



THE
BECK LAW FIRMSM
LLC

THE GUIDE TO STARTING A BUSINESS IN GEORGIA

BY JOEL BECK



Starting a Business in Georgia

In this free guide*, we'll share with you:

Four questions we often hear about starting a business in Georgia

and

Three questions people SHOULD BE ASKING when thinking about starting a business in Georgia.

** This report is provided for educational and informational purposes only. It is not legal advice for your situation and it is not a substitute for speaking with legal counsel about your matter.*

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Dear Reader,



If you're thinking about starting a business here in Georgia - congratulations. Being in business for yourself can be exciting and rewarding. Owning a business can also be somewhat challenging, but getting your new business set up and running correctly can certainly help position you for success.

Experienced entrepreneurs know the value in working with a team of advisors such as their attorney, CPA, and financial advisor to help them handle the legal, accounting, and financial side of things, so that the business owner can focus on building and managing the business. At my law firm, we work with small business owners across the state, helping them go into business and stay there, advising and counseling them as they navigate the various legal issues that they'll face when starting up - from forming a LLC or corporation, to drafting contracts with clients or vendors, and dealing with issues with employees and contractors, as well as customers and competitors.

In this report, I'll share the answers to a few frequently asked questions that we get from prospective clients looking to start a business in Georgia, and I'll also address some questions that people ought to be asking, but sometimes don't think to do so. In doing this, we'll point out some potential legal problems that you'd be wise to avoid as you begin your new business – especially when you are going into business with someone else. And then finally, I'll share with you a little about how we work with business owners so that they can focus on their business, and know that they've taken the right legal steps to protect themselves and their new business, such that they are positioned for success.

Understand that this information is provided for informational purposes only. It is not legal advice for your specific situation.

Once you've reviewed this guide, feel free to contact us if you have questions, and be sure to look to us for help with your business legal needs. It would be our honor to serve you.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Joel R. Beck'. The signature is stylized with a large, looped 'J' and a cursive 'B'.

Joel R. Beck
The Beck Law Firm, LLC

Four Questions About Starting a New Business We Frequently Hear From Callers

1. There are so many options, from corporations, to LLCs to professional corporations, LLPs and more. How do I know what type of business entity to use for my new business?

This is a great question, but one that does not lend itself to a short answer without knowing about your goals and expectation. To determine what business entity type makes sense for you, the following factors have to be considered:

- * Number of owners
- * Type of owners – will they be individuals, or will some companies (such as other LLCs or corporations) be an owner
- * Source of financing/capital for the business
- * Exit strategy – do you have a vision in place for what you want to happen to the business later (such as pass it down to family, sell it to others, or close it down when you retire, etc.).

We need to consider these factors, as well as other information about how you want to operate the company and your business goals, to then make a recommendation as to what business entity type is right for you.

Here's a couple of other points about entity selection:

Professional corporations are allowed for those practicing certain professions under Georgia law, but these businesses can also be operated through other entities, generally speaking. For example, doctors and accountants, among other professions, can establish a business as a P.C. (a professional corporation), but they can also use a LLC for their business, and the LLC may be easier to manage on an annual basis.

Limited Liability Companies, or LLCs, are the newest type of legal entity, but have quickly become one of the most popular entity types. This is because of ease of use and flexible tax status. LLCs generally are easier to maintain than corporations because they have fewer “corporate formalities” to keep up with each year, especially when the company is owned by just one person. Further, the LLC has the option of being taxed either as a disregarded entity (meaning as a sole proprietor) if there is one owner or as a partnership if there are two or more owners, or as a Subchapter S corporation under the tax code (with some exceptions). Of course, making a decision as to how a LLC should be treated for tax purposes should be made in consultation with your CPA.

Corporations are also commonly used here in Georgia, but with the rise of LLCs as a popular entity choice, we tend to form fewer corporations than in years past. This is, I believe, in part due to the flexibilities offered to LLCs from a tax perspective, and to the fact that maintaining a corporation requires a bit more annual paperwork than a LLC might require. Having said that, a

corporation may be a good entity choice for many people, and the maintenance of the “corporate formalities” is not overwhelming such that corporations should be avoided.

The bottom line is that the right entity for you might be different than for someone else. After we discuss your business goals and plans, we can then discuss the pros and cons of the different entity options and determine what the best choice is for your situation.

2. Does a LLC or corporation protect me from all liabilities of my business and my business activities?

Not necessarily.

