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YOUR TRUSTED LEGAL COUNSELOR



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SMALL BUSINESS SEPTEMBER

Written by Francine D. Ward

Starting or expanding a business can be an exciting time. You are filled with hope and the possibility of realizing a dream. For some people, it might be a lifelong dream. For others, it might be a brand new idea. Regardless, while that new business may be exciting, getting it off the ground can also be stressful, especially if you take a wrong turn. The choices you make, every step of the way, will determine the success or failure of your venture.

Many people invest their life savings to pursue their dream of starting a business. Some people also seek financing through banks, friends, and family. Since loans need to be repaid, setting up your business for success is critical. With success you have the ability to pay off your creditors.

One of the first questions to be considered, when starting a business, is what type of business will it be. There are a variety of forms to consider. Recently a client came to me and asked, "Should I form a limited liability company (LLC)?" She said, her friend mentioned that an LLC is the best type of business entity.

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My response to her was, 'No, LLC's are not the best business entity for everyone.' This is One reason it's a bad idea to get legal advice from non-lawyers and from lawyers who don't understand business law. A little incorrect knowledge can get you into trouble and there would be no one to blame. The non-informed tend to think that one size fits all. That is not true. There are many factors to take into account when choosing a business entity, e.g., the type of business you will have, will you run it by yourself, will you have investors, how much control do you want, how much will it cost to start your business, in what state will you form your business, what are the requirements for maintaining it, will there be protection from liability, what about taxes, will you have intellectual property? These are just some of the questions you will need to consider.

The first question is what type of entity should you form? The answer to that question will be determined by many of the answers to the above questions. Here are some of the entity types to consider:

- C-corporation
- Limited Liability Company
- Limited Liability Partnership
- General Partnership
- Limited Partnership
- Sole Proprietorship
- Benefit Corporation (here are some of the states that acknowledge benefit corporation status CA, HI, IL, MD, MA, LA, NJ, NY, PA, SC, VA, VT)
- Flexible (Social) Purpose Corporation (in CA only)

Charitable Nonprofit (with a variety of tax exemptions, e.g., 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7))

Once you decide on the what type of business to form, you will then turn your attention to the following:

- In what state will you form or organize your business? Some states are more corporate friendly than others, e.g., Delaware, Wyoming, and Nevada. But, if you don't reside in one of those states, you may have to also pay taxes in your home state. That can be an unexpected additional cost.
- What filings will you need to make? What are the cost to file in the state of your choice? You will likely need an agent to accept service of process. What will that cost be?
- Will you need a board of directors and who will they be?



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To some people these may seem like simple questions, but to others they may appear daunting. Regardless, they are important to consider before you embark on starting a business.

As a new business you will also need an assortment of contracts. Certain agreements you should have before you get started, such as entity-related agreements. They may include bylaws and shareholder agreements if you are forming a corporation. If you are organizing a limited liability company, you will need an operating agreement. If want to loosely form an entity with partners, having a strong partnership agreement in place will help you avoid many heartaches and headaches down the road. If you are looking to hire someone to design and develop your website, take marketing photographs, design your business logo, or help you come up with a name for your business, having well-drafted work for hire and independent contract assignment agreements are essential. The key is to have those contracts in place BEFORE you hire someone to create your content.

Also before you allow anyone to use your valuable intellectual property (IP), a must-have is a well-drafted licensing agreement. And yes, as to IP, don't put off protecting it. If you wait to protect it until after developing your awesome marketing plan, you may find someone has beat you to the punch. While you may have recourse, your options will be limited. Don't wait!

One more thing, don't forget about those all important website agreements e.g., terms of use and privacy policies. Make no mistake about it, ALL businesses have intellectual property law issues, from protecting your content, protecting your brand, protecting and developing your inventions; to ensuring that your contracts do everything you want them to do.



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SMALL BUSINESS MISTAKES TO WATCH OUT FOR

Written by Francine D. Ward

Contracts and agreements are an important part of doing business. One common mistake small business owners and entrepreneurs make is signing agreements (or any document) without first reading them carefully.

The second big mistake is that even if they read the contract, they don't always understand what they read. Yet, they sign it anyway. Is that crazy? Why would you sign something that could make you liable, without knowing what you would be liable for? Plus, by signing agreements you haven't read nor understand, you could impact your valuable intellectual property rights.

Another mistake often made is using templates without vetting them. Contract law is state law. Therefore, not all agreements are created equal ESPECIALLY if they are on the Internet. Since you have no idea where the agreement originated, investing in competent legal counsel can save you money and a headache in the long run. It's cheap and easy to download a contract from the Internet or piece together parts of a document someone gave you. It may seem like a seemingly innocent act. Operative word is "seemingly."

Make no mistake about it, I understand why people choose cheap over quality. Lawyers can be expensive. And, just because you paid good money for something doesn't mean you will receive a quality product. That's where doing your research comes into play. Read reviews, get referrals, ask questions. That is the responsible thing to do.

Lastly, another mistake is using old and outdated agreements, year after year. Like software and computers, contracts become outdated and unenforceable. As the law changes, so does the need for a new, updated, and customized agreement. Consider a yearly IP checkup, just as you would your annual physical checkup.



Why You Need to Hire a Lawyer to create your Contract

Written by Francine D. Ward

Lawsuits are tedious, costly, and can damage a small business beyond repair. This is why it is worth the time to negotiate contracts through the proper procedures. A competent intellectual property lawyer or business attorney can help you navigate contracts to ensure they are skillfully drafted and executed. As an online business owner, you will likely have multiple contracts, and here are some key reasons why you should have a competent attorney review them before you sign on the dotted line:

Negotiations.

