



L A U R A A . D A V I S
L A W O F F I C E S

NEW BUSINESS FORMATION WORKSHEET ^{1/}

I. GENERAL INFORMATION

A. Name of Business:

First Preference: _____

Second Preference: _____

- ___ 1. Will all of the participants' names be used? _____
- ___ 2. Will a fictitious business name be used? _____
- ___ 3. If one or more participants withdraw and the business continues, what name will be used?

B. Term of Entity

- ___ 1. Will there be a specified term of the venture? If so, how long? _____
- ___ 2. What specific events will cause termination? _____

C. Principal Offices

- ___ 1. Where will the business' principal business office be located (Street, City, County)?

D. Officers:

- ___ 1. President: _____
- ___ 2. Vice President (Optional): _____
- ___ 3. Secretary: _____
- ___ 4. Treasurer/CFO: _____
- ___ 5. Others: _____

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E. Directors:

- ___ 1. Number: _____
- ___ 2. Term of Office: _____

F. Designated Agents:

- ___ 1. Who will be the company's Agent for Service of Process in California (Name, Street Address, City, County)? _____

- ___ 2. Which partner will be designated the initial Tax Matters Partner? _____

G. Expulsion

- ___ 1. On what grounds can a owner be expelled? _____
- ___ 2. What notice is required? _____
- ___ 3. What vote is required? _____
- ___ 4. On what terms will the expelled owner's interest in the business be liquidated? _____

H. Limited Liability Partnerships, or Professional Corporations ONLY

- ___ 1. Are existing practices being merged? ___ If so, on what terms? _____
- ___ 2. What licenses are needed for the proposed practice? _____ Who must hold a license? _____
- ___ 3. How are fees to be set? _____
- ___ 4. How will clients and duties to clients be allocated? _____
- ___ 5. Will there be non-owner associates? _____ If so, can they eventually become partners? _____ What are the requirements or procedures? _____

II. INFORMATION ABOUT PARTICIPANTS, THEIR ROLES AND INTERESTS IN THE BUSINESS

A. Identity of Participants

- ___ 1. What is the name, address, phone number, email address, business or profession, age, and marital status of each participant? (Use table below)
- ___ 2. What role will each participant play in the business? Who will be owners? Who will be key employees? (Use table below)
- ___ 3. What relationships (family, business, or financial) exist outside the proposed business among the participants?
- ___ 4. Are all participants U.S. citizens? If not, please advise country of citizenship (Use table below)

Name & Address, Phone and Email of Participant <small>(include County & State of residence, and Citizenship)</small>	Business/ Profession	Age	Marital Status/ Name of Spouse	Role(s) <small>(i.e. General Participant? Limited Participant? Employee?)</small>	Relationship to Other Participants

(Please attached additional sheets if necessary)

- 5. In which state(s) does the company expect to offer or sell its ownership interests?

6. For participants other than natural persons (e.g., corporations, other partnerships, limited liability companies), what is each participant's form of organization? Who are the persons responsible for management and control? What is the fiscal year?

7. Legal advisors (Name, Firm, Address, Phone, Fax, Email)

8. Accountant contact information (Name, Firm, Address, Phone, Fax, Email)

9. Banking Institution contact information (Name, Branch Address, Contact Person, Phone, Fax, Email)

10. Insurance carriers' contact information (Name, Branch Address, Contact Person, Phone, Fax, Email)

11. Promoters (Name, Address, Phone, Fax, Email)

B. Anticipated Capital Contributions or Loans to Enterprise (See table on next page)

___ 1. If there is an existing business, how is it capitalized? _____
Who are the owners, and what are their proportional shares of ownership? _____

___ 2. Who will contribute capital on formation, and in what amounts? (See table)

___ (a) Does anyone expect to contribute services for a capital interest? If so, are they past, present (organizational), or proposed future services?

___ (b) Is it intended that any ownership interest be issued in exchange for promotional services? _____

___ (c) Will any party contribute property? What kind of property (e.g., real property, tangible or intangible personal property, existing business operations, goodwill)? What is the contributing party's cost basis in the property? What is the current fair market value of the property?

Name of Owner	Type of Capital Contribution: Cash? Property? Services?	Value of assets contributed	Income Tax basis of property contributed	If services, were they past, present or future services?	Percentage Ownership in Business

- ___ 3. What ratio of debt and equity is desirable or necessary?
- ___ (a) How much total cash will be contributed? _____
What will be the ratio of debt to equity? _____
- ___ (b) What is the minimum capitalization required to begin conducting the proposed business? _____
How long will it be before cash is generated from operations? _____
How long before the business breaks even? _____
How long before it makes a profit? _____
- ___ 4. Would sufficient capital be available from borrowing if the business does not incorporate?

