



Webinar Series Part IV: Small Business Considerations Naming Your Business & Building Your Workforce

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Disclaimer

The information contained in this presentation is intended to serve as general background information on certain legal matters relating to operating a small business. The discussion and included information do not establish an attorney-client relationship between you and Ropes & Gray LLP and are not a substitute for legal advice. Prior to taking any action, we encourage you to contact an attorney or a legal organization in your state (please see Appendix B for some state-specific resources).

A Note About Attorneys

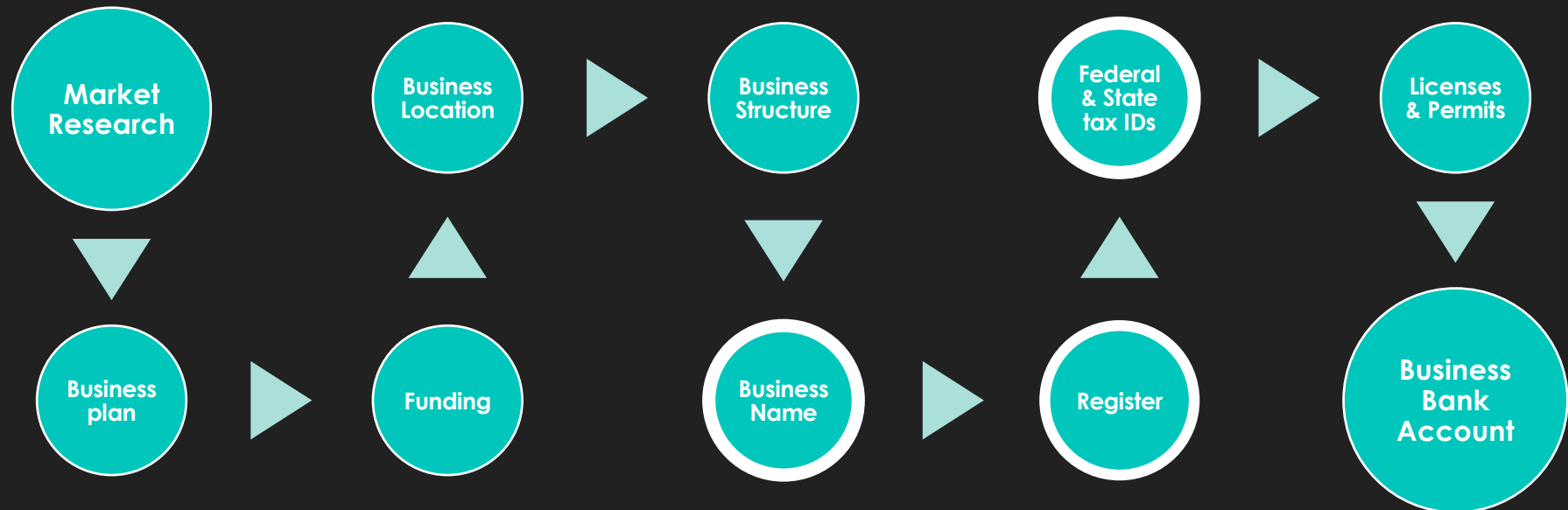
An attorney may be helpful or even necessary at various points in the process of forming and developing your business.

Always hire a specialist.

A good business lawyer:

- Can help you create contracts and other agreements that protect your business interests.
- Can help you ensure you are complying with the law.
- Can help you think through issues and alternatives faced by your business.
- Is familiar with legal issues faced by small businesses.
- Can help connect you to other business services.

10 Steps to Start Your Business



Resource: U.S. Small Business Administration

Choosing A Business Name

- Your business name should reflect your brand and capture your spirit
- Make sure the business name you are using isn't already used by someone else!
- 4 different ways to register your business name
 - Entity name
 - Trademark
 - Doing business as (DBA) name
 - Domain name
- Resource: <https://www.sba.gov/business-guide/launch-your-business/choose-your-business-name>

4 Ways To Register Your Business Name: Entity Name or Trademark

- **Entity Name**

- An entity name protects your business name at a state level
- Rules about your entity name may differ by state

- **Trademark**

- A trademark protects your business name at a national level
- Trademarks prevent others in the same industry in the US from using your trademarked names
- Check your prospective business names against the official trademark database maintained by the United States Patent and Trademark Office.

