



BUSINESS LAW
GROUP

The Complete Guide to

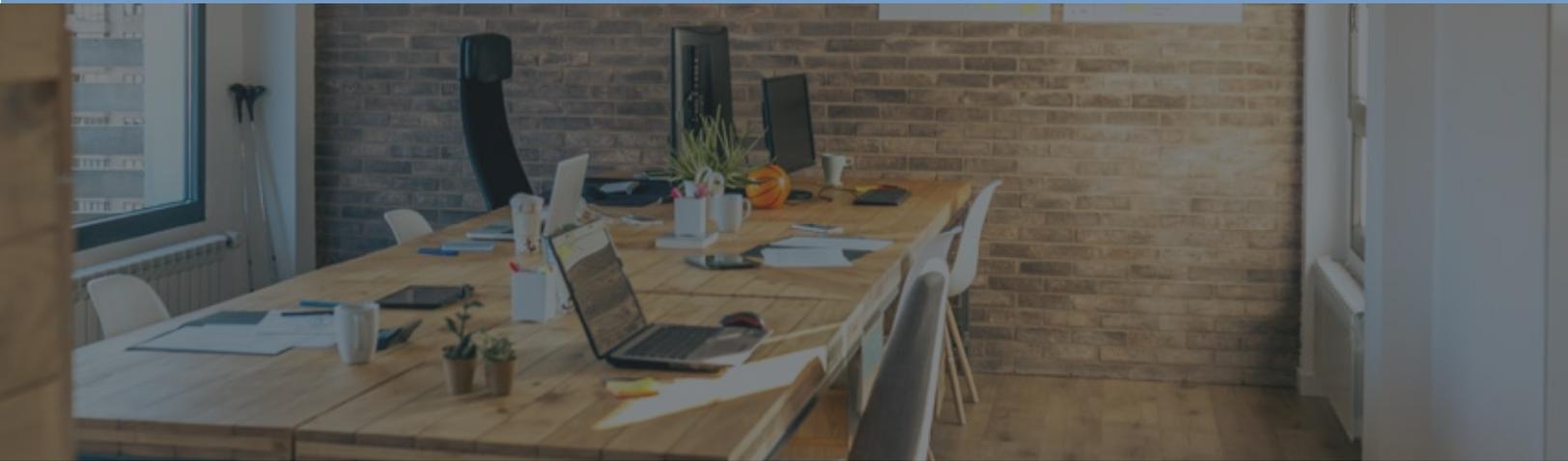
POSITIONING YOUR BUSINESS AND AVOIDING LEGAL PROBLEMS



www.lawgroup.biz

CONTENTS

Introduction	3
Creating a Business: The Ins and Outs of Corporate Formation	4
Limited Liability Companies	5
Sole Proprietorships	6
Partnerships	6
Corporations	7
Buying or Selling a Business	8
Buying a Business	8
Selling Your Business	9
Protecting Your Assets Through Business Contracts	10
Working With an Attorney on Contracts	11
Signing a Commercial Lease That Works in Your Favor	12
Before You Sign a Commercial Lease...	12
Common Issues That Should Be Addressed in Your Commercial Lease	13
Buying Commercial Real Estate	14
What Goes Into a Commercial Real Estate Purchase?	14
Familiarizing Yourself With Employment Law	16
Employer Representation	16
You Don't Have to Do This Alone	17



INTRODUCTION

As an entrepreneur, you know that you may face challenges when it comes to starting, running and protecting your business – and that the best way to position your company and avoid legal trouble is to get informed. This guide explains how you can do what it takes to set your business up for success, covering the basics on:

- Forming a business
- Buying or selling a business
- Setting up business contracts
- Undertaking commercial leases and purchasing real estate
- Following employment law to the letter

You don't have to navigate these uncharted waters alone. Business Law Group is here to answer your questions, provide you with the legal guidance you need and help preserve your rights as a business owner. You don't know what you don't know. But that's why we're here. Call us at 504-934-2020 or [book a quick consult here](#).

Best,

Amanda Butler Schley

[Business Law Group](#)

3432 Chestnut Street

New Orleans, LA 70115

504-934-2020



Creating a Business:

THE INS AND OUTS OF CORPORATE FORMATION

As an entrepreneur, you know that you may face challenges when it comes to starting, running and protecting your business – and that the best way to position your company and avoid legal trouble is to get informed. This guide explains how you can do what it takes to set your business up for success, covering the basics on:

- Limited Liability Companies, or LLCs
- LLCs taxed as S Corporations or C Corporations
- Sole proprietorships
- Partnerships
- Corporations
- S Corporations

LIMITED LIABILITY COMPANIES

A limited liability company, or LLC, is one of the most popular types of business formation. These businesses generally shield their owners (called members) from personal financial liability by limiting a member's liability to his or her investment in the LLC. There are some instances, however, where this liability shield – called the corporate veil – is pierced and a court can reach through to garnish the assets of the owners. LLCs are typically easy to set up and register, and for tax purposes, they may be treated like sole proprietorships, as partnerships, or as corporations. As a pass-through entity (unless it chooses tax treatment as a “regular” or C corporation), all of an LLC's profits and losses pass through the LLC to its members. As with a proprietorship or partnership, each individual member reports the profits and losses on his or her federal tax return. This avoids the double taxation to which a regular corporation and its owners are subjected.