- ___ 5. Who, if anyone (or any entity) will be making loans to the enterprise?
_____ How much? _____
Loan terms (interest rate, payment schedule, due date)

- ___ 6. What provisions are to be made concerning future capitalization?
- ___ (a) What right to contribute future capital will the participants be given? _____
- ___ (b) What obligation to contribute capital will be imposed on the participants?

- ___ (c) What mechanisms, if any, are desired for obtaining additional outside equity capital?

- ___ (d) What provisions or restrictions are to be imposed on future borrowings?

C. Management and Control

- ___ 1. Which participants are to manage the business and by what means?

- ___ (a) Will day-to-day management of the business be separated from long-range policy-making decisions and decisions on major transactions?

- ___ (b) Will the participants have one vote per participant, or will voting power be proportional to the partners' respective ownership interests?

- ___ (c) Will any participant have veto power? _____
Over what issues? _____
Any circumstances requiring special votes? _____
- ___ 2. If changes in control become necessary or desirable, how will these changes be effected?
- ___ (a) How will day-to-day management duties be shifted, if at all?

- ___ (b) How will any impasse on a major issue be resolved? _____
- ___ 3. Are the participants willing (and can they be relied upon) to observe the formalities of dealing with the business as a separate entity (such as record maintenance, regular meetings, separate bank accounts, etc.)?

D. Authority To Bind

- ___ 1. Is it necessary or desirable to limit the authority of any single participant, or of all participants?

- ___ 2. To what extent will each partner be able to bind the entire venture as to third parties?

- ___ 3. On what matters must special authority to bind the business entity be obtained?

E. Transferability of Ownership Interests

- ___ 1. What limitations on transferability are considered necessary or desirable? _____
- ___ 2. Would relatively free transferability potentially disrupt the business? _____
- ___ 3. Is a "right of first refusal" desirable? _____
Should the right be given to the entity or to the other owners individually? _____

- ___ 4. Are there one or more classes of person to whom interests may be transferred without restriction (e.g., existing owners, spouses of owners, children of owners, trusts for the benefit of owners/spouses/children)? _____

- ___ 5. Is there expected to be a market for the interests? _____
If so, will marketability depend on continued participation of a few key personnel?

- ___ 6. Is the business intended to survive the death, retirement or other withdrawal of any participant?

- ___ 7 How will an interest be disposed of at the participant's death, disability, or retirement?

F. Duties of Participants

- ___ 1. What are the specific duties of each participant? _____
- ___ 2. How much time will each participant be required to devote to the business?

- ___ 3. To what extent may they engage in activities outside the business? _____
In areas related or unrelated to the business? _____

G. Distributions and Compensation to Participants

- ___ 1. What share of the profits, losses, or distributions from the business will each participant have? _____
 - ___ (a) Will certain types of profits (i.e., profits from certain activities) be distributed differently from other profits? _____
 - ___ (b) Will the participants' respective rights to receive shares of the profits change during the lifetime of the business? _____
On what basis? _____
- ___ 2. Do the participants intend to allow earnings to accumulate, or will they withdraw profits of the business as they are earned? _____
- ___ 3. Will some participants receive salaries or guaranteed payments? _____
How will such amounts be determined? _____
- ___ 4. Will some participants need monthly or weekly draws on profits, or will irregular, quarterly, or annual draws suffice? _____
- ___ 5. What income will each participant have from activities outside the proposed business?

What is the tax status of such income? _____
- ___ 6. What fringe benefits are to be available to owners and employees? _____
- ___ 7. Aside from distributions from the business, what other sources of income do the participants have? _____

Are these other income sources sufficient to support the participants in their accustomed manner of living? _____

Do the participants have sufficient income and savings to cover their anticipated medical expenses? _____

Will fringe benefits such as pension and profit sharing plans, sick pay, medical coverage, and disability or other group insurance, be an important consideration to the participants? _____

I. Long-Range Planning Issues

___ 1. What is the desired effect on the enterprise (e.g., dissolution, continuation, buy-out) when a partner withdraws, retires, becomes bankrupt, becomes disabled, or dies? _____

___ (a) Will there be a buy-out agreement? _____

If so, will participation be voluntary or mandatory? _____

How will the value of the selling partner's interest be determined (e.g., book value of assets, appraisal?) _____

Will valuation adjustments (e.g., lack of marketability discounts or control premiums) be used in determining the purchase price? _____

___ (b) Will it be necessary to provide funding for a buy-out agreement? _____

___ 2. Are additional participants expected to join? _____

___ 3. Do age, health, or any other factors make any participant's departure from the business probable within the foreseeable future? _____

___ 4. Is there a present intention to sell the business after it has been developed? _____

III. INFORMATION ABOUT THE BUSINESS

A. General Nature of Business

- ___ 1. In what state(s), county(ies), and/or foreign countries will the company be doing business?