4 Ways To Register Your Business Name: DBA or Domain Name

○ **Doing Business As (DBA) Name**

- DBA allows you to conduct business under a different identity from your own name or your formal business entity name
- Some business structures require a DBA
- DBA requirements vary by location
- Trademark infringement laws will still apply

○ **Domain Name**

- Register a domain name
- Once you register your domain name, no one else can use it as long as you own that name.

Business Registration

- Register the business to make it a distinct legal entity
- Registration formalities (including fees) depend on business structure and business location
- Most small businesses only need to register a business name with state and/or local governments
- No need to register in certain cases but may miss out personal liability protections, legal benefits, and tax benefits
 - E.g., sole proprietorship conducting business as yourself using your legal name
- As of January 1, 2024, many businesses will have to report their beneficial owners (i.e., individuals who ultimately own or control the business) to the U.S. Government.

Resource: <https://www.sba.gov/business-guide/launch-your-business/register-your-business>

Business Registration – State Filings

- **Registered Agent:** Person or entity appointed to receive official government, tax and legal communications on behalf the business
 - Not needed for Sole proprietorship & General partnership
 - Must be located in the state where the business is registered
 - You can be the Registered Agent for the business (provided residence requirement is met)
- For LLCs, corporations or partnerships, register with any state where business activities are conducted
- **Typical information needed for state filings:**
 - Business name
 - Business location
 - Ownership, management structure or director
 - Registered agent
 - Number and value of shares (if a corporation)

Business Registration – State Filings (Cont'd)

- Most states require registration with with the Secretary of State's office, a Business Bureau or a Business Agency
 - **New Mexico:** <https://portal.sos.state.nm.us/BFS/online/Account>
 - **South Carolina:** <https://scbos.sc.gov/>
 - **Maryland:** <https://business.maryland.gov/business-resources/starting-a-business>
 - **Virginia:** <https://scc.virginia.gov/pages/New-Business-Resources>
 - **Texas:** https://www.sos.state.tx.us/corp/forms_option.shtml
 - **New York:** <https://dos.ny.gov/existing-corporations-and-businesses>

Federal and State Tax IDs

- **Employer Identification Number (EIN)**
 - Federal Tax ID
 - Like a social security number for your business
- **EIN (cost free application) needed if you:**
 - Pay your employee OR operate as a corporation or partnership
 - File tax returns for employment, excise, or alcohol, tobacco, and firearms
 - Withhold taxes on income, other than wages, paid to a non-resident alien
- **Some states require you to get a state tax ID as well**
 - Depends on whether your business must pay state taxes

Federal and State Tax IDs Resources

- IRS Small Business/Self-Employed Tax Center has helpful information and resources available online at <http://www.irs.gov/businesses/small/index.html>
- Some states require you to get a tax ID as well
 - Depends on whether your business must pay state taxes
 - **New Mexico:** https://tap.state.nm.us/tap/_/#1
 - **South Carolina:** <https://www.irs-taxid-numbers.com/apply-online/south-carolina-tax-id-ein-number-application-manual/>
 - **Maryland:** <https://businessexpress.maryland.gov/start/taxes-and-insurance>
 - **Virginia:** <https://www.irs-taxid-numbers.com/apply-online/virginia-tax-id-ein-number-application-manual/>
 - **Texas:** <https://www.irs-taxid-numbers.com/apply-online/texas-tax-id-ein-number-application/>
 - **New York:** https://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/st/how_to_register_for_nys_sales_tax.htm
 - businesses with employees must register with the NYS Department of Labor after receiving their EIN online

Employment Considerations: Employee vs. Independent Contractor

- **An employer has fewer obligations for independent contractors than for employees**
 - Independent contractors are not subject to minimum wage, sick leave and overtime laws.
 - Note that some cities have its own local minimum wage and sick leave laws that are greater than those required by state law.
 - Employers are not required to make tax withholdings for independent contractors.
 - May incur serious fines by IRS or under state law if a worker who should be characterized as an employee is improperly characterized as an independent contractor.
- **An Independent Contractor is:**
 - Free from control.
 - Outside the company's usual course of business.
 - Generally available to provide services to other companies.