LIMITED LIABILITY COMPANIES TAXED AS S CORPORATIONS OR A C CORPORATION

For federal income tax purposes, there is no such thing as being taxed as an LLC. Instead, an LLC can be taxed like a sole proprietorship, a partnership, a C corporation or—if it qualifies—an S corporation. Although business owners don't often choose to be taxed like an S corporation, it is an attractive option because for some LLCs and their owners, it may provide tax savings.

SOLE PROPRIETORSHIPS

A sole proprietor is an individual who owns an unincorporated business on his or her own. The owner pays personal income taxes on the profits that the company brings in. These are often the simplest types of business structures, but they're definitely not right for everyone. That's because all liability for the company falls directly on the owner.

PARTNERSHIPS

Partnerships are relationships between two or more people to do business or engage in trade. Each person in the partnership contributes money, skill or labor, and each person shares in the business's profits and loss. The partners are, for the most part, all personally liable for business debt (including court judgments). It is possible to set up a limited liability partnership, which is similar – but not identical to – a general partnership.

CORPORATIONS

A corporation is an incorporated entity that limits its owners' liability. More than one person owns a corporation – they're called shareholders – and the assets and liabilities belong to the corporation, not the individuals operating it. A special type of corporation, called an S corporation, is a corporation that passes income, losses, deductions and credits through to their shareholders.

Your attorney can help you determine which type of business entity is best for you.





BUYING OR SELLING A BUSINESS

Buying a business can be a risky proposition – and not just when you’re thinking about profits and loss. Selling one can be a legal minefield, too; you’ll be responsible for severing your ties to the company so that its new owner cannot hold you liable for issues that arise in the future.

BUYING A BUSINESS

When you find a business you want to buy, you’ll need to do a significant amount of homework. You need to familiarize yourself with what type of entity it is, find out how much it’s really worth, and choose a deal structure that works for you. You’ll also have to negotiate your purchase agreement and obtain all the approvals necessary to close the transaction. Most people choose to work with an attorney throughout this process to ensure that they’re not making serious missteps that can impact the future of the business.

A Word on Deal Structures

There are three common ways to buy a business: mergers, stock purchases, and asset purchases. Each has its own tax consequences and liabilities, so you should consult with an attorney, a financial professional and a tax adviser before you settle on a deal structure for the acquisition.

SELLING YOUR BUSINESS

Selling your business is an intensive process, and it requires you to determine a realistic price, deal with the tax consequences of the sale, and negotiating the deal. Though it's often easier to sell a business than it is to buy one, having an attorney in your corner is essential. Your lawyer will:

- Draft, review and modify contracts on your behalf
- Streamline the transaction to help you finalize the sale as quickly as possible
- Negotiate a fair price with the buyer
- Provide you with legal counsel every step of the way
- Advise you on the tax implications of each buying arrangement



PROTECTING YOUR ASSETS THROUGH BUSINESS CONTRACTS

The business agreements and contracts your company uses to operate must be enforceable – otherwise, there’s no point to having them. Before you sign any contract, it’s essential that you understand it completely and ensure that it doesn’t have any provisions or mistakes that could cost you in the future. That includes:

- Service contracts, which you may enter into with vendors or customers
- Commercial lease agreements, which are covered in the following section
- Employment agreements that you enter into with the people who work for your company

Contracts can be – and in some cases, should be – very nuanced. One of the biggest mistakes many business owners make is downloading a generic contract from the internet and believing that it will protect their best interests. The fact is that contracts need to be tailored to the specific situation they represent; if they aren’t, there are “loopholes” that can render them unenforceable in court. If a contract is unenforceable in court, it’s essentially useless. You cannot expect the other party to uphold its end of the bargain when there are no consequences for failing to do so.

WORKING WITH AN ATTORNEY ON CONTRACTS

It's important to work with an experienced attorney when it comes to drafting and reviewing contracts. Your attorney will customize your contract to cover all your bases. The contracts your company needs to function properly (and to limit your liability) may need to address things such as:

- All elements of the services being provided and the timing of delivery
- When payment should be made, and who's responsible for them
- Compliance with industry-specific laws, regulations and guidance
- Insurance requirements
- Salary and benefits
- Defense of trade secrets
- Confidentiality or non-disclosure agreements
- Intellectual property
- Indemnification
- Warranty information
- Default terms
- Remedies and dispute resolution
- Termination



SIGNING A COMMERCIAL LEASE THAT WORKS IN YOUR FAVOR

Commercial leases are among the most common reasons new businesses fail within the first few years of operation. Unfortunately, many commercial lease agreements don't hold landlords accountable for maintenance and repairs, don't address usage policies for the space, and contain terms that can be harmful to your business.