Inexperienced (and not so inexperienced) business owners often fear negotiations. Sometimes that's because they don't know how to negotiate, sometimes it's because they are intimidated by the other side, and sometimes they erroneously believe there is no room for negotiation. For the record, all contracts are negotiable. It just depends in how much leverage you have.

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Predicting the Future

A competent attorney can review the terms of the contract and identify which terms may cause you difficulty in the future. This can not only alert you to potential issues, but can save you money. The cost of litigation and the attendant legal fees can be prohibitive.

Understanding the Fine Print

Reading contracts can be tedious for some lawyers. For a layperson not trained in the law it can really be challenging, especially the tiny, often complicated, fine print. Sometimes just having someone explain what it all means can make the difference.

Unenforceable Terms

Because contract law is state specific, what might be enforceable in Maine, might not be enforceable in California, New York, Florida, or somewhere else. Understanding the law in your jurisdiction is critical to your success.

Get it in Writing.

Yes, some business owners sign agreements without reading and/or aunderstanding what they read. An equally important mishaps is entering into business relationships with any written agreement. It seems hard to believe that savvy business owners would enter into a relationship without a signed agreement. But it happens ALL THE TIME. Don't let that be you. There are many good reasons for having signed written agreements. The most important is to ensure that everyone is on the same page as to expectations.

Again, lawsuits are time consumin, tedious, and costly. They can also damage a business beyond repair. The initial financial investment you make to secure a valid and enforceable contract can be well worth the outlay of cash..



Give Me a Call

Ensuring your loved ones are cared for after you are gone is your top priority. My priority is to assist in crafting a plan that will ensure continued support and prosperity for your loved ones. Call me today to schedule your appointment.



BE CAREFUL WHAT YOU SIGN

A friend recently discovered the importance of reading and understanding documents before signing them. Unfortunately, she learned the VERY hard way. Let's call her Marian.

Marian wrote a screenplay. Then, without reading and/or understanding the piece of paper she was asked to sign, Marian signed away her rights. The document she signed was an assignment agreement. Unlike a license, an assignment gives away all your rights. Unbeknownst to Marian, she transferred the rights to her work over to her new literary agent, who immediately registered it with the US Copyright Office. By the time Marian realized what had happened, it was too late. Marian's agent was unwilling to sign over the rights back to her, leaving Marian with few options—an expensive legal remedy being one of them.

You might be thinking, why didn't I help my friend and tell her not to sign it before reading it? And my reply is, that I did. But she chose to do what she wanted and ignored my counsel. I have learned that when it comes to friends and legal issues, I tread lightly. We are all adults; you can take a thirsty adult to water, but you cannot force them to drink it. My clients pay for legal advice, and most of them take it. Not so much with my friends.

Sometimes we have to make poor choices in order to learn the hard lessons. Do you learn from your mistakes? If not, why not? What does it take to get you to drink clean, fresh, sparkling water when you are thirsty?

"Unbeknownst to Marian, she accidentally and completely transferred the rights to her work over to her new agent and business partner, who immediately registered it with the US Copyright Office"





Written by Francine D. Ward

On the plane to Hawaii, I sat next to a man wearing a knit skullcap, sweatsuit, sneakers, and dark glasses. As I do whenever someone sits next to me, I said hello. But then, I immediately thought, "He must be one of those hip-hoppers." Because of my innate belief about hip-hoppers, I formed a negative opinion. I assumed he wasn't smart, was into drugs, and denigrated women.

The attendant offered dessert and an after-dinner drink ninety minutes into the flight. He surveyed his choices: hot fudge sundae, cheesecake, or amaretto. Laughingly he said, "I'll pass, thanks; I'm on my way to work." I thought, "On his way to work from San Francisco to Hawaii, and no cheesecake or sundae? What could he be doing?" Curious about what he meant, I asked, "What do you do for a living?"

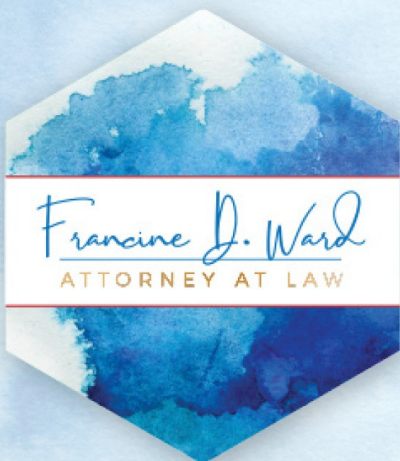
"I'm a mariner," he said. "What's that?" I asked.

For the next thirty minutes, I was fascinated. His stories of living on the water for four months at a time were geographical history lessons. As I listened, in the back of my mind I was embarrassed at how I had prejudged him.

How often do I make assumptions about people based on how they look, how they dress, the car they drive, where they live, who they love, where they went to school, the color of their skin, their familial associations, or their religious choices?"

Judging other people feeds into beliefs I have about myself e.g., that I'm better than you or worse than you. And when I am judging you, I don't have to look at myself. The focus is on what they're doing, not what I'm doing. Finally, it supports my thinking that I can't possibly have anything in common with people I perceive as different because I'm not like them. What a great way to keep my world small. How often do you prejudge others?

Some people believe there are benefits to being judgmental. Perhaps, but there's also a high price to pay. Your life becomes small and how you see the world becomes narrow. Also, judgment breeds anger and anger is ugly.



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