Employment Considerations: Tax Issues

- For “employees” you hire:
 - You must **obtain an EIN** for your business becoming an employer (see slide 7).
 - You must **withhold the employee’s share** of federal income tax, Social Security, and Medicare taxes and federal unemployment tax, along with state and local taxes, as applicable.
 - You must also **pay the business’s share of payroll taxes** including Social Security, Medicare taxes, and federal and state unemployment taxes, along with any other state and local requirements, as applicable.
- For “independent contractors” you engage:
 - No tax withholding requirements.
 - You must **report on Form 1099-NEC** any independent contractor compensation.

Any tax advice contained herein is not intended or written to be used, and cannot be used by any taxpayer, for the purposes of avoiding tax penalties.

Employment Considerations: Professional Employer Organization (PEO)

- PEO: takes on the responsibilities that would typically fall under a company's human resources function.
- Small business can benefit from utilizing a PEO for several reasons:
 - Payroll and tax compliance
 - Access to employee benefits
 - HR compliance and expertise
 - Administrative relief

Questions?

Please also feel free to email questions or suggestions for additional topics to: [EMAIL?]

Appendix A

Additional Small Business Basics

Licenses and Permits

- State-specific childcare licensing

- **New Mexico:** <https://www.nmececd.org/child-care-services/>
- **South Carolina:** <https://www.scchildcare.org/providers/licensing-requirements/>
- **Maryland:** <https://earlychildhood.marylandpublicschools.org/node/865>
- **Virginia:** <https://www.childcare.virginia.gov/providers/become-a-licensed-provider>
- **Texas:** <https://www.hhs.texas.gov/providers/protective-services-providers/child-care-regulation>
- **New York:** <https://ocfs.ny.gov/programs/childcare/providers/>

Business Bank Account

- Open a bank account for your business finances, keep it **completely separate** from your personal finances, and maintain excellent records
- **Benefits**
 - **Protection.** Limited personal liability protection by keeping your business funds separate from your personal funds.
 - **Professionalism.** Customers will be pay the business instead of directly to you.
 - **Credit Line.** Most business bank accounts provide an option for a line of credit for the business.
 - **Purchasing Power.** Credit card accounts can help your business make large startup purchases.

Business Bank Account (Cont'd)

- Documents needed to open a business bank account:
 - EIN or SSN (sole proprietorship)
 - Your business's formation documents
 - Ownership agreements
 - Business license or permit (if applicable)

Liability

- **Considerations relating to liability**

- Risk of exposure to lawsuits
- Type of contracts business will be entering into
- Whether company will borrow money
- Whether company will hire employees
- Whether customers will be coming to business establishment