- ___ 2. When is the business expected to commence? _____
- ___ 3. Has the business been conducted by the participants in the past? If so, under what form and by whom? _____
Was there an EIN for the business _____ If so, please provide _____
Does the new business wish to succeed to the goodwill, name, or trademark of the former business? _____
- ___ 4. Is the business divisible into industry or market segments? _____
If so, is it desirable to insulate one or more segments from the risks arising from others?

Will the capital or income of one segment be needed to develop or operate other segments? _____

- ___ 5. Is it anticipated that new lines of business will be developed in the future? _____

B. Assets of Business

- ___ 1. What will be the nature of the venture's assets? _____
- ___ 2. Will the business involve confidential information or proprietary processes or products? If so:
___ (a) Who will hold title to proprietary products or processes (i) owned at the outset, or (ii) developed during the lifetime of the enterprise? _____
___ (b) How will the use or ownership of proprietary items be restricted?

___ (c) Are trademarks, trade names, patents, or copyrights involved in the business? If so, who is or will be the owner of each? _____
___ (d) To what extent are confidential customer or client lists and relationships material to the success of the enterprise? _____
- ___ 3. Will tangible personal property be transferred? _____
- ___ 4. Will the transfer of any lease or other contract be made? _____

C. Regulation

- ___ 1. Is this type of business subject to regulations that restrict its form of organization or the persons who can be owners? _____
- ___ 2. Are permits, licenses, or other certifications or qualifications required to conduct the business? _____ If so, please identify the required item(s) and whether any applications been made. _____

- ___ 3. Are the individual participants required to be separately licensed, certified, or qualified? If so, please identify which participant(s) and the qualifications required. _____

- ___ 4. Do any regulatory provisions applicable to the business either restrict who may be shareholders (e.g. alcoholic beverage licenses) or require consent to issue shares (e.g. employment agencies)?

D. Capitalization Issues

- ___ 1. What are the initial capital needs of the business? _____
- ___ 2. What are the foreseeable future capital needs of the business? _____
- ___ (a) Will the business be able to borrow? Will personal guaranties of the owners be required? _____
- ___ (b) Will the business require additional equity capital? _____
- ___ (c) What effect will securities laws have on the cost and availability of future capital? _____

E. Risks

- ___ 1. What are the risks of tort liability (e.g., personal injury) or other litigation-related risks? _____
Are such risks insurable? _____ If so, at what cost? _____
- ___ 2. What risks of loss are inherent in the operation of the business (i.e., is it inherently speculative)? _____
- ___ 3. Do the owners need or desire to insulate their personal assets from the risks and obligations of the business? _____

F. Anticipated Operating Results

- ___ 1. Is the business expected to generate operating losses initially? _____ If so, for how long? _____
- ___ 2. Will business operations require the retention of capital, or is distribution of substantially all earnings contemplated? _____
- ___ 3. What are the principal sources of anticipated income (or loss) and what will be the character of such income (or loss) for tax purposes? _____

G. Administrative Issues

- ___ 1. Is relative cost or complexity of the form of business organization a significant disadvantage? _____
- ___ 2. Will the business operate on the cash or accrual basis? _____
- ___ 3. What fiscal year is desired? _____
- ___ 4. When will regular accountings be done? _____
- ___ (a) What reports will be provided to owners? _____
- ___ (b) Will financial statements be prepared? _____ Will they be audited? _____

H. Management

- ___ 1. Which is preferable: (a) centralized management, or (b) management by consensus or committee? _____
- ___ 2. What checks and balances will be required (a) in day-to-day management, and (b) in broad policy making? _____
- ___ 3. Do the participants wish to minimize disclosure? _____

I. Long-Range Business Planning

- ___ 1. Desired continuity of the business
 - ___ (a) Is the business expected to have indefinite duration? If not, what is its anticipated term? _____
 - ___ (b) Do the partners anticipate selling the business as a going concern after developing its operations? _____
- ___ 2. To what extent, if any, are particular individuals essential to the continuance of the business?
 - ___ (a) Are one or more of the participants of such an age or infirmity as to require specific plans for their absence? _____
 - ___ (b) Is key-man life insurance necessary or desirable? _____
- ___ 3. Is a noncompetition agreement desirable with respect to any of the participants? _____