Generally speaking, people form a corporation or LLC to provide them with a level of protection so that they are not personally responsible for the debts and obligations, as well as the other liabilities, of the business. This limited liability protection of a LLC or corporation generally acts to shield the owner’s personal assets from being on the hook for someone with a claim against the business.

For the most part, this limited liability protection protects the owner’s personal assets from claims against the business, but there are some exceptions. For example, a business owner who fails to pay the proper payroll taxes can be personally responsible for those taxes due. Likewise, the owner who personally guarantees payment for the business by way of a personal guaranty will be personally obligated for such payment. And, where negligence occurs, such as malpractice by a professional, that professional can be personally responsible for his or her own actions.

What you need to know is that a business entity such as a corporation or LLC can provide some level of protection for the owners, but that may not be complete protection. Therefore, other risk management and mitigation strategies should be used, where appropriate, to protect the owner’s personal assets and the business itself. To this end, many business entities will carry insurance to help protect it, and the owners, from certain possible claims.

3. What are Bylaws and Operating Agreements? Do I need those for my business?

If you form a corporation or LLC, yes, you’ll need one of these, but not both. Bylaws are for a corporation, and an Operating Agreement is for a LLC. These documents essentially set forth information about how the company will be managed and operated, and provide certain rights for the owners with respect to voting, allocation of profits/losses and dividends, and more.

For a corporation, the Bylaws will identify how the Board of Directors is elected and when, how many directors there are, and how vacancies will be filled. They also provide information about how and when shareholder meetings will be held and how shareholders cast votes on certain issues, and provide minimum notice requirements and limitations on who can call for meetings of the shareholders. The Bylaws typically detail the main officers to be appointed by the Directors, their roles and duties, and may also provide for which officers are authorized to sign contracts for the company, and to sign or endorse checks or financial instruments, etc. The Bylaws may also provide for certain indemnification provisions for directors and officers. Additional information

concerning the maintenance of books and records of the corporation will also generally be included in the Bylaws.

For a LLC, the Operating Agreement for a LLC will often identify the ownership, the breakdown of percentage ownership, or membership unit ownership by the members, and it will also explain how profits or losses will be distributed among the members. Further, the operating agreement will address how the LLC is managed; a LLC can be managed by a manager, by a managing member, or by all of the members. The Operating Agreement will further explain the role of any managers, as well as list what type of decisions are left to the vote of the members, and specify the requirements for calling for a meeting of the members, including who can do that and what type of notice must be given to the members. Often, the Operating Agreement will identify how the LLC can go out of business, what steps must be taken to decide to dissolve the business and wind it down, or what will happen in a specific point in the future if the LLC is only set up to operate for a certain number of years.

The Bylaws for a corporation or the Operating Agreement for a LLC may go into decisions and plans for what happens if a member or shareholder dies, or becomes disabled and can no longer actively participate in the company. It may also go into what will happen if a member or shareholder wants out of the business or if other members/shareholders want another member/shareholder out – situations where there is a business divorce. Typically, for the death, disability, or a business divorce of members/shareholders, our firm's practice is to put those plans in a more comprehensive contract between the members or shareholders, called a Member's Agreement (in the case of a LLC) or a Shareholder's Agreement (in the case of a corporation), as opposed to in the Bylaws or Operating Agreement itself.

4. The state says I need a registered agent. Who can be a registered agent and what do they do?

Essentially, a registered agent is a stand-in for the LLC or corporation as the person who receives official communications, including being served with court papers, on behalf of the corporation or LLC. Think about it this way: If someone is suing you, the sheriff or process server comes and gives you the papers. Or, if someone needs to mail something official to you, they put it in the mail to you at your address. But a LLC or a corporation is essentially a fictional person created under the law. There is no one named "The Business, LLC" or "That Business, Inc." But, since companies can sue and be sued, and have other elements of being, we need someone who can "stand-in" on behalf of the company. That's what the registered agent does.

Under Georgia law, each corporation and LLC in the state has to designate a registered agent. This is a person (or a registered agent company) that has a designated address where official mail and service of process can be made. The registered agent is not necessarily responsible for responding to the items that he or she receives on behalf of the company, but will take those items and get them in the hands of management at the corporation or LLC so that appropriate responses can be made, as needed.