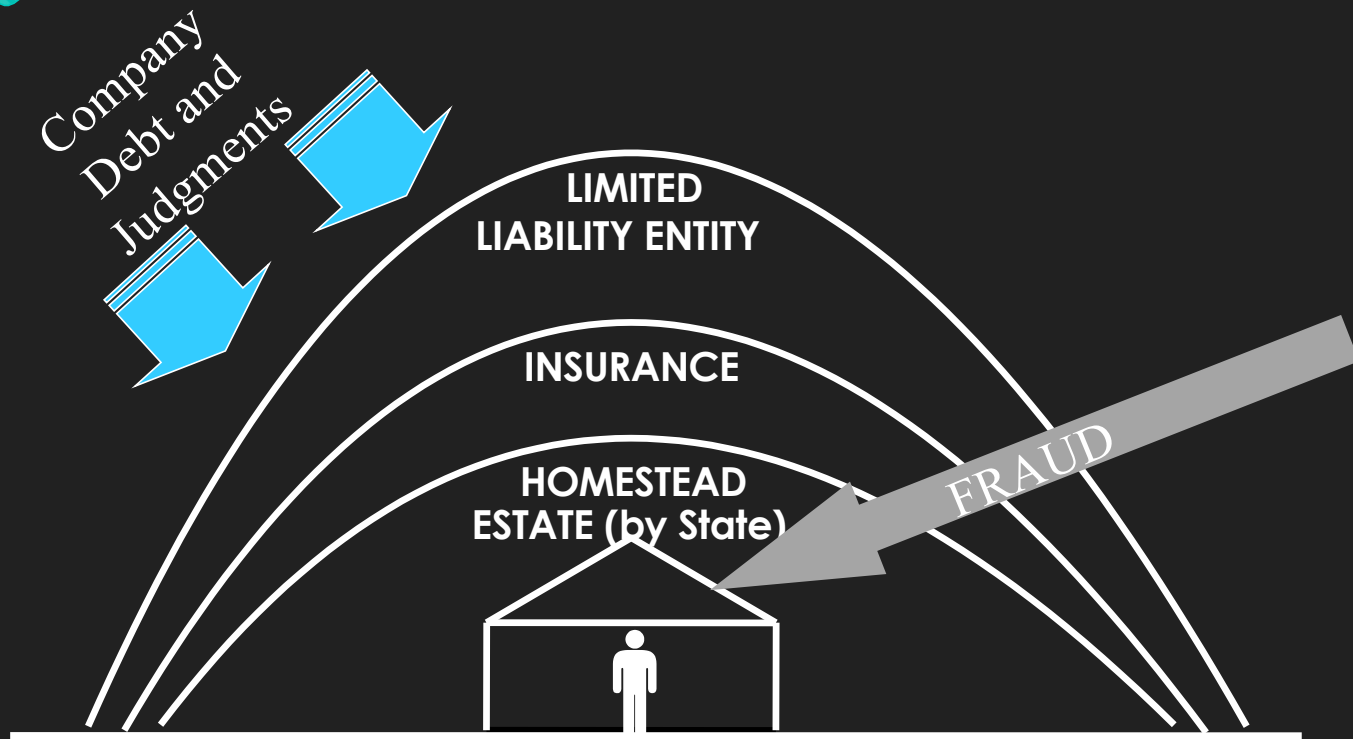
- **Limitation of Liability:**

- With some forms of entity, the entity and not you bears these risks

- **Other Mitigation Strategies:**

- Insurance
- Declaration of Homestead (State-specific protections, often require annual filings)

Liability Diagram



Insurance

- Identify any local regulations that might require your type of business to carry certain types of insurance
- **Basic Types of Business Insurance Coverage**
 - **Liability insurance** protects the business against third-party claims of bodily injury, property damage and personal injury such as defamation or false advertising
 - **Property insurance** covers the physical assets of the business, including office space, equipment and inventory
 - **Business interruption insurance** pays for the loss of income if the business is forced to close temporarily due to a covered event such as a natural disaster
 - **Product liability insurance** protects against claims that products of the business caused bodily injury or property damage.
 - **Employee practices liability insurance** covers claims from employees alleging discrimination, sexual harassment or other wrongful termination.
 - **Workers' compensation insurance** covers medical expenses and income replacement for employees who are injured on the job.