BEFORE YOU SIGN A COMMERCIAL LEASE...

Commercial leases are notoriously complicated. You should never sign one without having an attorney review it first.

Naturally, most commercial leases favor the landlord – but they should still be fair to lessees, as well. This concept is called commercially reasonable.

agreement that you're thinking about signing to ensure that it is commercially reasonable doesn't set your company up to fail. Your attorney can review the lease, which may be dozens of pages long, to check it for:

- Landlord overreach
- Accuracy
- Unreasonable charges and assignment of responsibility for maintenance and repairs
- Personal guarantees
- Protections for the tenant in the event that the property is foreclosed

COMMON ISSUES THAT SHOULD BE ADDRESSED IN YOUR COMMERCIAL LEASE

Commercial leases should address all these issues:

- Access and entry
- Alterations and improvements
- Tenant improvement, or TI, allowances
- Casualty/damage and destruction
- Default by landlord and by tenant
- Governmental regulations
- Indemnification
- Insurance requirements
- Landlord maintenance and repair obligations
- Permitted use
- Signage
- Utilities
- Common area maintenance, or CAM, charges, if there are common areas (such as parking lots) that tenants share

The key to successfully negotiating a commercial lease is knowing how these issues – and others that many leases address – could impact the way you run your business. That's why the best course of action is to work with an attorney who's looking out for your best interests.



BUYING COMMERCIAL REAL ESTATE

Buying and developing your own commercial property can be lucrative – but only if your interests are protected every step of the way. Each of these pursuits comes with its own risks, and working with an attorney can help minimize your potential for loss.

WHAT GOES INTO A COMMERCIAL REAL ESTATE PURCHASE?

Commercial real estate transactions can be complex, and most people who want to buy property build a team of professionals who can help them sort out issues and negotiate the best possible outcome. Generally, your team should include a real estate attorney, an accountant or financial professional, a lender, a real estate professional, and a tax professional to ensure that you're getting favorable terms and that you understand the financial and tax implications of the purchase.

A commercial real estate purchase requires you (with your team's help) to do due diligence – that is, to ensure that you're making the right decision by embarking on a fact-finding mission. You'll want to look at:

- What the property has been used for in the past, and whether you'll continue using it for the same purpose
- Whether the property is zoned properly for your use (or whether you can request a change in zoning)
- How much income the property generates now and how much it has generated in the past
- Whether the property needs significant repairs now or it will soon
- How much the current property taxes cost
- Tax credits for renovations
- Financing options

Having an attorney on your team is absolutely essential. Your lawyer will ensure you're up-to-speed on the legalities surrounding every aspect of the transaction, maximize any tax advantages or credits, watch for pitfalls during the negotiation and purchase processes, and help you get the best possible terms on the deal.



FAMILIARIZING YOURSELF WITH EMPLOYMENT LAW

If your business needs employees, contractors, gig workers or freelancers to succeed, it's in your best interest to consult with an employment law attorney. Employers are responsible for upholding federal, state and local laws, as well as remaining compliant with regulations that govern their industries. You may need to speak to an attorney who's familiar with:

- Hiring and firing
- OSHA compliance
- The Family and Medical Leave Act
- The Fair Labor Standards Act
- Title VII of the Civil Rights Act of 1964
- Affirmative action
- Wages, overtime and pay practices
- Anti-harassment training

EMPLOYER REPRESENTATION

Most employees want to settle workplace disputes out of court, and that generally works in everyone's favor. You'll likely still need to work with an attorney to reach an agreement, but negotiating a resolution is best for everyone involved. However, in the event that a dispute ends up in court, you'll certainly need an attorney to represent your business's best interests. Your attorney can help you with wage and hour disputes, discrimination and harassment cases, as well as a wide range of other issues that could pose a hazard to your business.

YOU DON'T HAVE TO DO THIS ALONE

Whether you have the next big idea and are ready to start your own business or you're a seasoned pro, you can benefit from working with an experienced attorney who knows how to help you position your business – and yourself – for success.

If you have questions about how to structure your company, negotiate contracts, purchase commercial real estate, resolve disputes, handle employee issues, protect your brand, or buy or sell an existing business, we can help. Call us at 504-934-2020 now to schedule a complimentary consultation with a knowledgeable attorney who can look out for you.

Amanda Butler Schley

[Business Law Group](#)

3432 Chestnut Street

New Orleans, LA 70115

504-934-2020



BUSINESS LAW
GROUP

OFFICE LOCATION

3432 Chestnut Street
New Orleans, LA 70115
(504) 934-2020