Georgia law also requires that the registered agent's address be a place where the person can normally be found – in other words where that person is located. This means that PO Box at the

post office is not allowed, and typically a PMB (private mail box) that might be used as a mail drop is not workable either. Many small business owners just starting out and choosing to have their office at home may be leery of listing their home address on the LLC or corporation documents, wherein they serve as the registered agent, because that address is publicly available and the LLC and corporation filings with the Secretary of State's office are available online. Because of that, several business owners will choose to have the attorney that helps them form the new company serve as the registered agent each year, and may pay a nominal fee for that service. Other options include companies that essentially serve as a professional registered agent for a fee.

Three Questions People SHOULD Be Asking When Considering Starting a Business

1. I want to go into business with someone else. Are there specific steps I should take to do that?

You really want to go into business with someone else? Are you sure? It's a whole lot easier not to do that. And it can prevent a lot of partner-related problems and drama if it is just you that is calling the shots. But, if you're committed to this idea of wanting to go into business with someone else and you have good reasons to do that, then the answer to the question is that yes, there are some specific steps you should take.

At the start of this new business adventure, it can be disheartening to think about where things can go wrong, and what happens if a partner dies, becomes disabled, or someone decides that they want a business divorce. But, it is important to think about that early on, and plan for that possibility. Here's the point: if you don't agree at the start on how to deal with these issues and instead try to put it off until a situation develops, you'll have a very hard time agreeing on a resolution later after trouble has arisen. So, having a professionally written and detailed agreement in place signed by all of the business owners to address these concerns can be key to avoiding stress, costly legal and other expenses, and a drawn-out battle with your business partner or their family.

Additionally, you have to think through how the business is going to be managed and operated. Just because someone owns part of the business does not mean that they should be involved in the management of the business. Importantly, we're all gifted with different skills and talents, and just because someone can do something, doesn't mean that they are ideally suited for that position.

Whenever two or more people come together to start a business, getting complete and detailed plans in place to govern the business, and the relationship of the owners to the business and each other is a critical step. Those who fail to plan in this regard often do so at their own peril, and suffer much more costly expenditures of money, time and stress when eventually someone dies, becomes disabled, or the owners cannot agree on how to operate the business together or decide that they need a business divorce.

2. What do I have to do to maintain the company from a legal perspective, to preserve the limited liability protection?

Sometimes, once people form a new business entity, they fail to take necessary steps to maintain the corporation or LLC in good standing. In doing so, their inaction may result in their business entity being dissolved by the state, or their failure to keep the company's assets as separate from their own may result in a plaintiff's lawyer piercing the limited liability veil and therefore putting the owner's personal assets on the line for a business obligation. There are some steps to take to help prevent this, including the following:

- * Keep the company's assets separate from the owner's. Maintain a company bank account and don't commingle personal money and assets and business money and assets.
- * Keep records of company revenues and expenses. Your business should have an accounting system in place – your CPA can help you set this up.
- * Each year, businesses such as LLCs and corporations in Georgia must file a new annual registration with the Secretary of State's office and pay a nominal annual fee. Failing to make the filing can result in the Secretary's office administratively dissolving the business.
- * Follow your governing documents and have meetings of shareholder or members when required, and also meetings of the directors or managers. The Bylaws or Operating Agreement come into play here. If the business is required to have an annual meeting of shareholders or members, have that meeting and document it. Have meetings of the Board of Directors (for the corporation) or of the Managers (for a manager-managed LLC) and document that. When votes are required to approve a certain course of action, take the vote and document that in the minutes of the meeting, or in a writing signed by all of the parties in lieu of a meeting if that is allowed in your governing documents. In short, follow the required steps set forth in the governing documents for the business and maintain documentation of compliance with these formalities.

3. What other requirements must my business comply with to operate legally?

Beyond forming a business entity, to actually conduct business, there may be a wide range of other issues to deal with. For example, some types of business activity require certain licenses from the state and are heavily regulated. In addition, other requirements might include:

- * Local business license (sometimes called a business occupation tax) from the local city or county.
- * Estimated federal income tax – owners of certain entities may need to pay estimated taxes in installments, so consult your CPA on this.
- * Tax Returns – both federal and state tax returns may be required, and personal property returns may also be required for your local jurisdiction. Consult your CPA.

* Other taxes – payroll taxes, worker’s compensation taxes and unemployment insurance taxes may apply depending on your situation. Yes, consult your CPA on this as well.

* Qualification in other states – as noted above, depending on the company’s presence in other states, the company may be required to register as a foreign corporation or LLC in that other state. Your business lawyer can counsel you on this.