Insurance (Cont'd)

- **Considerations for insurance**

- Scalability. Can change as your business grows and its needs evolve
- Cost per employee
- Coverage
- Legal requirements
 - If the business has employees, need to have workers' compensation insurance
- Deductibles

Appendix B

State Specific Resources

New Mexico Small Business Resources

- **Business Support.** Early Childhood Education & Care Department's provides a platform to support child care providers
 - Provides information on compliance strategies and HR related matters
 - <https://www.nmececd.org/child-care-business-toolkit/0>
 - List of field offices: <https://www.nmececd.org/contact-us/>
- **Licensing.** New Mexico's Child Care Services Bureau administers the Child Care Assistance, Child Care Licensing, and Registered Child Care Home programs
 - Offers training, technical assistance, health and safety and monitoring
 - <https://www.nmececd.org/child-care-services/>
- **Additional Certification.** FOCUS – tiered quality rating and improvement system designed to improve early childhood programs in New Mexico
 - <https://www.nmececd.org/focus-tqris/>

New Mexico Small Business Resources

○ Taxes

- New tax credit policy affecting providers & parents – effective July 1, 2024
 - <https://www.nmcecd.org/2024/07/17/new-mexico-streamlines-child-care-assistance-program-with-grt-deduction-ensuring-cost-free-care-for-families/>
- Childcare Provider Tax Guidelines
 - <https://homegrownchildcare.org/wp-content/uploads/2023/01/Preparing-for-Tax-Season-Home-Based-Providers-2022-Update-Jan-2023.pdf>

○ Legal Assistance

- Economic Justice Clinic at the University of New Mexico School of Law
 - Provides transactional legal assistance to entrepreneurs on formation of business entities, compliance, governance, and contractual matters
 - <https://lawschool.unm.edu/clinic/sections/economic-justice-clinic.html>

○ Blog by Brightwheel

- Brightwheel is a provider of preschool software is designed to meet the needs of childcare centers
- <https://mybrightwheel.com/blog/how-to-start-a-daycare-in-new-mexico>

South Carolina Small Business Resources

- **South Carolina Child Care Resource and Referral Network**
 - Providing free, statewide services to early childhood programs, including training, technical assistance (TA) and coaching
 - <https://www.sc-ccrr.org/>
- **SC Child Care Early Care and Education**, a division of the South Carolina Department of Social Services (DSS).
 - Provides training & career development resources, emergency numbers, safety guidelines, frequently used forms and links to state and national resources
 - <https://www.scchildcare.org/providers/>

South Carolina Small Business Resources

○ Funding

- SC DSS is offering a one-time Materials, Health & Safety Grant for child care providers.
- <https://dss.sc.gov/news/dss-announces-latest-grant-program-for-child-care-providers/>

○ Legal Assistance

- Provides resources and networking opportunities for South Carolina family and small business owners and has a mobile law office (a bus)
- https://sc.edu/study/colleges_schools/law/centers/family_small_business/index.php

○ Blog by Brightwheel

- Brightwheel is a provider of preschool software is designed to meet the needs of childcare centers
- <https://mybrightwheel.com/blog/how-to-start-a-daycare-in-south-carolina>

Maryland Small Business Resources

- **Family Child Care Home Registration Packet**

- <https://earlychildhood.marylandpublicschools.org/system/files/filedepot/3/applicationpacketfamilychildcarehomeregistration.pdf>

- **Maryland Family Network (Non-Profit)**

- Offer state-of-the-art training, mentoring, coaching, and other supports to Maryland's dedicated child care workforce
- <https://www.marylandfamilynetwork.org/for-providers>

- **Funding**

- No-interest loans for capital expenses to child care providers who participate in the State Department of Education's Child Care Scholarship Program
 - <https://commerce.maryland.gov/fund/child-care-capital-support-revolving-loan-fund>
- Applications for up to \$500 grant for childcare providers every quarter
 - <https://www.childcarecompany.org/grants.html>

- **Blog by Brightwheel**

- Brightwheel is a provider of preschool software is designed to meet the needs of childcare centers
- <https://mybrightwheel.com/blog/how-to-start-a-daycare-in-maryland>

Virginia Small Business Resources

- **Licensing**

- **ChildCareVA (Virginia DoE)**. Provides guidance on licensing for child care centers
 - <https://www.childcare.virginia.gov/providers/become-a-licensed-provider>
 - <https://www.childcare.virginia.gov/providers/resources-for-providers>

