greater cost certainty.

## **When should I seek a business lawyer?**

You should seek a business lawyer if you or your company are . . .

organizing a new business. It has been my experience that those who rely on do-it-yourself incorporation kits to save a few bucks overlook and fail to understand the application of the various laws that a business entity must observe and the fix can often be many more times than the initial cost that would be spent in hiring an attorney to organize the business. If you form a corporation or a limited liability company (LLC), you must make sure that you properly capitalize the company, observe legal formalities and properly execute documents and agreements. Otherwise the liability protection offered by the corporation or LLC could be lifted and you can be held personally liable for claims against the corporation or LLC. This is often referred to as "piercing the corporate veil." A company must also ensure that it complies with certain legal requirements or it may become suspended. If you go to the California Secretary of State's website and search companies, you will find a surprising number of suspended companies. If your company enters into agreements as a suspended company, the agreements are voidable (which can allow the other parties to simply void the agreement, at their option). We can help

you decide on the type of business entity that is best suited for your company. We can also prepare and file the organizational documents for the business (articles of incorporation or organization; bylaws, partnership or operating agreements; incorporator / organizational certificates, minutes of initial board of directors or managers meeting; minutes of initial shareholder's meeting). We can also provide information about business licenses and assist you in obtaining tax IDs. We can also issue share certificates, with proper legends. Since our attorneys are very experienced with this process, we can do so at a very reasonable cost.

hiring your first employees. Many employee disputes and lawsuits occur because companies fail to clearly define the employment relationship with the employee from the outset. Companies that fail to have employees sign invention assignment and non disclosure agreements risk future claims on its intellectual property. Companies that accept money from employees without proper documentation risk future ownership claims. Companies who fail to pay wages on a timely basis or breach applicable employment laws are subject to serious consequences. We can prepare employment agreements, invention assignment agreements, and non-disclosure agreements. We can advise you with respect to common traps that lead to expensive employee disputes regarding intellectual property ownership and equity ownership. We can also help you in the event of a later employee termination.

offering or issuing stock, options, warrants or convertible notes. The offer and issuance of stock, options, warrants, convertible notes and other types of securities are heavily regulated by both state and federal securities laws. The registration of stock and security offerings and preparation of the disclosure documents can be a timely and expensive proposition. Legal compliance is complex and the consequences can be severe. The company and its directors, officers and advisors may be held liable for losses incurred by the shareholders or security holders if securities laws are violated. Even worse, those who violate certain anti-fraud statutes can be subject to criminal penalties. We can advise you as to the applicable securities laws. We can typically structure the offering so that the Company can qualify for an exemption to registration. We also can help prepare or review the disclosure documents that accompany the offering.

planning to create and develop new products and services. It is important to protect the ownership of all of the company's creative work and intellectual property including inventions, patents, trade secrets, trademarks and copyrights. We can help you take steps to protect your creative works and, in the case of patents and inventions, we can assist you in securing a competent patent attorney.

launching new products and services to your customers or clients. When you sell a product or render services, you are in a position to set or initiate the terms of the underlying contract. Surprisingly, companies do not always take advantage of this fact. We can prepare product, sales, service or service level agreements that you can present to your customers or clients. We can draft these agreements to address your specific products and services and with language that best protects your interests.

entering into third party prepared contracts. Leases, supplier agreements, distribution agreements and other contracts drafted by third parties are often one sided in the other party's

favor (e.g. escape clauses, disclaimers, penalties, provisions shifting liability to you). We can review your third party contracts, look for problem areas and prepare appropriate contractual amendments or addendums.

seeking to resolve internal disputes. Disputes among co-owners, partners, shareholders, directors, officers and key employees can tear a company apart, if left unresolved. We can advise you regarding your legal options and suggest practical ways to help resolve disputes and differences within the company. We can help communicate (and if necessary, negotiate or mediate) an acceptable resolution.

acquiring another business. Acquiring a business entails a morass of business, tax and legal issues. We can help structure an acquisition in the most suitable manner, conduct due diligence on the business to look for unforeseen liabilities and risks, negotiate the terms of and document the transaction. We can provide assistance in securing key personnel, valuable intellectual property and the assignment of the acquired business's contracts. We will also help you comply with all the regulatory and contractual requirements necessary to close the transaction including the preparation of a legal opinion.

selling your company. Selling a company entails a morass of business, tax and legal issues and affects shareholders, employees and customers. We can advise you on your duties to your shareholders, employees and customers and can help you structure the transaction and negotiate terms most favorable to you. We can also provide advice with respect to tax consequences, restricted stock transferability, earn-out provisions, employee contracts and non-compete provisions. We will also help you comply with all the regulatory and contractual requirements necessary to close the transaction including the preparation of a legal opinion.

seeking to continue the business upon the departure of a key person. In small businesses, the loss of a key person can be devastating. Death, disability, illness, retirement, voluntary departure or involuntary termination can lead to the sudden departure of a key person. Without a succession plan in place, the company's own survival may be in jeopardy. We can help advise you as to how best to address these contingencies. We can prepare a buy sell agreement, a shareholders agreement or an employment agreement to address your specific concerns.

If you or your company could utilize the services of a business lawyer or corporate attorney, [please contact us to set up a free consultation.](#)