How it works to get help with your business start-up from The Beck Law Firm, LLC

Starting a business is hard enough without worrying about the legal issues. Here at The Beck Law Firm, LLC, we work with business owners across the state to help them go into business and stay there. We’re in their corner as their legal counsel, so that they can work in and on their business - doing what they do best - and so they don’t get bogged down with the legal issues.

Not every situation is the same. Some business owners have limited legal needs, needing help only with forming a new corporation or LLC. Others have more complex needs, such as business formation plus reviewing and drafting contracts and leases, helping with hiring and other matters. And, those going into business with partners are often interested in developing a solid members’ or shareholders’ agreement, so that they have a plan in place to follow should an owner die, become disabled, or there needs to be a business divorce among the owners. We know that your goals and objectives are unique, so we don’t try to cram your situation into a cookie-cutter approach that is not tailored to your situation, as that approach does not serve you well. Whatever the need, we work to provide personalized service to help our client reach their goals.

When representing business owners, we use technology to make the process work better. Many of our client’s objectives can be addressed through communications through the phone, email and video conferences, and many documents can be signed electronically. This minimizes our client having to take time away from their business efforts to drive to meetings with the lawyer, and may also allow us to get the client’s desired results in a shorter period of time. Depending on the scope of work, our legal work is done either on a fixed-fee basis, on an hourly basis, or a combination of the two. With years of experience in business law issues, you can trust The Beck Law Firm, LLC to have your back, so that you can focus on starting and growing your business.

We love working with business owners (and persons who are soon to be business owners) and assisting with their legal needs, but we’ve found over the years that not everyone is a good prospect for working with us. Those who don’t value counsel from advisors tend not to be good clients. If you think about it, it really doesn’t make sense to hire someone to help you succeed and then not listen to their guidance. Also, people looking for the lowest cost provider, regardless of the uniqueness of their situation and the client experience they receive, aren’t generally going to be a good fit for working with The Beck Law Firm, LLC. Our fees are reasonable and tailored to the job at hand, but we’ll never be the absolute lowest cost provider. Our legal services are not commoditized, nor is the client experience. You’ve probably already learned that you get what you pay for in most circumstances. We think that’s generally true as well for your business legal needs.

What Some Clients Have Said*

Here's what a few clients who engaged The Beck Law Firm, LLC for business law needs have said about their experience working with us:

We enjoyed the personal attention we received from everyone in your office. We felt we received solid advice and learned several things we never knew existed. Well worth the time and money!

JEB, JR. (JUNE 2018)

I am highly satisfied with the legal services provided by The Beck Law Firm. I was impressed with Joel's service & prompt replies to all questions, as well as the efficient timing on all requests. I would absolutely contact The Beck Law Firm again as the staff and Joel are personable, caring, and professional in handling all requests.

H.K. (MARCH 2018)

Joel communicated with me during regular and off hours. The matter was resolved quickly and with little angst on my part. I would use The Beck Law Firm for legal counsel again. Joel provides thoughtful, conscientious legal counsel catered to the individual's needs and understanding.

TS, A BUSINESS LAW CLIENT (DECEMBER 2017)

Joel is always very courteous and professional. He's great and has helped my business with a lot of issues. Completely satisfied.

S.J. – A BUSINESS LAW CLIENT (OCTOBER 2017)

Joel was a pleasure to work with – knowledgeable, professional and always a step ahead.

R.E., A BUSINESS LAW CLIENT, (AUGUST 2017)

* Any results obtained for a client are done based on the facts and law applicable to that matter; your situation may be different. Prior results do not guarantee a similar outcome. These testimonials are not intended to solicit for any clients where the use of testimonials may be prohibited or restricted.

The Next Step – Where Do You Go From Here?

After reading this guide on starting a business in Georgia, the next step on the path to getting your business going is to contact us to speak about your situation. Call us at (678) 344-5342 to briefly speak about your needs to see if we can assist you.

We know that for some people, the prospect of calling a lawyer's office is somewhat scary or intimidating. If that's you, relax. We're people too, and we work each week to help our clients succeed in their business. You'll find that you'll be greeted by friendly people, and we can chat for a few minutes about your needs to see if we can be of help.

Remember that this free guide is designed to provide you with information, but it is not legal advice for your situation.

Finally, if you've got thoughts on how we might be able to improve this free guide for other readers, be sure to let us know. Drop us a letter or an email and share your thoughts.



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