- **Law & Business**

- **University of Virginia School of Law Community Organization and Social Enterprise Clinic**. Teams of law students and professors assist startups, developing community organizations and social enterprises execute their business strategies and draft associated legal documents
 - <https://www.law.virginia.edu/clinics/community-organization-and-social-enterprise-clinic>
- **Virginia Small Business Development Center (SBDC)**. Has offices across Virginia for providing professional business advising, training, and business resources
 - <https://www.virginiasbdc.org/>
- **Women's Business Center (WBC) of Northern Virginia**. Part of a national network of over 100 educational centers throughout the United States which are designed to empower women to achieve small business success and provides free and confidential business counseling
 - **WBC at George Mason University**. [https://cbponline.org/who-are/who-serve/wbc/#:~:text=Women%27s%20Business%20Center%20\(WBC\)%20of,share%20that%20success%20with%20others](https://cbponline.org/who-are/who-serve/wbc/#:~:text=Women%27s%20Business%20Center%20(WBC)%20of,share%20that%20success%20with%20others)
 - **WBC at Old Dominion University**. <https://ww1.odu.edu/ie/wbc>

Texas Small Business Resources

○ Legal

- **University of Texas at Austin School of Law Entrepreneurship and Community Development Clinic.** Provides transactional business law representation to small businesses, including assistance with choice of entity decisions and drafting and reviewing contracts.
 - <https://law.utexas.edu/clinics/ecdc/>
- **Southern Methodist University Dedman School of Law Small Business and Trademark Clinic.** Assists small businesses with various legal matters, including preparing necessary legal documents
 - <https://www.smu.edu/law/clinics/small-business-clinic-trademark-clinic>

○ Blog by Brightwheel

- Brightwheel is a provider of preschool software is designed to meet the needs of childcare centers
- <https://mybrightwheel.com/blog/how-to-start-a-daycare-in-texas>

Texas Small Business Resources

- **Business**

- **Texas Office of Economic Development – Small Business Assistance.** Assists small and medium Texas businesses through advocacy, entrepreneurial support, education and technical assistance.
 - <https://gov.texas.gov/business/page/small-business>
- **Texas Small Business Development Center (SBDC).** Provides business advising, access to training, tools and resources to help small businesses.
 - **Houston:** <https://www.sbdc.uh.edu/sbdc/default.asp>
 - **Dallas:** <https://ntsbdc.org/>
 - **San Antonio:** <https://txsbdc.org/>

New York Small Business Resources

- **New York State Office of Children and Family Services.** Provides general information on how to start a child care program in New York State
 - <https://ocfs.ny.gov/programs/childcare/providers/>
- **Business**
 - **SCORENYC.** Helps women grow their small businesses by providing mentoring, networking, education and valuable business resources
 - <https://nywib.org/>
 - **Queens Economic Development Corporation.** Provides assistance for small businesses, with an emphasis on supporting those of low-to-moderate income, women, minorities, and immigrants
 - <https://queensny.org/qedc/about/>

New York Small Business Resources

○ Legal

- **New York Law School Nonprofit and Small Business Clinic.** Provides transactional legal assistance to nonprofit organizations and small businesses
 - <https://www.nyls.edu/nonprofit-and-small-business-clinic/>
- **Columbia Law Entrepreneurship and Community Development Clinic.** Represents the start-ups of low- and moderate-income entrepreneurs
 - <https://www.law.columbia.edu/academics/experiential/clinics/entrepreneurship-and-community-development-clinic>
- **Fordham Law Entrepreneurial Law Clinic.** Assists early stage, traditional start-ups and social enterprises with a range of legal issues
 - <https://www.fordham.edu/school-of-law/experiential-education/clinics/entrepreneurial-law>
- **New York University Law Business Transactions Clinic.** Provides free business, transactional and advisory legal services to under-resourced entrepreneurs and small businesses that operate in areas of concern to the public
 - <https://www.law.nyu.edu/academics/clinics/business>