



**DIKE LAW GROUP**

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# **STARTUP LEGAL GUIDE**

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# CONGRATULATIONS!

You've decided to establish a business. Having a strong legal foundation gives you confidence and peace of mind, allowing you to concentrate on growing your business. While it may be tempting to put off legal matters until later, it is much less expensive to set up your company properly in the first place than it is to fix a costly issue after it has arisen. Here are some crucial legal concerns to keep in mind when you establish your company...

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#### 1. Verify That Your Business Name is Available

Before you decide on a name, do a few searches. You'll need to register your name on the state and federal levels and secure a domain for your website.

**ENTITY NAME:** Entity names protect you on a state level. You can do a search to make sure it's available on your state's website. Each state has different requirements for what your entity name can be.

**TRADEMARK:** Trademarks protect you on a federal level. Trademarks prevent others in the same or similar industry in the U.S. from using your trademarked names. You can search here to make sure your name is available:

<https://www.uspto.gov/trademarks-application-process/search-trademark-database>.

**DOMAIN NAME:** Domain names protect your website address and brand presence on the internet. Your domain name doesn't have to be the same as your business name or trademark, but if you want it to be, make sure your name is available on the web before you fully commit to a name.

**"DOING BUSINESS AS" NAME:** If you have a "doing business as" name it's a good idea to do these searches on it as well. You may be legally required to have a "doing business as" name.

#### 2. Decide Where Your Business is Located

Location matters. Income tax, sales tax, and corporate taxes can vary significantly from place to place. Talk to a lawyer and an accountant to decide what location is best for you. You'll need a business address that is different from your home address.



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### 3. Form Business Entity

Forming a business entity that limits liability acts as a wall against your personal assets (your home, bank account, car, etc.) in the event someone were ever to sue your company and get a judgment. A business entity needs to be in place before you get sued in order to protect your personal assets. There are several different types of business entities. LLCs and Corporations are the most common. While both LLCs and Corporations limit your personal liability, the two entities differ in terms of how taxes are paid, how money is raised, and what paperwork needs to be filed. It's a good idea to consult an attorney and/or accountant to see which is right for your business needs. The important thing is that you form a business entity that limits personal liability as soon as you are exposing yourself to risk and make sure you are following the appropriate formalities like keeping financial records and filing the appropriate paperwork.

### 4. File for EIN Number

File for an EIN Number. Your Employer Identification Number is like a social security number for your business. You need your EIN before you can open a business bank account.

### 5. Form a Business Bank Account

Business bank accounts are necessary to make your business entity legit and protect your personal assets. Having one also makes it easier to track expenses.

### 6. Finalize Contracts

You need contracts from day one of your business. Contracts set boundaries between parties, establish expectations, protect you from the "what ifs," describe deliverables and payment terms, spell out how you can terminate the relationship, tell the parties where disputes are handled and set forth who owns any intellectual property.



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HERE ARE SOME CONTRACTS YOUR BUSINESS MIGHT NEED STARTING OUT:

- **PARTNERSHIP AGREEMENT:** This is essential if you have a business partner to establish each partner's responsibilities and state how profits and debts are divided.
- **SERVICE PROVIDER AGREEMENTS:** If you are someone who provides services (Web Designer, Graphic Designer, Social Media Manager, Coach, etc.) this is the contract you have with your clients.
- **EMPLOYEE AGREEMENTS:** If you hire contractors, you'll need an Independent Contractor contract with them to describe the job and payment terms, and prevent them from taking confidential information and soliciting your clients/employees.
- **NONDISCLOSURE AGREEMENT:** You'll want one of these if you need to discuss business matters with potential employees or investors. NDAs protect your confidential information from unwanted disclosure.
- **AFFILIATE AGREEMENT:** If you use affiliates to promote your product, you need to have a contract with your affiliates to tell them how they can use your logo, what the payment terms are, etc.
- **WEBSITE TERMS OF USE:** If you have a website, you need a Website Terms of Use, which is your contract with visitors of your site. It tells users how they can behave, what kind of comments they can post, and limits your liability.
- **PRIVACY POLICY:** If you have a website, you need a Privacy Policy, which tells your website, visitors, how their personal data is being stored and shared. You're legally required to have one if you're collecting personal info from anyone in the EU or California, or if you run Google or Facebook ads, or use Google Analytics.



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### 7. Protect Intellectual Property

Intellectual property is a category of property that covers creations of the mind, like inventions, literary and artistic works, designs, and images.

Intellectual property includes copyright, trademark, patent protection, and trade secrets. The most common intellectual property issues you are likely to see in your business are copyright and trademark.

**COPYRIGHT:** Copyright protection covers "original works of authorship," including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations. This includes common online business creations like e-books, courses, photographs, and blog posts. Copyright protection is automatic, i.e. your work is under copyright protection the moment it is created.

However, you should still register your work so that you can sue under the federal copyright statute and be eligible for statutory damages and attorney's fees if you're successful in litigation.

**TRADEMARK:** A trademark protects words, phrases, symbols, or designs identifying the source of the goods or services of one party and distinguishing them from those of others. In order to acquire ownership of a trademark, you have to be the first to use the trademark in commerce (as opposed to being the first to register the mark).



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### 8. Use Disclaimers/Disclosures

You likely need a disclaimer if you are giving any kind of professional or health advice, or if your website creates any kind of risk of user error or misuse.

YOU MAY NEED ANY OF THE FOLLOWING DISCLAIMERS IN YOUR BUSINESS:

Warranties and Representations Disclaimer  
Affiliates/Endorsement Disclaimer  
Third-Party Disclaimer  
Earnings Disclaimer  
Professional-client relationship  
Purpose of Information Disclaimer  
No responsibility/Errors Disclaimer  
Copyright Disclaimer

### 9. Comply With Applicable Laws & Regulations. Obtain Any Necessary Licenses, Permits, & Registrations.

Depending on your state and industry, your business may be affected by additional laws and regulations, and you may be required to obtain necessary licenses, permits, and registrations. Your tax liability and insurance needs will also vary depending on your industry and location.



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# Startup Checklist

- ☐ Business Name Availability
- ☐ Business Location
- ☐ Business Entity Formation
- ☐ EIN Number
- ☐ Business Bank Account
- ☐ Contracts
- ☐ Disclaimers/Disclosures
- ☐ Laws & Regulations